Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 113-2020

Saskatchewan Health Authority

April 29, 2022

Summary: The Complainant had concerns with how the Saskatchewan Health Authority (SHA) used and disclosed her personal health information in the course of a grievance process. She also had concerns over the SHA disclosing her personal health information to the Saskatchewan Human Rights Commission (SHRC). The Complainant requested the Commissioner investigate her concerns. The Commissioner found that section 26(3) of *The Health Information Protection Act* (HIPA) did not authorize the SHA to use the Complainant's personal health information in the preparation for the meeting as part of the first step of the grievance process. As a result, the Commissioner found that the SHA did not have authority to disclose the Complainant's personal health information at the meeting. The Commissioner found that the SHA had authority to disclose the Complainant's personal health information to the SHRC as part of the SHRC's investigation into the Complainant's human rights complaints. The Commissioner recommended that the SHA send a letter to the Complainant apologizing for using and disclosing her personal health information for the purpose of the first step of the grievance process. He also recommended that the SHA create and implement policies and procedures to ensure that employees' personal health information is used in accordance with section 26(3) of HIPA.

I BACKGROUND

[1] The Complainant was an employee of the Saskatoon Regional Health Authority (now amalgamated with other regional health authorities to form the Saskatchewan Health Authority) (SHA) from January of 2001 to October of 2017. Prior to the end of her employment with the SHA, she sent an email dated January 17, 2017 to her manager that

provided details of her disability, challenges she faced in the workplace as a result of her disability, and requested accommodations in the workplace. Attached to her email was a doctor's note that specified her disability. She sent this email and attachment for the purpose of seeking accommodations in the workplace.

[2] In May of 2017, the Complainant filed her first of two complaints with the Saskatchewan Human Rights Commission (SHRC) against the SHA for discrimination, pay equity and harassment. In response to this matter, the SHA provided a submission (with attachments) to the SHRC dated May 16, 2018. The submission contained the Complainant's personal health information that is noted in paragraph [1] above.

[3] From June of 2017 to September 5, 2017, the Complainant went on a sick leave. In the course of this leave, she submitted 14 notes from her doctor to the SHA.

[4] While on leave, in August of 2017, the Complainant was notified by the SHA that her position was eliminated, which ultimately resulted in the Complainant's layoff.

[5] Eventually, in 2018, the Complainant submitted an application to the Saskatchewan Labour Relations Board (LRB) alleging that her union, Service Employees' International Union-West (SEIU), had failed to properly represent her pursuant to sections 6-59 and 6-60 of *The Saskatchewan Employment Act*. In a decision dated November 13, 2018, the LRB ordered that the SEIU prepare and file on behalf of the Complainant a grievance under Articles 12 ("Lay-offs and Re-employment") and 21 ("Technological Change") of the collective bargaining agreement. The LRB ordered that the SEIU shall follow its normal process for dealing with a grievance.

[6] Article 7.07 of the collective bargaining agreement describes the first step of the "normal process" for dealing with a grievance, which is as follows:

> **7.07 First (1st) Step – Pre Grievance Resolution Discussions**
>
> The parties agree to promote the timely resolve of workplace issues and, where dialogue between the Shop Steward and the immediate out-of-scope Supervisor or designate results in effective resolutions, to avoid filing a grievance. It is understood that such resolutions are agreed on a without prejudice basis.

[7] A meeting for the first step of the process was scheduled for July 4, 2019 ("Step One Meeting"). The Complainant sent an email dated June 10, 2019 to a Union Representative at SEIU detailing her accommodation requirements for the meeting, which included Computerized Note-taking Services (CNS) from the Saskatchewan Deaf and Hard of Hearing Services. The Union Representative responded that she would let "the employer" know the Complainant's requirements.

[8] The Complainant indicated she was not provided with the accommodation she had requested for the Step One Meeting. Present at the meeting was the Complainant, two representatives from SEIU, and three employees from the SHA (a manager, a Labour Relations Consultant, and a Labour Relations Associate). The SHA had designated the Labour Relations Associate as the "note taker" for the meeting. The notes were forwarded to the Complainant on July 5, 2019.

[9] In an enclosure sent to my office, the Complainant's understanding of the purpose of the Step One Meeting was as outlined in the LRB decision, which said:

> That the Union shall prepare and file on behalf of the Applicant and the other effected employee, a grievance or grievances (the "grievance") under Articles 12 and 21 of the CBA.

