



Office of the
Saskatchewan Information
and Privacy Commissioner

INVESTIGATION REPORT 154-2022

Dr. Lalita Malhotra

December 5, 2022

Summary:

My office received a call from Crown Shred and Recycling (Crown) regarding what appeared to be medical records mixed in with regular recycling at its facility in Prince Albert (PA Facility). My office attended on site, seized the records and commenced its investigation. Upon investigation, my office determined the records had been dumped by agents of Dr. Lalita Malhotra, who was in the process of closing her practice in Prince Albert. The Commissioner found Dr. Malhotra did not undertake adequate efforts to contain or investigate the breach, and did not provide notification, but she did take appropriate steps to prevent further breaches involving the medical records still in her custody and control. The Commissioner recommended that Dr. Malhotra provide both individual and public notification. The Commissioner also recommended she ensures the remaining records, once assessed and if the retention period allows for it, are securely destroyed.

I BACKGROUND

- [1] On July 25, 2022, my office received a call from a Crown Shred and Recycling (Crown) employee (Crown employee). The Crown employee reported that its Prince Albert facility (PA facility) noticed what appeared to be patient medical records (records) mixed in with regular recycling. The Crown employee stated they had contacted the College of Physicians and Surgeons of Saskatchewan about the records, who advised them to call my office. My office asked the Crown employee if it could secure the records at the PA Facility for the time being. Crown agreed to do so.
- [2] On July 26, 2022, the Crown employee contacted my office again to confirm it was Greenland Waste Disposal (Greenland) in Prince Albert that had dumped the records at the PA facility. The Crown employee stated it appeared the physician's name linked to the files

was Dr. Lalita Malhotra (Dr. Malhotra). The Crown employee stated the manager of the PA facility noticed this when some medical records fell loose. The Crown employee explained that they were unsure of how many medical records may be involved.

- [3] One July 28, 2022, the Crown employee clarified with my office that the medical records came in with regular community recycling (see photos in Appendix). The Crown employee explained that Greenland would pick up such recycling from its community dumpsters and unload it at the PA facility where the PA facility processes (bales) it. From the PA facility, the materials go to a mill in Regina to be broken up, sorted and recycled back into paper products.
- [4] On August 3, 2022, three staff from my office arrived at the PA facility. My staff met with the manager of the PA facility, who directed them to the bale of records. Upon inspection, my staff confirmed there were several medical records that appeared to have come from Dr. Malhotra's office (see photos in Appendix).
- [5] As my staff was sorting through the existing bale that day, Greenland dumped a new load of recycling materials (see photos in Appendix). Upon inspection, my staff noted that the new shipment contained even more medical records, also apparently connected to Dr. Malhotra's office.
- [6] My staff continued to sort through both the existing and newly dumped recycling materials and bagged and boxed records that would likely fill 55 or more banker's style boxes (see photos in Appendix). My staff concluded sifting through the recycling and taking physical custody of the records by 4:30 pm.
- [7] While on-site, my staff learned from Greenland's driver that they had picked up that day's recycling at its city pick-up location at 38 Street East, Prince Albert. My staff stopped at the dumpsters at the 38 Street East location at approximately 5:00 pm and noted there were nine unsecured (unlocked) community dumpsters with Greenland's logo on them (see photos in Appendix). The site was surrounded by community businesses, including car

dealerships directly to the east and north. Anyone in the community can take their recycling to the dumpsters.

