



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **INVESTIGATION REPORT 120-2022, 135-2022**

### **Saskatchewan Health Authority**

**November 21, 2022**

**Summary:**

The Commissioner initiated two investigations into misdirected faxes sent by the Saskatchewan Health Authority (SHA). Both cases involved employees who entered the incorrect fax number into a traditional fax machine. In one case, SHA sent personal health information to the Town of Gravelbourg (Town) instead of Gravelbourg Public Health. In the other case, SHA sent personal health information to the Parole Board of Canada (PBC) instead of a physician. The Town and PBC reported the incidents to the Commissioner. After investigating the breaches, the Commissioner found that SHA contained the breaches, but its notices to the affected patients and investigations were not adequate. He also found that SHA did not take adequate steps to prevent further breaches. The Commissioner recommended that SHA proactively report all misdirected fax breaches to his office and send notifications to affected individuals as soon as reasonably possible. He also recommended that SHA provide annual privacy training that includes training on the risks of using fax machines. Finally, he recommended that SHA provide his office with further information about its working group on misdirected faxes.

### **I BACKGROUND**

[1] This Investigation Report involves two misdirected faxes containing personal health information. In Investigation File 120-2022, the Saskatchewan Health Authority (SHA) sent a fax to the Town of Gravelbourg (Town) that was intended for Gravelbourg Public Health. In Investigation File 135-2022, SHA sent a fax to the Parole Board of Canada (PBC) that was intended for a physician.

- [2] Regrettably, SHA has sent faxes containing personal health information to the Town previously. The last breach involving SHA and the Town occurred in December 2021.
- [3] Since 2018, my office has investigated approximately 42 incidents of misdirected faxes by SHA, with various causes. Since January 2022, I have issued seven investigation reports involving misdirected faxes. As SHA does not report all misdirected faxes to my office, I do not know how many more misdirected fax breaches may have occurred. I have serious concerns about the privacy risks that arise from the ongoing use of faxes to send personal information and personal health information.
- [4] Other privacy oversight authorities share my concerns. Canada's federal, provincial and territorial privacy commissioners and ombudspersons passed a resolution in September 2022 titled, "[Securing Public Trust in Digital Healthcare.](#)" The resolution calls for a concerted effort across the healthcare sector to modernize and strengthen privacy protections for sharing personal health information. It urges stakeholders to develop a plan to phase out the use of traditional fax machines to address the privacy risks and thereby protect and bolster public trust in digital healthcare. My hope is that SHA will heed this call to action.
- [5] I now turn to the circumstances of these two incidents.

***Investigation File 120-2022***

- [6] On June 15, 2022, the Town advised my office that the Maple Creek Public Health office (MCPH) sent it a fax containing personal health information. It advised my office that it had shredded the paper copy of the fax and deleted the electronic copy from its systems. The Town stated that it left a voicemail message with MCPH reporting the misdirected fax and confirming that it had shredded the fax.
- [7] On July 8, 2022, my office notified SHA, as operator of MCPH, that we were investigating the incident pursuant to subsection 52(d) of *The Health Information Protection Act* (HIPA). The notice requested that SHA investigate the matter and provide my office with a

completed [Privacy Breach Investigation Questionnaire](#) (Questionnaire). On September 13, 2022, SHA provided my office with the completed Questionnaire and a copy of its notification to the affected individual.

### ***Investigation File 135-2022***

- [8] PBC advised my office that it had received a misdirected fax containing personal health information on June 10, 2022, from the Royal University Hospital (RUH). It subsequently confirmed with my office that it had deleted the fax from its systems.
- [9] On June 14, 2022, my office notified SHA, as operator of RUH, about the fax. On June 24, 2022, SHA's privacy office confirmed that the fax originated with the Genomics Lab at RUH.
- [10] On July 8, 2022, my office notified SHA that we were investigating the incident pursuant to subsection 52(d) of *The Health Information Protection Act* (HIPA). The notice requested that SHA investigate the matter and provide my office with a completed Questionnaire. On September 1, 2022, SHA provided my office with the completed Questionnaire. It provided a copy of its notification to the affected individual on October 25, 2022.

## **II DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction?**

- [11] HIPA applies when three elements are present: (1) personal health information, (2) a trustee, and (3) the personal health information is in the custody or control of the trustee.
- [12] Both misdirected faxes contained an individual's name, health services number, address, telephone number, and birthdate. In Investigation File 135-2022, the fax also included the individual's gender, information about their physical health and health services, and the ordering physician's name. This information qualifies as "personal health information" as defined by subsections 2(m)(i), (ii) and (v) of HIPA, which provide:

**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;

(ii) information with respect to any health service provided to the individual;

...