[10] As noted earlier, Article 12 of the CBA dealt with lay-offs and re-employment and Article 21 dealt with technological change. The Complainant had not expected that any details about her disability would be discussed by the SHA at the meeting.

[11] Based on the notes taken by the Labour Relations Associate of the SHA, the Labour Relations Consultant of the SHA made statements that suggest the LRC had access to the

Complainant's file, including the doctor's note that the Complainant had submitted to her manager on January 17, 2017, when she was still an employee. The notes by the Labour Relations Associate said the following:

> LRC – …What we have on file is a [description of disability].
> …
> LRC – Doctors [sic] note said [description of disability].
> …

[12] After the Step One Meeting, the Labour Relations Consultant for the SHA sent an email to SEIU in response to the union's request to amend the Complainant's layoff options to include, "any and all IT family positions for which she may be eligible, and the Employer engaged with [name of Complainant] in a formal process to determine qualifications and ability to bump into such position…".

[13] After the meeting, the Complainant submitted her second complaint with the SHRC against the SHA. In response to this matter, the SHA provided a submission dated February 25, 2020 to the SHRC.

[14] On August 9, 2019, the Complainant submitted a letter (via e-mail) to a Privacy Officer at the SHA detailing her concern about SHA's Labour Relations Consultant having access to information regarding her disability and discussing such information at the Step One Meeting. On August 15, 2019, the SHA Privacy Officer responded to the Complainant that he had received the Complainant's letter. He asked if the Complainant wished to be advised of his findings.

[15] Before responding to the SHA's Privacy Officer's email of whether she would like to be advised of his findings, the Complainant sent another letter dated August 19, 2019 to the SHA Privacy Officer. The Complainant said:

> It is my belief this previously submitted PHI [personal health information] information is still contained within my former personnel record. <u>For that reason, I will need reassurance that the privacy of my medical health information is secure and that the information is kept securely and separately from my employee personnel file, before I will provide a signature on the SEIU-West Grievance Report.</u>

[Emphasis in original]

[16] On August 27, 2019, the Complainant emailed SHA's Privacy Officer saying she would like to be advised of his findings. She said she would "need to know if the PHI breach by SHA is contained."

[17] Several months later, on January 9, 2020, the Complainant emailed SHA's Privacy Officer asking for the status of his investigation. The Complainant did not receive a response. In the meantime, the SHRC sought information from the SHA regarding the Complainant's second human rights complaint. As noted earlier, the SHA prepared a submission (dated February 25, 2020) for the SHRC. The Complainant received a copy of the SHA's submission to the SHRC. The submission, prepared by an SHA lawyer, referenced the Complainant's disability as described in the doctor's note she submitted to her manager in January of 2017. She took issue with how the SHA lawyer had access to her personal health information.

[18] Due to the lack of a response from SHA's Privacy Officer, the Complainant contacted my office on May 6, 2020. My office contacted SHA's Privacy Officer, who indicated there must have been a misunderstanding and miscommunication and suggested that my office encourage the Complainant to contact him. On May 8, 2020, the Complainant indicated she no longer wished to contact the SHA Privacy Officer regarding her concerns. She requested that my office undertake an investigation.

[19] On May 19, 2020, my office sent emails to both the Complainant and the SHA that it would be undertaking an investigation.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[20] The SHA qualifies as a "local authority" pursuant to section 2(f)(xiii) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). It also

qualifies as a "trustee" as defined by section 2(t)(ii) of *The Health Information Protection Act* (HIPA). Therefore, I have jurisdiction to investigate this matter.

2. Is the Complainant's personal information and/or personal health information involved?

[21] At issue is information that the Complainant had shared with the SHA as described at paragraphs [1] and [3] above, which can be summarized as follows:

- An email dated January 17, 2017 that provided details of her disability, challenges she faced in the workplace as a result of her disability, and requested accommodations in the workplace.
- Attached to the email was a doctor's note that specified her disability.
- 14 notes from her doctor sent to the SHA from June 2017 to September 5, 2017.