- [8] At approximately 5:25 pm, my staff traveled to the location where Dr. Malhotra's office was located at 1316 Central Avenue in Prince Alberta (I note that Dr. Malhotra is now retired and her office is closed). Dr. Malhotra's office is about a five-minute drive from Greenland's dumpsters. Upon arrival, my staff noted the office was not open. A light was on inside, but no one answered the door, and my staff did not observe anyone moving about. Through the front and side entrance doors, my staff noted that approximately 45 banker's style boxes were visible, lined up on the floor inside the office. Each box had a piece of paper attached to the top (see photos in Appendix). The office doors were locked.
- [9] Dr. Malhotra's office was in a building with several other businesses, including a Pharmasave. The Pharmasave was still open, so my staff approached the pharmacist to ask if they knew anything about Dr. Malhotra's clinic. The pharmacist confirmed with my staff that Dr. Malhotra had retired and was closing her clinic. The pharmacist gave my staff Dr. Malhotra's contact number as well as the contact number of her receptionist. My staff left a note under the office door for Dr. Malhotra, and a copy with the pharmacist.
- [10] At approximately 5:45 pm on August 3, 2022, the Deputy Commissioner left a message for Dr. Malhotra at the number provided. After leaving a message, the Deputy Commissioner contacted and spoke with Dr. Malhotra's receptionist. The receptionist confirmed that the medical office assistant (MOA), who they would not name, had been disposing patient medical records, but believed MOA took the records to where they would be shredded.
- [11] On August 4, 2022, Dr. Malhotra returned the Deputy Commissioner's call. Dr. Malhotra explained that they normally use confidential shredding (one used with Pharmasave), but there was not enough room, so MOA and their partner disposed of the records in Greenland's dumpsters thinking they would be shredded. Dr. Malhotra stated she would be sending approximately 100 boxes of records to a facility in Ontario for secure storage.

- [12] On August 5, 2022, my office sent notification to Dr. Malhotra of my office's intention to undertake an investigation. My office asked Dr. Malhotra to complete and return my office's *Privacy Breach Investigation Questionnaire*, and to provide any additional or supplemental information or materials necessary.
- [13] Dr. Malhotra responded to my office, through their legal counsel, on September 6, 2022. Dr. Malhotra's legal counsel provided information on September 28, 2022, October 11 and 17, 2022, and a commitment form signed by Dr. Malhotra on November 9, 2022.

II DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

- [14] HIPA applies when three elements are present: 1) there is personal health information; 2) there is a trustee involved; and 3) the personal health information is in the custody or control of the trustee.
- [15] In her submission, Dr. Malhotra confirmed her staff took 22 boxes containing medical records to Greenland's dumpsters. Dr. Malhotra advised the records contained the personal health information of patients Dr. Malhotra had not seen in six (6) years, or who are deceased. Dr. Malhotra said they could not confirm the data elements involved. Dr. Malhotra also confirmed that they did not prepare a list for the contents of the boxes.
- [16] Upon review of the records, I note they appear to contain information related to a variety of medical topics. Some records are marked "deceased", and certainly some records date back several years. The types of information in the records include Saskatchewan health numbers, patient diagnoses, prescription information (medications prescribed or taken), referral information (e.g., referrals to specialists or reports from specialists), notes and reports on procedures completed (e.g., results of MRIs, x-rays), testing results (e.g., obstetrics information, STIs, COVID-19) – anything you might normally expect to be contained in an individual's medical record. This is all "personal health information" as defined by subsections 2(m)(i), (ii), (iv) and (v) 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;
- ...
- (iv) information that is collected:
 - (A) in the course of providing health services to the individual; or
 - (B) incidentally to the provision of health services to the individual; or
- (v) registration information;

[17] Once establishing personal health information is involved, I need to consider if there is a trustee. Dr. Malhotra does not dispute that she is the trustee in this matter. Dr. Malhotra stated she retired June 30, 2022 (which is confirmed by the College of Physicians and Surgeons of Saskatchewan (College) on its website), was in solo practice, and that she owned the medical clinic (Malhotra Clinic) as a professional corporation under the name “Dr. Lalita Malhotra Medical Professional Corp.” Prior to that, the College website confirmed Dr. Malhotra was an active physician up until her retirement. Her practice as a physician was governed by *The Medical Professions Act, 1981*. Based on all this, Dr. Malhotra is a trustee pursuant to section 2(t)(xii)(A) of HIPA as follows:

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

- ...
- (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

[18] Although Dr. Malhotra was retired prior to overseeing the file destruction and storage, I add that she maintained responsibility for her patient medical records pursuant to subsection 22(1) of HIPA, which provides as follows:

22(1) Where a trustee ceases to be a trustee with respect to any records containing personal health information, the duties imposed by this Act on a trustee with respect to personal health information in the custody or control of the trustee continue to apply to the former trustee until the former trustee transfers custody and control of the personal health information to another trustee or to an information management service provider that is a designated archive.

[19] The next step is to determine if Dr. Malhotra, as trustee, had custody or control of the records. “Custody” is the physical possession of a record by a trustee with a measure of control. “Control” means having authority over a record. A record is under a trustee’s control when the trustee has the authority to manage the record, including its disposal. Dr. Malhotra does not deny that these are her patient records. As such, the records were in her custody or control.

[20] As all three elements are present, I have jurisdiction to conduct this investigation.

2. Did Dr. Malhotra properly manage the privacy breach?

[21] A privacy breach occurs when there is an unauthorized collection, use and/or disclosure of personal health information, or if HIPA does not authorize the collection, use and/or disclosure.

[22] As previously discussed in this Investigation Report, many of Dr. Malhotra’s patient records ended up in an unsecured Greenland community dumpster. After pickup, the records were loosely strewn on the ground amongst regular recycling materials at the PA facility (see photos in Appendix). While in the dumpster, the records were left exposed available to any number of individuals who did not have a need to know this information, and then also to those who worked at the PA facility. As such, a privacy breach occurred. As Dr. Malhotra does not dispute this fact, I will shift into analyzing how Dr. Malhotra managed the breach.

[23] My office’s [*Rules of Procedure*](#), outlines that my office will analyze whether the trustee properly managed the breach and took the following steps in responding:

- Contained the breach (as soon as possible);
- Notified affected individuals (as soon as possible);
- Investigated the breach; and
- Prevented future breaches.

[24] I will consider each step separately and make any necessary recommendations at the end of this Investigation Report.

Contained the breach (as soon as possible)

[25] Upon learning that a privacy breach has occurred, steps should be taken to immediately contain the breach. Depending on the nature of the breach, this can include:

- Stopping the unauthorized practice;
- Recovering the records;
- Shutting down the system that has been breached;
- Revoking access privileges; and
- Correcting weaknesses in physical security.

(Privacy Breach Guidelines, p. 4)

[26] On November 30, 2022, Dr. Malhotra's agent attended at my office and facilitated the return of the patient records to her, so she could properly manage the retention or disposal, which I will speak to later in this Investigation Report. Prior to this, the records remained in my office as evidence that informed my office's investigation, which is now concluded.

[27] As part of analyzing containment, I want to be able to conclude the trustee took reasonable steps to contain the breach. I want to have some reassurance the trustee has reduced the magnitude of the breach and the risk to individuals. In this matter, I am not considering the records my office seized and returned to Dr. Malhotra on November 30, 2022. Rather, I am looking at what may have occurred to some records after Dr. Malhotra's staff dumped them. In so doing, I am considering different factors, including how Dr. Malhotra disposed

of the records, the timeline of what occurred, and Dr. Malhotra's efforts to contain the records. I need to consider these against what happens to recycling that goes for further processing after it passes through the PA facility. As I previously stated in this Investigation Report, from the PA facility, materials go on to be further processed into recycled paper products.

a. How Dr. Malhotra Disposed of the Records

[28] It is important to note that when Greenland dumps materials at the PA facility, it dumps them on the ground in mounds or piles covering a large area (see photos in Appendix).