(v) registration information;

[13] The second element is present because SHA is a “trustee” pursuant to subsection 2(t)(ii) of HIPA, which provides:

**2** In this Act:

...

(t) “trustee” means any of the following that have custody or control of personal health information:

...

(ii) the provincial health authority or a health care organization;

[14] Finally, I must determine if SHA had custody or control over the personal health information at issue. “Custody” is physical possession with a measure of control. There is no need to consider control when the trustee has custody.

[15] As noted above, SHA operates RUH and MCPH. For this reason, SHA had physical possession of the faxes and therefore, custody of the personal health information. Therefore, the third element is also present.

[16] As all three elements are present, I find that HIPA applies, and I have jurisdiction to investigate these matters.

**2. Did a privacy breach occur?**

[17] A privacy breach occurs when personal health information is collected, used and/or disclosed in a way that is not authorized by HIPA.

[18] The term “disclose” means sharing personal health information with a separate entity that is not a division or a branch of the trustee organization.

[19] SHA disclosed personal health information when it sent the faxes to the wrong recipients. SHA acknowledged that the disclosures were not authorized. I find that breaches of privacy occurred.

**3. Did SHA respond appropriately to the privacy breaches?**

[20] In privacy breach investigations, my office determines whether the trustee appropriately responded to the breach. In accordance with my office’s [\*Rules of Procedure\*](#), my office will consider whether the trustee appropriately managed the breach. My office will also consider if it:

- Contained the breach (as soon as possible)
- Notified affected individuals (as soon as possible)
- Investigated the breach
- Took appropriate steps to prevent future breaches.

[21] As the timeliness of SHA’s response to the breach is an issue in Investigation File 120-2022, here is a summary of the key events surrounding the breach:

June 15, 2022 – privacy breach occurred

June 15, 2022 – Town reported privacy breach to my office

June 15, 2022 – Town left a voice mail message with MCPH advising of breach

June 21, 2022 – MCPH retrieved the voicemail and returned the Town’s call. The Town confirmed to MCPH staff that it had shredded the record

June 23, 2022 – Patient Safety and Quality staff advised SHA’s privacy office of the incident and advised the MCPH Manager that a Privacy Incident Report (PIR) form needed to be completed

July 11, 2022 – SHA’s privacy office followed up by sending another copy of the PIR form to the Manager of MCPH as it had not received a completed form from the Manager

July 26, 2022 – SHA’s privacy office received the PIR form

August 29, 2022 – SHA notified the affected individual by mail

[22] Here is a summary of the key events surrounding the breach in Investigation File 135-2022:

June 10, 2022 – privacy breach occurred

June 13, 2022 – PBC notified my office

June 14, 2022 – my office notified SHA’s privacy office

June 15, 2022 – SHA’s privacy office notified RUH, and internal investigation commenced

June 16, 2022 – RUH revised its policy “Faxing a Patient’s Cytogenetic Report” revised

June 20, 2022 – RUH contacted PBC and PBC staff confirmed that it destroyed the fax

June 20, 2022 – RUH telephoned the affected individual

June 21, 2022 – RUH notified the affected individual by email

June 22, 2022 – RUH sent relevant documents to SHA’s privacy office

[23] I will now consider if SHA’s response to the breaches followed the steps described in paragraph [20] above.

***Contained the breach (as soon as possible)***

[24] On learning that a privacy breach has occurred, a trustee should immediately take steps to contain it. Depending on the nature of the breach, this can include:

- Stopping the unauthorized practice
- Recovering the records
- Shutting down the breached system
- Revoking access to personal health information
- Correcting weaknesses in physical security.

*([Privacy Breach Guidelines for Trustees](#), August 2022 at p.3)*

[25] Effective and prompt containment reduces the magnitude of a breach and the risks involved with the inappropriate disclosure of personal health information.

[26] The Town and PBC confirmed to my office that they destroyed the faxes immediately after they received them. SHA also confirmed with the Town and PBC that they destroyed and deleted the faxes from their systems. Therefore, I find that the breaches were contained.

***Notified affected individuals (as soon as possible)***

[27] It is important to notify an individual that their personal health information was inappropriately disclosed for several reasons. Not only do individuals have a right to know, but they also need to know to protect themselves from any potential harm that may result from the inappropriate disclosure. Unless there is a compelling reason not to, trustees should always notify affected individuals.