[22] In order for information to qualify as "personal information" under LA FOIP, the information must be about an identifiable individual and the information must be personal in nature. Section 23(1) of LA FOIP provides an enumerated non-exhaustive list of examples of what is considered personal information under LA FOIP. It appears as though the information at issue may qualify as personal information as defined by section 23(1)(c) of LA FOIP. Section 23(1)(c) of LA FOIP provides:

> **23**(1) Subject to subsections (1.1) and (2), **"personal information"** means personal information about an identifiable individual that is recorded in any form, and includes:
> ...
> (c) information that relates to health care that has been received by the individual or to the health history of the individual;

[23] However, since the SHA is both a local authority under LA FOIP and a trustee under HIPA, I must note that section 23(1.1) of LA FOIP provides as follows:

> **23**(1.1) On and after the coming into force of subsections 4(3) and (6) of *The Health Information Protection Act*, with respect to **a local authority that is a trustee** as defined in that Act, **"personal information" does not include information that constitutes personal health information as defined in that Act.**

[Emphasis added]

[24] I find that the information at issue qualifies as personal health information as defined by section 2(m)(i) of HIPA. Section 2(m)(i) of HIPA defines "personal health information" 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;

[25] Section 4(3) of HIPA provides:

> **4**(3) Except where otherwise provided, *The Freedom of Information and Protection of Privacy Act* and *The Local Authority Freedom of Information and Protection of Privacy Act* do not apply to personal health information in the custody or control of a trustee.

[26] Based on section 23(1.1) of LA FOIP and section 4(3) of HIPA, I find that the information at issue qualifies as "personal health information" under HIPA. Therefore, the Complainant's personal health information is involved in this matter.

[27] Normally, in the course of an investigation under HIPA, I must determine if three elements are present in order for HIPA to be engaged: (1) a trustee, (2), personal health information and (3) the personal health information is in the custody or under the control of the trustee. Earlier, I established that the SHA qualifies as a trustee pursuant to section 2(t)(ii) of HIPA. Next, I also established that the information at issue qualifies as "personal health information" as defined by section 2(m)(i) of HIPA. Finally, since the Complainant provided the personal health information to the SHA when she was an employee, I find that the personal health information is in the custody or under the control of the SHA. All three elements are present. I find that HIPA is engaged.

3. Did privacy breaches occur?

a. Use

[28] A privacy breach occurs when personal health information is collected, used, and/or disclosed in a way that is not authorized by HIPA. In this part of the analysis, I will consider whether there was authority for the "use" of the Complainant's personal health information by SHA's Labour Relations Consultant at the Step One Meeting.

[29] Section 2(u) of HIPA defines "use" as follows:

> **2** In this Act:
>
> ...
>
> (u) **"use"** includes reference to or manipulation of personal health information by the trustee that has custody or control of the information, but does not include disclosure to another person or trustee.

[30] In order for a trustee organization to "use" personal health information, it must do so in accordance with sections 23 and 26 of HIPA.

[31] First, section 23 of HIPA outlines the "need-to-know" and "data minimization" principles:

> **23**(1) A trustee shall collect, use or disclose only the personal health information that is reasonably necessary for the purpose for which it is being collected, used or disclosed.
>
> (2) A trustee must establish policies and procedures to restrict access by the trustee's employees to an individual's personal health information that is not required by the employee to carry out the purpose for which the information was collected or to carry out a purpose authorized pursuant to this Act.
>
> ...
>
> (4) A trustee must, where practicable, use or disclose only de-identified personal health information if it will serve the purpose.

[32] The need-to-know principle means that the SHA should collect, use, and disclose personal health information on a need-to-know basis. This means that the personal health information should only be available to those that have a legitimate need-to-know the information for the purpose of delivering their mandated services. The data minimization principle means that the SHA should collect, use or disclose the least amount of identifying information necessary for the purpose.

[33] Second, section 26 of HIPA prescribes the circumstances in which a trustee may use personal health information:

> **26**(1) A trustee shall not use personal health information in the custody or control of the trustee except with the consent of the subject individual or in accordance with this section.
>
> (2) A trustee may use personal health information:
>
> (a) for a purpose for which the information may be disclosed by the trustee pursuant to section 27, 28 or 29;
>
> (b) for the purposes of de-identifying the personal health information;
>
> (c) for a purpose that will primarily benefit the subject individual; or
>
> (d) for a prescribed purpose.
>
> (3) Nothing in subsection (2) authorizes a trustee as an employer to use or obtain access to the personal health information of an individual who is an employee or prospective employee for any purpose related to the employment of the individual without the individual's consent.

[34] I will determine if the "use" of the Complainant's personal health information in the following scenario were in accordance with sections 23 and 26 of HIPA.

i. Was there authority for the SHA to "use" the Complainant's personal health information by sharing it with the Labour Relations Consultant in preparing for the Step One Meeting?

