



## INVESTIGATION REPORT 084-2021

### Saskatchewan Health Authority

July 15, 2022

**Summary:** The Complainant was upset that Public Health, a part of the Saskatchewan Health Authority, disclosed their COVID-19 status (or suspected COVID-19 status) to their employer to aid in contact tracing. The Commissioner found that the disclosure was made in accordance with *The Public Health Act, 1994*, and that *The Public Health Act, 1994* applies to the disclosure in this matter rather than the disclosure provisions found at Part IV of *The Health Information Protection Act*. The Commissioner recommended that SHA take no further action.

### I BACKGROUND

- [1] On February 23, 2021, the Complainant contacted the Saskatchewan Health Authority (SHA) stating their, “PHI was disclosed to [their] employer by Public Health”.
- [2] In correspondence dated March 31, 2021, SHA advised the Complainant that, “disclosures of your personal health information were permitted under the *Public Health Act, 1994*, therefore we find no breach has occurred”.
- [3] On April 13, 2021, the Complainant contacted my office because they disagreed with SHA’s response.
- [4] On April 19, 2021, my office notified both SHA and the Complainant of my office’s intent to undertake an investigation of SHA’s alleged unauthorized disclosure of the Complainant’s personal health information.

[5] I note my investigation deals *only* with the disclosure of information, and not with any decisions made by the Complainant’s employer regarding the Complainant’s employment.

### III DISCUSSION OF THE ISSUES

#### 1. Do I have jurisdiction?

[6] In this matter, the Complainant has asked my office to investigate a disclosure made by Public Health to their employer. The Complainant had or was thought to have had COVID-19. SHA stated Public Health needed to disclose the Complainant’s COVID-19 status to the Complainant’s employer, “in order to perform contact tracing”. Public Health wanted to conduct contact tracing with staff and coworkers the Complainant had been in contact with at the Complainant’s place of employment. At the time, the Complainant’s place of employment had a COVID-19 outbreak, so daily calls occurred between Public Health and the employer to discuss residents and staff who were, “tested, isolated and/or positive/negative”.

[7] First, I need to consider Public Health’s relationship to the SHA, since SHA responded to the complaint. In its submission, SHA did not explain how Public Health is part of the SHA, but according to the [SHA’s](#) website, Public Health appears to be part of Population Health. I also note that individual health regions, including [Prince Albert Parkland Health Region](#) and [Regina Qu'Appelle Health Region](#), who I have found in the past became part of the SHA, also have individual population and public health departments or branches. Therefore, it appears that Public Health is part of the SHA.

[8] In my office’s [Investigation Report 126-2021](#), also concerning the SHA, I stated SHA is a “trustee” pursuant to section 2(t)(ii) of *The Health Information Protection Act* (HIPA). In my office’s [Review Report 073-2020](#), I stated that SHA is also a “local authority” pursuant to section 2(f)(xiii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[9] With respect to contact tracing lists, in my office's [Review Report 177-2021](#) concerning the Ministry of Corrections, Policing and Public Safety, I found at paragraph [16] that being named on a contact tracing list, which requires a person to seek testing and care, involves personal health information as defined by section 2(m)(i) of HIPA as follows:

**2** In this Act:

...  
(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;

[10] A contact tracing list, then, involves or includes personal health information. Since Public Health was managing the contact tracing list, it would have been in SHA's custody or control.

[11] At the time the disclosure occurred, a [Public Health Order](#), dated November 26, 2020, was in effect. The order outlined the role of the medical health officer in contacting individuals having, or suspected of having, COVID-19. A medical health officer is designated by the Minister of Health pursuant to section 11(1) of [The Public Health Act, 1994](#) as follows:

**11(1)** The minister:

(a) may designate one or more public health officers to be medical health officers;  
and

(b) shall specify the jurisdiction of each medical health officer.

[12] In my office's [Review Report 177-2021](#), I recognized that COVID-19 is listed as a Category I communicable disease pursuant to *The Public Health Act, 1994*. With respect to the control of communicable diseases, section 38(1) of *The Public Health Act, 1994*, states as follows:

**38(1)** A designated public health officer may order a person to take or refrain from taking any action specified in the order that the designated public health officer considers necessary to decrease or eliminate a risk to health presented by a communicable disease.

[13] Section 38(1) of *The Public Health Act, 1994* seems clear that a public health officer can take any action to help curb the spread of a communicable disease. The public health order I previously described in this Investigation Report was established to enable actions including contact tracing for COVID-19. To effectively carry out contact tracing, Public Health would need to disclose the names of those infected with, or suspected of being infected with, COVID-19 to an employer so that the employer could confirm the names of staff or coworkers who likely had contact with that individual. Public Health would then contact those individuals to provide further direction to them, such as the requirement to get tested or to isolate. The act of contact tracing and what it entails, then, occurs pursuant to *The Public Health Act, 1994*.

[14] Section 4(4)(b) of HIPA removes Parts II, IV and V of HIPA from applying to personal health information that has been collected, used or disclosed where that information was obtained for the purposes of *The Public Health Act, 1994*, as follows:

4(4) Subject to subsections (5) and (6), Parts II, IV and V of this Act do not apply to personal health information obtained for the purposes of:

...  
(g) *The Public Health Act, 1994*;

[15] Disclosure provisions can be found in Part IV of HIPA. *The Public Health Act, 1994* appears to set out Public Health's process for managing the spread of communicable diseases. At the time of the disclosure in this matter, Public Health was doing so with respect to COVID-19, and under a public health order that outlined the role of Public Health in contacting individuals who may have been exposed to COVID-19.

[16] I find, therefore, the disclosure in this matter was made by the SHA for the purposes of carrying out its duties pursuant to *The Public Health Act, 1994* and that *The Public Health Act, 1994* applies. I further find *The Public Health Act, 1994* applies to the disclosure of information in this matter instead of the disclosure provisions found at Part IV of HIPA.

#### **IV FINDINGS**

[17] I find the disclosure in this matter was made by the SHA for the purposes of carrying out its duties pursuant to *The Public Health Act, 1994*.

[18] I find *The Public Health Act, 1994* applies to the disclosure of information in this matter instead of the disclosure provisions found at Part IV of HIPA.

#### **V RECOMMENDATION**

[19] I recommend SHA take no further action.

Dated at Regina, in the Province of Saskatchewan, this 15th day of July, 2022.

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