[29] In terms of the records taken to Greenland's dumpsters, Dr. Malhotra stated as follows:

[The MOA] assisted Dr. Malhotra with gathering the records to be destroyed into boxes, which included patients who had either passed away or not attended at Dr. Malhotra's clinic in over six years. Dr. Malhotra asked [MOA's partner] to take the boxes of records for shredding. Dr. Malhotra asked [MOA] to take boxes to the same place [MOA's partner] had gone. The records were taken to recycling bins at or near 3990 5th Avenue E in Prince Albert (the "bins") on the following dates:

- 10 boxes were taken by [MOA's partner] on July 13, 2022
- 6 boxes were taken by [MOA] on July 18, 2022
- 6 boxes were taken by [MOA] on August 2, 2022

[30] When my staff inspected the records on site at the PA facility, it appeared to them as if the records were loosely dumped. That is, the records did not appear as if they had been bagged or boxed when placed in the bins. My staff did not find any records contained, in whole or in part, in any bags or boxes, and did not find any boxes marked in such a way to indicate they had come from Dr. Malhotra's clinic (Dr. Malhotra stated she did not document which records she was disposing, such as by creating a list). My office asked Dr. Malhotra to confirm how the records were taken to Greenland's dumpster, and she stated as follows:

[MOA's partner] previously advised that [they] put the entire box into the bin...

[31] MOA's partner took records to Greenland's dumpster on July 13, 2022, which was the first time Dr. Malhotra dumped records. Dr. Malhotra did not confirm if MOA had also placed whole boxes of records in Greenland's dumpsters when they took them on July 18 and August 2, 2022. Dr. Malhotra explained she may not be able to get confirmation from MOA because of MOA's personal circumstances, and so does not know. Loosely dumped records, though, are much harder to contain, particularly when they are dumped with a huge mass of recycling (see photos in Appendix).

b. Lapsed Time

[32] The first time Dr. Malhotra stated her agents dumped records was on July 13, 2022. The Crown employee contacted my office about the records on July 25, 2022, which is approximately two weeks later. Greenland stated it picks up recycling from its dumpsters three times a week. There is no way to know for certain, but the records MOA and MOA's partner took to Greenland's dumpsters on July 13 and 18, 2022 respectively, may or may not be all the records that Crown contacted my office about on July 25, 2022. Given the time gap, plus Greenland's pick-up schedule, it is possible that some of these records went on for further processing. That is, it is possible that some of these records passed through PA's facility without any of its employees noticing them.

[33] At the same time, the records MOA took to the bins on August 2, 2022, may or may not be all the ones that Greenland dumped at the PA facility on August 3, 2022, while my staff were there. Again, it is possible some of these records went on for further processing.

[34] Further to this, given the nature of how Greenland physically dumps its recycling materials (see photos in Appendix), and because the records themselves did not appear to be contained in boxes or bags, I cannot completely confirm that my staff located every single medical record amongst the debris on August 3, 2022. Some of those records, then, may have gone on for further processing.

[35] Finally, if Dr. Malhotra loosely placed some records in Greenland's dumpsters, it is possible that community members could have viewed, or even taken records. I have no

proof that this occurred, and no one has reported to my office any such concerns. It is always a possibility, particularly if the records were openly accessible in the dumpsters for several days.

c. Dr. Malhotra's Efforts to Contain

[36] In terms of containment, Dr. Malhotra's lawyer stated as follows:

Dr. Malhotra was contacted by the OIPC on August 3, 2022. It is her understanding that the records [the ones collected by my staff from the PA facility] are currently in OIPC's possession. Immediately upon being notified, she instructed [MOA and MOA's partner] not to remove anything else from her office. She also confirmed that the only location where records were taken were the recycling bins located at or near 3990 5th Avenue E in Prince Albert, Saskatchewan, and only on July 13, July 18, and August 2, 2022.

[37] To clarify Dr. Malhotra's statements in the preceding paragraph, Greenland advised my staff on August 3, 2022 (when additional records were dumped at the PA facility on that date) that it had brought in recycling (containing the records) from its dumpsters located on 38th Street E. in Prince Albert. The address, 3390 5th Avenue in Prince Albert, appears to be Greenland's corporate address.

