Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 222-2020

Saskatchewan Health Authority

July 6, 2021

Summary: The Saskatchewan Health Authority (SHA) received a complaint regarding the Complainant's personal health information, which an individual from the community (Individual A) had disclosed in a letter to the editor of their local newspaper. The Complainant's representative was concerned that someone associated with the Outlook and District Health Centre had disclosed, without authority, the Complainant's personal health information to Individual A. The Commissioner found that SHA did not breach the Complainant's privacy, as there was not enough evidence to support the claim that anyone who works or speaks for the SHA disclosed the Complainant's personal health information to Individual A. The Commissioner made no recommendations in this matter.

I BACKGROUND

[1] In this matter, the Complainant is represented by a family member (Complainant's representative). Saskatchewan Health Authority (SHA) advised my office the Complainant's representative has authority to act on the Complainant's behalf pursuant to *The Health Care Directives and Substitute Health Care Decision Makers Act*. As such, it appears this person can exercise the rights of the Complainant in this matter pursuant to subsection 56(e)(ii) of *The Health Information Protection Act* (HIPA).

[2] The Complainant was the subject of a news article published in a Saskatchewan newspaper in June 2020. The article raised concerns regarding the Complainant's care at the Outlook and District Health Centre. The information for the article was provided by the Complainant's representative and another family member.

[3] In response to the newspaper article, an individual from the community (Individual A) wrote a letter to the editor of the local newspaper that was published in July 2020.

[4] On July 12, 2020, the Complainant's representative emailed the SHA with the following:

> The concern our family has is that my [family member's] private information is being passed to a local resident, namely [Individual A] and perhaps others in the community. The information in [Individual A's] letter to the editor includes information about my [family member] that was not in the media statement we made. I am concerned that the staff are disclosing information to local residents in breech [sic] of my [family member's] confidentiality. I assume information is being shared through phone conversations between staff and [Individual A], based on the information in [their] article.

[5] On August 25, 2020, the SHA emailed the Complainant's representative that its investigation into the alleged privacy breach was complete. The SHA added as follows:

> I followed up with [Individual A] and [they] indicated that [they are] aware of the processes and techniques used by staff when providing care to the residents because [they] had a family member living there for several years. The comments made, even though there were in reference to [the Complainant], came from general knowledge and had not been shared with [them] about [the Complainant] by staff. With regard to having met [the Complainant], [the Complainant] was introduced to [them] one day while [they were] visiting with [their spouse] out on the patio and [the Complainant] was walking by. [They] also heard staff calling with [the Complainant] by name.

[6] On September 1, 2020, the Complainant's representative emailed my office because they were not, "satisfied with the cursory investigation that was completed and would like to elevate this complaint to the provincial commission".

[7] On September 17, 2020, my office provided notice to the Complainant's representative and the SHA of my office's intent to undertake an investigation.

II DISCUSSION OF THE ISSUES

1. Is there proof of a breach of HIPA by a trustee?

[8] HIPA applies when three elements are present: 1) there is personal health information; 2) a trustee is involved; and 3) the personal health information is in the custody or control of the trustee.

[9] The news article published in June 2020 contained information on the Complainant's health conditions and personal care at the Outlook and District Health Centre. Individual A's letter to the editor in July 2020 reiterated some of this same information, and included other information on the Complainant's personal care received at the Outlook and District Health Centre. This is the Complainant's personal health information pursuant to subsections 2(m)(i) and (ii) of HIPA as follows:

> **2**(m) **"personal health information"** means, with respect to an individual, whether living or deceased:
>
> (i) information with respect to the physical or mental health of the individual;
>
> (ii) information with respect to any health service provided to the individual;
> …

[10] I find, therefore, personal health information is involved in this matter.

[11] The Complainant's representative questions if staff at Outlook and District Health Centre shared the Complainant's personal health information with Individual A. They appear to base this on two beliefs: 1) that staff posted a copy of Individual A's letter to the editor, as well as a copy of a letter from another community individual (Individual B), on the Complainant's bulletin board; and 2) that the individual from the community appeared to know details about the Complainant's health that staff must have disclosed to them.

[12] I note the letter written by Individual B was written to staff of the Outlook and District Health Centre, and did not contain the Complainant's personal health information. As such, I will not consider it further. However, the act of a staff member placing Individual A's letter from the editor on the bulletin board may be viewed as a continuation of a breach. In order to determine if a breach occurred, though, I need to determine if a trustee with custody or control of the Complainant's personal health information breached their

obligations under HIPA. The starting point of my analysis, then, is to determine if these incidents involve a trustee as defined by subsection 2(t) of HIPA who has custody or control of the personal health information in question.

[13] Subsection 2(t) of HIPA defines "trustee" as follows:

> **2**(t) **"trustee"** means any of the following that have custody or control of personal health information:
>
> (i) a government institution;
>
> (ii) the provincial health authority or a health care organization;
>
> (iii) Repealed. 2002, c.R-8.2, s.77.
>
> (iv) a licensee as defined in *The Personal Care Homes Act*;
>
> (v) a person who operates a facility as defined in *The Mental Health Services Act*;
>
> (vi) a licensee as defined in *The Health Facilities Licensing Act*;
>
> (vi.1) a licensee as defined in *The Patient Choice Medical Imaging Act*;
>
> (vii) an operator as defined in *The Ambulance Act*;
>
> (viii) a licensee as defined in *The Medical Laboratory Licensing Act*, 1994;
>
> (ix) a proprietor as defined in *The Pharmacy and Pharmacy Disciplines Act*;
>
> (x) a community clinic:
>
> (A) as defined in section 263 of *The Co-operatives Act*, 1996;
>
> (B) Repealed. 2014, c.17, s.7.
>
> (C) incorporated or continued pursuant to *The Non-profit Corporations Act*, 1995;
>
> (xi) the Saskatchewan Cancer Foundation;
>
> (xii) a person, other than an employee of a trustee, who is:
>
> (A) a health professional licensed or registered pursuant to an Act for which the minister is responsible; or