[35] Consent in public sector privacy law is the exception, not the norm (Investigation Report F-2010-001 at paragraph [43]). Generally, HIPA authorizes trustees to collect, use, and/or disclose personal health information without an individual's consent. However, section 26(3) of HIPA, as quoted above, applies to the personal health information of employees of a trustee. That is, it requires that a trustee, as an employer, must have an employee's (or prospective employee's) consent to use or obtain access to their personal health information for any purpose related to employment of the individual. This is because of the prejudice that attaches to the use of personal health information for employment purposes (Investigation Report F-2012-005 at paragraph [31]).

[36] As described in the background of this Investigation Report, the Complainant had submitted an email dated January 17, 2017 to her manager with a doctor's note attached for the purpose of seeking workplace accommodations. This suggests that the Complainant consented to the use of her personal health information for the purpose of workplace accommodations in the position she had at the time. She also submitted 14 notes from the doctor for the purpose of supporting a sick leave starting in June of 2017. This suggests that the Complainant consented to the use of her personal health information to facilitate her sick leave. I note that section 6(4) of HIPA provides that consent may be expressed or implied unless otherwise provided.

[37] As quoted in the background of this Investigation Report, the Labour Relations Consultant had referenced the doctor's note on the Complainant's "file" during the Step One Meeting on July 4, 2019. At the time of the meeting, the Complainant was no longer an employee of the SHA. However, I note she was a prospective employee as the Step One Meeting was for the purpose of "lay-off and re-employment." Therefore, in order for the SHA to have used the Complainant's personal health information for purposes of the Step One Meeting, it must have had consent from the Complainant pursuant to section 26(3) of HIPA.

[38] In its investigation report to my office, the SHA indicated it used the personal health information for the purpose of attempting to resolve grievance matters informally and for the purpose of the grievance process. It said the following:

> As part of the grievance process and prior to the July 4, 2019 grievance meeting, SHA and the Union discussed numerous options for resolution. SHA had also discussed this internally. One option was to potentially have [name of Complainant] return to work with SHA. As part of this diligence review, amongst other items, SHA had discussion [sic] toward determining whether, **given her previously noted disability**, she would be able to perform the core functions of any IT related job, as a legitimate bona fide occupational requirement.
>
> [Emphasis added]

[39] In its submission, the SHA cited section 28(2)(d) of LA FOIP as authority for its use of the Applicant's personal information. As I already found earlier, HIPA applies in this matter and not LA FOIP.

[40] In the course of my office's investigation, the SHA indicated that the Complainant's disability was "public knowledge" or known through other processes engaged in by the Complainant including the complaints submitted to the LRB and to the SHRC. The SHA also asserted that, when the Complainant was an employee, the LRC was involved in several meetings with the Complainant where she discussed problems she experienced in the workplace, many related to her disability and where the Complainant was informally accommodated in a number of ways. This does not change the fact that the SHA required her consent to use her personal health information for the purpose of resolving grievance matters.

[41] While the LRC may have well been aware of the Complainant's disability, the SHA has not demonstrated to my office that it had the Complainant's consent to use the Complainant's personal health information, including the doctor's note, for the purpose of resolving grievance matters. I find that section 26(3) of HIPA required the SHA to have the Complainant's consent to use her personal health information for the purpose of preparing for the Step One Meeting. Therefore, as there was no consent, this use constituted a breach of the Complainant's privacy. As I have found there was no authority for the 'use' of the Complainant's personal health information for this purpose, I do not need to consider whether the SHA was compliant with section 23 of HIPA for this use.

[42] I recommend that the SHA send a letter to the Complainant to apologize for using her personal health information without her consent in preparation for the Step One Meeting.

[43] I recommend that the SHA create and implement policies and procedures to ensure that employees' personal health information is used in accordance with section 26(3) of HIPA. This may include: (1) keeping employees' personal health information separate from other information in personnel files to ensure personal health information is managed in accordance with HIPA while employees' personal information in managed in accordance

with LA FOIP, and (2) obtaining the employee's written consent to use the personal health information for any purpose related to the employment of the individual.

b. Disclosure

[44] "Disclosure" is not defined in HIPA. However, my office has previously defined the term. "Disclosure" is the exposure of personal health information to a separate entity, not a division or branch of the trustee organization that has custody or control of the personal health information (Investigation Report 345-2019 at paragraph [17]).