[28] A notification should include:

- A general description of what happened

- A detailed description of the personal health information involved (e.g., name, medical record, etc.)
- A description of the types of harm that may result from the privacy breach
- Steps taken and planned to mitigate the harm and to prevent future breaches
- If necessary, advice on actions the individual can take to further mitigate the risk of harm and protect themselves (e.g., how to change a health services number)
- Contact information of an individual within the organization who can answer questions and provide information
- A notice that individuals have a right to complain to the IPC
- Recognition of the impacts of the breach on affected individuals and an apology.

*(Privacy Breach Guidelines for Trustees, at p.4)*

[29] In addition to notifying individuals, depending on the type of the breach, trustees may want to notify other organizations. This might include my office, law enforcement or other regulatory bodies that oversee professions.

[30] In Investigation File 120-2022, SHA sent its notification to the affected individual on August 29, 2022 – over two months following the date of the breach. SHA stated that “on several occasions” it attempted to reach the affected individual by telephone prior to August 29, 2022. However, SHA should not have waited two months before mailing the written notice. I recommend that SHA send its notifications to affected individuals as soon as reasonably possible following discovery of the breach.

[31] The content of the written notices provided to the affected parties in these cases are similar. However, in Investigation File 135-2022, SHA included a description of the steps taken to investigate the breach. I commend SHA for including this information.

[32] The notices do not include a description of the types of harm that may occur because of the privacy breaches and information about how the affected individuals could change their health services number. This is particularly important here as the date of birth and health



services number were involved. Nor do they include a description of the steps planned to prevent future breaches.

[33] In these circumstances, I find that SHA's notifications were not adequate.

[34] In previous reports, I have recommended that SHA proactively report all misdirected fax breaches to my office (see for example Investigation Reports [045-2021, et. al.](#), [032-2022](#), [080-2022](#) and [081-2022](#)). This would enable my office to track and report publicly on the progress of SHA's efforts to address the privacy risks and bring some transparency and accountability to its work to address this problem. SHA has stated that it does not agree with this recommendation. In response to Investigation Report 080-2022, it stated:

The SHA does not agree with this recommendation. Patients are notified of misdirected faxes, and in most cases, they are satisfied with the response of the SHA. Patients are always informed of their right to contact your office should they be dissatisfied. We proactively report misdirected faxes where the volume of patient information is high or the types of personal health information involved is particularly sensitive.

[35] I accept that individual patients may be satisfied with SHA's response to a misdirected fax. These patients may not be aware of the magnitude of the problem. I continue to believe that the public interest is best served by SHA notifying my office of all breaches involving misdirected faxes. I will repeat my recommendation that SHA proactively report all misdirected fax breaches to my office.

[36] As noted in previous reports such as Investigation Reports 080-2022 and 081-2022, SHA is developing a work standard for patient notification which will detail how it provides verbal and/or written notification to a person affected by a privacy breach. I understand that work on the standard is in progress. In response to these investigation reports, SHA stated that it will provide my office with a copy of the work standard once it is complete. I commend SHA for taking steps to improve the quality of its notifications. However, I regret that it does not appear willing to address this more expeditiously or to provide an explanation of why it cannot complete this task in the time recommended by my office. While this work remains incomplete, SHA continues to send notices to affected parties that do not comply with best practices. I recommend that SHA provide my office with a copy

of the work standard on patient notification within 30 days of issuance of this Investigation Report.

*Investigated the breach*

- [37] Once the breach has been contained and appropriate notification has occurred, the trustee should continue its internal investigation. At the conclusion of its investigation, the trustee should understand the cause of the breach. This will inform how to prevent future breaches.
- [38] The misdirected faxes at issue here occurred when employees entered the incorrect number in a fax machine.
- [39] SHA's investigations did not consider if factors, other than human error, may have contributed to the breaches. For example, it appears that SHA's privacy breach investigations did not include a consideration of whether additional training or privacy awareness initiatives were needed.
- [40] In Investigation File 120-2022, the employee responsible for the misdirected fax had received privacy training in March 2022. SHA's investigation should have considered whether its privacy training adequately addressed the risk of misdirected faxes. It should also have considered whether sufficient efforts had been made to raise staff awareness about this risk. In response to my office's questions, SHA stated that the current privacy training program does not specifically address misdirected faxes, emails or other communications.
- [41] In Investigation File 135-2022, SHA advised that the employee responsible for the misdirected fax received their privacy training in November 2020. It added that it provides the training every three years. Its investigation concluded that no additional training was required, but it did not explain why.
- [42] I have previously recommended that SHA provide its privacy training to staff who have access to personal health information on an annual basis (see for example Investigation

Reports [320-2017](#), [043-2018](#), [066-2018](#), [081-2022](#)). The need for annual privacy training is also set out in my office's *Privacy Breach Guidelines for Trustees*, at page 3. I will discuss this further below.