[38] While my office did recover and secure some records, the issues I raise makes it difficult to account for all records as they made their journey from Dr. Malhotra's office to the PA facility. It is possible some records made it beyond the PA facility and onto another destination where the breach was continued. The longer you go with records out of your physical custody or control, the harder it is to know exactly what happened to them.

[39] After my office contacted her, Dr. Malhotra did take some immediate steps to stop records from continuing to be taken to Greenland's dumpsters. She, however, does not appear to have taken any further steps, such as contacting Crown to determine if any records could have gone to other facilities. If records had, she could have contacted those facilities to determine if there was any to retrieve and contain them. As trustee, it was incumbent on her to do so.

[40] While my office was able to contain some records, given all the factors and unknowns, I find Dr. Malhotra did not take enough effort to contain the records.

d. Notified affected individuals (as soon as possible)

[41] It is a best practice to inform affected individuals and my office of a privacy breach. The following is a list of individual organizations that may need to be notified as soon as possible after learning of the incident:

- The organization's privacy officer
- My office
- The police, if criminal activity is suspected and
- The affected individual(s) (unless there are compelling reasons why this should not occur).

(Privacy Breach Guidelines, pp. 4 to 5)

[42] Providing notice to individuals affected by the breach should occur as soon as possible after key facts about the breach have been established. In terms of notification, my office's resource, [*Privacy Breach Guidelines for Trustees*](#) (August 2022), offers the following guidance at page 4:

It is best to contact affected individuals directly, such as by telephone, letter or in person. However, there may be circumstances where it is not possible, and an indirect method is necessary or more practical. Such situations would include where contact information is unknown or where there are a large number of affected individuals. An indirect method of notification could include a notice on a website, posted notices, media advisories, and advertisements. Ensure the breach is not compounded when using indirect notification.

[43] In her submission, Dr. Malhotra stated as follows:

Once appropriate to do so, Dr. Malhotra will make efforts to advise all patients impacted by the Breaches. Given the number of patients involved and the likely inability to determine the affected individuals' current contact information, Dr.

Malhotra proposes to make an announcement in the local Prince Albert, Saskatchewan newspaper.

[44] I agree with Dr. Malhotra that it may be difficult for her to provide direct notification to every affected individual. This is because the records involve past and deceased patients, and because she did not document their disposal. There is also the possibility that some records went beyond the PA facility for further processing. I do note, however, there are some recently dated records (for example, ones containing COVID-19 test results), so ones that are apparently not that old. Once my office returns the records to her, Dr. Malhotra may find that when she goes through them, she would have some opportunity to provide direct notification to some individuals. I recommend that she provide such notification where she determines she can do so.

[45] Of course, given the circumstances, I also recommend that Dr. Malhotra publish a public notice. I add that this is a step she should have already taken – she did not need to wait for the conclusion of my office’s investigation to do so. Any notification she provides should include the following:

- A description of the breach (a general description of what happened).
- A detailed description of the personal health information involved (e.g., name, medical record, etc.).
- A description of possible types of harm that may come to them as a result of 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.
- Contact information of an individual within your organization who can answer questions and provide further information.
- A notice that individuals have a right to complain to the IPC (provide contact information).
- Recognition of the impacts of the breach on affected individuals and an apology.

(Privacy Breach Guidelines for Trustees, August 2022, p. 4)

[46] Because Dr. Malhotra has not yet taken any action, I find she did not provide notification.

Investigated the breach

[47] When considering why a privacy breach occurred, a trustee should reflect on the root causes, or what led to the breach occurring. It is an important step in mitigating the risk of a future breach of a similar nature from occurring. Following are some key questions to ask during a privacy breach investigation:

- When and how did your organization learn of the privacy breach?
- What occurred?
- How did the privacy breach occur?
- What is the applicable legislation and what specific sections are engaged?
- What safeguards, policies, and procedures were in place at the time of the privacy breach?
- Was the duty to protect met?
- Who are the affected individuals?