[45] In order for a trustee organization to disclose personal health information, it must do so in accordance with sections 27, 28 or 29 of HIPA as well as the need-to-know and data minimization principles set out in section 23 of HIPA.

[46] Section 27(1) of HIPA provides that a trustee may disclose personal health information with the consent of the individual. Where the trustee does not have consent, it must have authority for the disclosure under sections 27(2), (3), (4), (5), (6), 28 or 29 of HIPA.

[47] I will consider whether there was authority for the "disclosure" of the Complainant's personal health information in two cases: (1) the disclosure of the Complainant's personal health information to the union during the Step One Meeting, and (2) the disclosure of the Complainant's personal health information to the SHRC.

i. Was there authority for the SHA to disclose the Complainant's personal health information to union representatives during the Step One Meeting?

[48] As described in the background of this Investigation Report, during the Step One Meeting, SHA's Labour Relations Consultant made statements that referred to the doctor's note that the Complainant had submitted to her manager on January 17, 2017 and also revealed the name of the disease that caused the illness from which she was required to take a sick leave in June of 2017. According to the notes taken by the Labour Relations Associate of the SHA, present at the meeting were two union representatives from SEIU. Since SEIU is an

entity separate from the SHA, the sharing of the Complainant's personal health information during the Step One Meeting constituted a disclosure of the Complainant's personal health information.

[49] It has already been established that the SHA did not have the consent of the Complainant to use her personal health information (including the doctor's note), for the purpose of preparing for the Step One Meeting. Therefore, the SHA would not have had consent to also disclose the information to the SEIU for this same purpose. Without consent, the SHA must have authority for this disclosure under sections 27(2), (3), (4), (5), (6), 28 or 29 of HIPA. The SHA did not indicate to my office which of these provisions it was relying on to disclose the Complainant's personal health information to the SEIU. Therefore, I find that the SHA was not in compliance with HIPA when it disclosed the Complainant's personal health information to union representatives during the Step One Meeting. As I have found there was no authority for the disclosure of the Complainant's personal health information for this purpose, I do not need to consider whether the SHA was compliant with section 23 of HIPA for this disclosure.

[50] I recommend that the SHA send a letter to the Complainant to apologize for disclosing her personal health information to the union representatives in the Step One Meeting without authority under HIPA. This constituted a breach of the Complainant's privacy.

[51] Before I proceed, I must note that in my office's Investigation Report 090-2017, I discussed how the City of Saskatoon had authority to disclose personal information under LA FOIP for the purpose of a grievance hearing. In that case, I found that a grievance hearing was a proceeding before a tribunal. I found that sections 28(2)(s) of LA FOIP and section 10(f) of *The Local Authority Freedom of Information and Protection of Privacy Regulations* authorized the use and disclosure of the personal information. While there are similar provisions in HIPA, I note that the Step One Meeting in this case was not a proceeding before a tribunal. "Tribunal" means a court of justice or other adjudicatory body (Garner, Bryan A., 2019. *Black's Law Dictionary*, 11th Edition. St. Paul, Minn.: West Group). I note that the Step One Meeting was not before a court of justice or any other adjudicatory body.

ii. Was there authority for the SHA to disclose the Complainant's personal health information to the SHRC?

[52] In its submission, the SHA indicated that in response to the Complainant's second human rights complaint to the SHRC, it had, "incorporated pleadings from the previous SHA response to the other SHRC response and didn't specifically review any medical information."

[53] Section 32(3) of *The Saskatchewan Human Rights Code, 2018* provides the SHRC the authority to require the production of information from parties to a human rights complaint. Section 32(3) of *The Saskatchewan Human Rights Code, 2018* provides:

> **32**(1) In this section, "investigator" means a person authorized by the commission to investigate a complaint.
>
> ...
>
> (3) For the purposes of an investigation pursuant to subsection 31(1), the commission or an investigator may, at any reasonable time:
>
> (a) require the production of books, documents, correspondence, records or other papers that relate or may relate to the complaint;
>
> (b) make any inquiries relating to the complaint, of any person, in writing or orally; and
>
> (c) subject to subsection (4), on giving a receipt for books, documents, correspondence, records or other papers, remove any books, documents, correspondence, records or other papers examined pursuant to this section for the purpose of making copies or extracts of those books, documents, correspondence, records or other papers.