[43] SHA's investigation should have also considered what if any additional privacy awareness raising measures were required to address the problem of misdirected faxes. Trustees should understand that it is not sufficient to develop policies. Policies must be implemented through adequate training and awareness raising initiatives. Ongoing awareness raising activities, such as notices, meeting discussions, email blasts and bulletins, which occur throughout the year, contribute to a culture of privacy.

[44] SHA stated that in May and August of 2022, it sent email bulletins to all SHA staff regarding the privacy risks of faxing. This is an important first step. I commend SHA for taking this action and encourage it to increase the number of privacy awareness raising initiatives that address misdirected faxes.

[45] In Investigation File 135-2022, SHA informed my office that it updated the applicable faxing procedure, (CGEN-98 "Faxing a Patient's Cytogenic Report"). SHA stated:

These modifications included: the addition of what information can or cannot be present on the Cover Letter that must accompany every fax and additional directive to resource the CPSS (College of Physicians and Surgeons of Saskatchewan) website for confirmation of contact information.

[46] I note that the revised procedure states that the fax cover sheet should not contain any information that will specifically identify the patient. It also includes a requirement to use the College of Physicians and Surgeons of Saskatchewan (CPSS) website to search for fax numbers where necessary. It states that staff should "[e]nsure that the fax numbers for the recipients are correct."

[47] I commend SHA for reviewing and updating this procedure. The changes regarding the use of the CPSS website for information about physicians' fax numbers are consistent with recommendations made in my Investigation Report 045-2021, et al.

[48] In summary, I find that SHA's investigations were not adequate, because they failed to identify the need for annual privacy training that includes information about the risks of sending personal health information by fax. I will address this further below.

***Took appropriate steps to prevent future breaches***

[49] Prevention is one of the most important steps. A privacy breach cannot be undone but a government institution can learn from one and take steps to help ensure that it does not happen in the future.

[50] With respect to the steps to prevent further breaches, in Investigation File 120-2022, SHA's privacy office made two recommendations:

The SHA Privacy Office recommends all fax numbers used by the Public Health Office's throughout the province be pre-programmed into all Public Health fax machines.

The SHA Privacy Office recommends a second employee confirm the fax number prior to sending personal or personal health information when manually entering the fax numbers or when entering the numbers to be pre-programmed.

[51] SHA did not state whether the privacy office had provided these recommendations to senior management and if there was a plan to implement them.

[52] Regarding Investigation File 135-2022, SHA asserted that it asked the employee involved in sending the misdirected fax to review the applicable standard operating procedure, but that no additional safeguards or training was required.

***Privacy training***

[53] As noted above, previous investigation reports of my office involving SHA and misdirected faxes have identified the importance of privacy training. Adequate privacy training is an important administrative control and best practice.

[54] In response to my recommendation for annual privacy training in Investigation Report 081-2022, SHA stated:

The SHA does not accept this recommendation. As per SHA's Privacy and Confidentiality policy, all staff complete privacy training upon hire, and retake it every three years after that. Due to the high volume of SHA staff, it is unrealistic to have all employees complete the mandatory Privacy Training every year. The privacy training modules are available to all staff throughout the year and can be reviewed at any time. In addition, if the review of the Privacy Training needs to be completed, the SHA Privacy Office will make a recommend regarding same.

[55] Based on the information above and, in this investigation, I am not persuaded that annual privacy training is "unrealistic" or not feasible within the SHA. If the privacy training "modules are available to all staff throughout the year and can be reviewed at any time," I do not understand why SHA cannot implement mandatory annual privacy training. For these reasons, I will repeat recommendations made in previous investigation reports. I recommend that SHA provide mandatory annual privacy training to all staff who access personal health information.

[56] Given SHA's experience with misdirected fax breaches, its annual privacy training should include examples of these breaches. I recommend that SHA include specific information and examples about the privacy risks of using faxes to transmit personal health information in its privacy training program.