(B) a member of a class of persons designated as health professionals in the regulations;

(xiii) a health professional body that regulates members of a health profession pursuant to an Act;

(xiv) a person, other than an employee of a trustee, who or body that provides a health service pursuant to an agreement with another trustee;

(xv) any other prescribed person, body or class of persons or bodies;

[14] The Complainant's representative submitted their complaint to SHA regarding Individual A and their letter to the editor. The first question I have to answer is if the Outlook and District Health Centre is a standalone trustee or not. When asked this question, the SHA indicated the Outlook and District Health Centre is one of its facilities, so would be part of the SHA. I note the SHA qualifies as a trustee pursuant to subsection 2(t)(ii) of HIPA.

[15] I must also consider what Individual A's relationship is to the SHA.

[16] First, the Manager of Health Services confirmed with my office that Individual A is not, and was not at the time, its employee.

[17] Second, in their letter to the editor, Individual A identified themselves as a member of the Resident and Family Council for the Outlook and District Health Centre. The SHA's Resident and Family Council policy, approved by the Community Care Branch of the Ministry of Health (effective April 2013), states special care homes are to "establish and maintain a resident and/or family council" for the purpose of "ensuring residents of **special-care homes have a voice in the operations of the activities of the home…**" [Emphasis added].

[18] The Manager of Health Services at Outlook and District Health Centre confirmed in an email dated June 1, 2021, they were not able to locate the terms of reference for its Resident and Family Council, but added the following with respect to its local Council:

> **It isn't formal and there is no "membership" per se. All family members are sent the invitation for the meeting and can chose to attend or not**. There are only a

> couple residents that are able to sit in during the meeting and provide their input. We have an agenda that we go through that is mainly informational.
>
> …
> There I [sic] **no specific membership so no one is really "a council member**", so, no, there isn't any formal oath or non-disclosure agreement. It isn't that kind of "council".
>
> [Emphasis added]

[19] Individual A is not, and was not at the time, employed by Outlook and District Health Centre, and does not appear to represent SHA on the Resident and Family Council. Based on this, I find Individual A is not a trustee, nor do they represent a trustee, pursuant to subsection 2(t) of HIPA. Therefore, any actions they took with respect to the personal health information in question is not the responsibility of the trustee. However, if I conclude that anyone who speaks or works for the SHA disclosed the personal health information to Individual A without authority, then I would find a privacy breach occurred.

[20] What needs to be considered then is if a staff member of the Outlook and District Health Centre disclosed the Complainant's personal health information to Individual A, who then used that information to compose their letter to the editor. If so, there may have been a breach of the Complainant's personal health information by the SHA.

[21] In correspondence to my office, the Complainant's representative highlighted specific statements from Individual A's letter to the editor they felt indicated Individual A knew more regarding the Complainant's personal care than they ought to have known. The statements they highlighted from the letter to the editor in question are as follows:

- "I was also a member of the Family Council which advocated for all residents not just our own loved one."
- "It is still a puzzle how your loved one got out!! We once had a resident that walked around the facility with her purse in one hand and her sweater or jacket over her arm, and really she looked like a visitor so she would slip out the door when other visitors were coming or going and away she would go".
- "Your loved one didn't get a tub bath, which most people get once a week, because even using Gentle Persuasion [they] refused to have a bath…"

[22] With respect to the first bullet in the preceding paragraph, the Manager of Health Services advised in an email dated June 8, 2021, "[w]e do not discuss personal resident information [at meetings]". To support this, they provided my office with a copy of meeting minutes, dated June 16, 2020, when Individual A was present. During this time, the Complainant would have been a resident at the facility. From my office's review of these minutes, no resident information was discussed at the meeting, including that of the Complainant, so that would not appear to be a source of potential information for Individual A. As there is no evidence that personal health information was shared at the Resident and Family Council meeting that Individual A attended while the Complainant was at the Outlook and District Health Centre, I will not consider this item further.

[23] With respect to the second and third bullets at paragraph [21] of this Report, SHA stated Individual A had occasion to observe the Complainant in the home, and was aware of Outlook and District Health Centre using the "Gentle Persuasion" technique with residents. That is, based on what Individual A understood and observed about the home, they made assumptions about the Complainant, which they then stated in their letter to the editor.

[24] SHA also stated it conducted interviews with staff, and concluded no staff had shared the Complainant's personal health information with Individual A. With respect to the bulletin board incident, SHA added, "[t]here were no witnesses and no evidence that they had been posted on the bulletin board by staff. There was acknowledgement that the documents may have been at the Nursing Station and that [the Complainant] was known to remove items from the Nursing Station at times. To that end, steps have been taken to ensure nothing is left at the Nursing Station that [they] can remove".

[25] The Complainant's representative stated they "assume information is being shared through phone conversations between staff and [Individual A], based on the information in [their] article". What I require in this case, however, is evidence, and I have no evidence that what the Complainant's representative assumes occurred actually did.

[26] In a matter such as this, my consideration is of all the facts provided to my office so that I can determine, on a balance of probabilities, that if what is alleged is likely to have occurred. In this matter, there is not enough evidence to support the claim that anyone who speaks or works for the SHA disclosed the Complainant's personal health information to Individual A.

[27] Accordingly, I do not find that the trustee breached the Complainant's privacy.

IV FINDING

[28] I do not find that that the trustee breached the Complainant's privacy.

V RECOMMENDATION

[29] I make no recommendations with respect to this matter.

Dated at Regina, in the Province of Saskatchewan, this 6th day of July, 2021.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy Commissioner