[54] Furthermore, section 12 of *The Saskatchewan Human Rights Code Regulations* provides:

> **12**(1) Where the Chief Commissioner determines that a complaint should be investigated, the respondent shall, when requested, provide a response to the complaint and any further information relating to the complaint that the commission may request.
>
> (2) In addition to requiring the production of documents and records, the Chief Commissioner may request a summary of the information contained in any documents or records relating to the complaint in the respondent's possession.

[55] The SHA provided my office with two letters, one dated October 5, 2018 by the SHRC to the SHA where the SHRC requests information regarding the Complainant's first human rights complaint. The second letter was dated February 10, 2020 by the SHRC to the SHA where the SHRC requested information regarding the Complainant's second human rights complaint.

[56] Based on a review of the two SHRC letters provided to my office by the SHA, I am satisfied that the SHRC had indeed undertaken investigations into the Complainant's two human rights complaints. Section 32(3) of *The Saskatchewan Human Rights Code, 2018* provided the SHRC the ability to require the production of information from the SHA for the purpose of investigating the complaints. Section 27(4)(l) of HIPA provides the SHA with the authority to disclose personal health information to comply with the SHRC's requests for information:

> **27**(4) A trustee may disclose personal health information in the custody or control of the trustee without the consent of the subject individual in the following cases:
>
> …
>
> (l) where the disclosure is permitted pursuant to any Act or regulation;

[57] Therefore, I find that section 27(4)(l) of HIPA authorized the SHA, as the respondent, to disclose personal health information to the SHRC, because section 32(3) of *The Saskatchewan Human Rights Code* and section 12 of *The Saskatchewan Human Rights Code Regulations* requires that the respondent provide a response and further information requested by the SHRC. The Complainant's personal health information was related to the human rights complaints filed with SHRC and was therefore a part of the SHRC's investigations.

4. Did the SHA meet its obligations under HIPA when the Complainant raised her privacy concerns with an SHA Privacy Officer?

[58] As described in the background of this Investigation Report, the Complainant first contacted an SHA Privacy Officer on August 9, 2019, with her privacy concerns. However, when the Complainant contacted my office on May 6, 2020, she alleged she had not

received a response from the SHA. As part of my office's investigation, my office asked the SHA to explain why it did not respond to the Complainant when she first raised her privacy concerns. However, the SHA did not explain to my office why it did not respond to the Complainant's privacy concerns.

[59] My office is an office of last resort. This means that my office encourages individuals with a privacy concern to contact the trustee organization first since most privacy concerns can be resolved this way and a trustee should have the opportunity to do so before an oversight office, such as mine, has to become involved. However, in cases where individuals are not satisfied with a trustee organization's response (or lack of response), then the individual may request that my office conduct an investigation pursuant to sections 42(1)(c) and/or section 52 of HIPA. For more information about my office's privacy complaint process, see my office's guidance on *How do I resolve a privacy complaint?*

[60] I recommend the SHA develop processes to ensure it is responding to individuals' privacy concerns in a timely manner. As a best practice, I recommend trustees respond within 30 days (Investigation Report 200-2019 at paragraph [8]; Investigation Report 349-2017 at paragraph [7]).

III FINDINGS

[61] I find that I have jurisdiction to investigate this matter.

[62] I find that the Complainant's personal health information is involved and HIPA is engaged.

[63] I find that the SHA did not have authority to use the Complainant's personal health information for the purpose of preparing for the Step One Meeting.

[64] I find that the SHA did not have authority under HIPA to disclose the Complainant's personal health information to SEIU during the Step One Meeting.

[65] I find that section 27(4)(l) of HIPA authorized the SHA to disclose the Complainant's personal health information to the SHRC as part of the SHRC's investigations into the Complainant's human rights complaints.

IV RECOMMENDATIONS

[66] I recommend that the SHA send a letter to the Complainant to apologize for using her personal health information in preparation for the Step One Meeting without authority and for disclosing her personal health information to the union representatives in the Step One Meeting without authority under HIPA.

[67] I recommend that the SHA create and implement policies and procedures to ensure that employees' personal health information is used in accordance with section 26(3) of HIPA. This may include: (1) keeping employees' personal health information separate from other information in personnel files to ensure personal health information is managed in accordance with HIPA while employees' personal information is managed in accordance with LA FOIP, and (2) obtaining the employee's written consent to use the personal health information for any purpose related to the employment of the individual.

[68] I recommend the SHA develop processes to ensure it is responding to individuals' privacy concerns in a timely manner.

Dated at Regina, in the Province of Saskatchewan, this 29th day of April, 2022.

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