***Plan to address systemic problem***

[57] SHA's Questionnaires do not identify a plan to address the systemic problem of misdirected facts. Also, they do not reference previous recommendations made by my office regarding this problem.

[58] I have been calling for the elimination of traditional faxes and for updates on SHA's work to address the systemic faxing problem since my office's February 2, 2022, Investigation Report 045-2021 et al. I received a quarterly report from SHA in response to this investigation report on August 29, 2022. In that quarterly report, SHA stated that it had

carried out work on the provincial EMR to address some of the causes of misdirected faxes associated with the EMR's faxing software. SHA also reported that it has established meetings with operational leads from various departments. However, SHA did not provide my office with information about the nature of the work of this group.

[59] In its response to Investigation Report 032-2022, SHA advised my office that it has established a "working group" to address misdirected faxes. It is not clear whether this "working group" is the same group referred to in paragraph [58] above. In Investigation Report 080-2022, I recommended that SHA provide my office with a copy of any terms of reference for the "working group" and monthly updates on the work. However, in response, SHA stated that it would "continue to update [my] office as improvements are made to our systems that assist in reducing misdirected reports." It would not commit to providing my office with monthly updates.

[60] In response to Investigation Report 081-2022, where I made the same recommendation, SHA stated:

The task of addressing the systemic problem of misdirected faxes is complicated and requires consultation with our partners in the health care system. The SHA has had to realign the conversations both internally and externally with our partners. We are creating a framework to engage the appropriate stakeholders both internally and externally, but it is unlikely that we will have that framework created within 30 days of the date of this report. We will continue to update your office as improvements are made to our systems that assist in reducing misdirected reports.

[61] I commend SHA for taking some action to address this systemic problem. I accept its claim that the problem is complex and will require consultation with its partners in the health care system. However, in the absence of any information about the terms of reference, the framework for the consultation, and the goals of the "working group" I am not persuaded that its plan is sufficient. Nor has SHA provided my office with any information about the timeframe for completion of the work. In these circumstances, I find that SHA's plan is not sufficient to address the systemic problem.

[62] My office asked SHA whether it tracked the number of misdirected fax breaches that it experiences on an annual basis. I understand that some tracking of misdirected fax breaches

is occurring, but SHA stated that it is not able to provide me with the number of misdirected fax breaches that it has had in the last five years. If SHA does not currently track the total number of misdirected fax breaches, I recommend that it begin tracking those breaches going forward.

[63] For these reasons, I find that SHA's plan to prevent further breaches involving misdirected faxes is not adequate.

[64] I recommend that SHA provide my office with the framework for engaging its stakeholders and partners, including the scope of the plan, the participants, goals, and the timelines for completion. I also recommend that SHA provide my office with monthly updates on its work on misdirected faxes. SHA should provide my office with the framework on misdirected faxes and first monthly update within 30 days of the release of this Report.

### **III FINDINGS**

[65] I find that I have jurisdiction to investigate these matters.

[66] I find that privacy breaches occurred.

[67] I find that SHA contained the privacy breaches.

[68] I find that SHA's notifications to the affected parties were not adequate.

[69] I find that SHA's investigations of the breaches were not adequate.

[70] I find that SHA's plans to prevent further breaches are not adequate.

### **IV RECOMMENDATIONS**

[71] I recommend that SHA send its notifications to affected individuals as soon as reasonably possible following discovery of a breach.

- [72] I recommend that SHA proactively report all misdirected fax breaches to my office.
- [73] I recommend that SHA provide my office with a copy of the work standard on patient notification within 30 days of issuance of this Investigation Report.
- [74] I recommend that SHA provide mandatory annual privacy training to all staff who access personal health information.
- [75] I recommend that SHA include specific information and examples about the privacy risks of using faxes to transmit personal health information in its privacy training program.
- [76] I recommend that SHA begin tracking the number of misdirected fax breaches it experiences going forward, if it does not currently track them.
- [77] I recommend that SHA provide my office with the framework for engaging its stakeholders and partners, including the scope of the plan, the participants, goals, and the timelines for completion.
- [78] I recommend that SHA provide my office with monthly updates on its work on misdirected faxes.
- [79] I recommend that SHA provide my office with its framework on misdirected faxes within 30 days of the release of this Investigation Report.
- [80] I recommend that SHA provide my office with the first monthly update on its working group within 30 days of the release of this Investigation Report.

Dated at Regina, in the Province of Saskatchewan, this 21st day of November, 2022.

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