(Privacy Breach Guidelines, pp. 6 to 7)

[48] Dr. Malhotra learned of the privacy breach from my office on August 3, 2022. Regarding what occurred, Dr. Malhotra's submission states as follows:

As she [Dr. Malhotra] was preparing to close her practice, she instructed a staff member [MOA] and hired a contractor [MOA's partner] to assist with cleanup of her office.

...

Dr. Malhotra instructed [MOA] and [MOA's partner] to take the files for shredding. She discussed this first with [MOA's partner], who understood the contents of the bins located at 3390 5th Avenue in Prince Albert would be shredded. Dr. Malhotra then advised [MOA] to take the boxes to the same place [MOA's partner] had taken the boxes.

...

There was no specific training or written instructions about the files that were to be destroyed. Dr. Malhotra acknowledges that detailed instructions on the requirements for destruction were not given [MOA and their partner].

...

[MOA's partner] was asked to provide the boxes and then was asked to take the files for shredding as described above. [MOA's partner] did not assist with filling the boxes with files. [MOA's partner] did not sign a confidentiality agreement.

- [49] Dr. Malhotra did not document which records she was disposing, which should have been done to be able to later track them. In my office's [Investigation Report H-2011-001](#) concerning Dr. Teik Ooi, at paragraphs [163] and [183], it was stated that one of the strongest safeguards a physician can put in place is to document or take an inventory of file records going for destruction. The [Canadian Medical Protective Association](#) (February 2022) offers this advice when disposing of patient records:

Before destroying records, it is recommended that you make a list of the names of the patients whose records are to be destroyed, and that this list be kept permanently in a secure location. This is to be able to later determine at-a-glance that a medical record has been destroyed and not simply been lost or misplaced.

- [50] The above is of particular note since Dr. Malhotra stated 22 boxes of records were taken to Greenland's dumpsters. Dr. Malhotra did not describe the size of the boxes she used, but my office returned records to her that would fill an estimated 55 banker's style boxes. Dr. Malhotra could have avoided any discrepancy that may have existed between these numbers by preparing an inventory of records.

- [51] Dr. Malhotra also did not provide proper instructions on file disposition, and she did not ensure the records were going to be confidentially shredded. Dr. Malhotra also added that she did not have MOA's partner sign a confidentiality agreement. Again, in [Investigation Report H-2011-001](#) at paragraphs [214] and [215], it was stated that the "job of reviewing patient files and deciding what information should be culled" should be left to experienced individuals who have signed a confidentiality agreement, have received an orientation to HIPA, and who are closely supervised. This is because medical records contain some of the most sensitive information. While MOA may have had some training or background as

part of their employment with Dr. Malhotra, it appears that MOA's partner was likely not the most suitable individual to be handling Dr. Malhotra's patient records.

[52] Quite simply, Dr. Malhotra, as the trustee, did not take the steps required to safeguard the records, including ensuring the records were documented, handled and safely disposed in a manner that is consistent with her duty to protect personal health information pursuant to section 16 and subsection 17(2)(b) of HIPA, which provide as follows:

16 Subject to the regulations, a trustee that has custody or control of personal health information must establish policies and procedures to maintain administrative, technical and physical safeguards that will:

- (a) protect the integrity, accuracy and confidentiality of the information;
- (b) protect against any reasonably anticipated:
 - (i) threat or hazard to the security or integrity of the information;
 - (ii) loss of the information; or
 - (iii) unauthorized access to or use, disclosure or modification of the information; and
- (c) otherwise ensure compliance with this Act by its employees.

...

17(2) A trustee must ensure that:

...

- (b) personal health information is destroyed in a manner that protects the privacy of the subject individual.

[53] There are a few details that make me wonder why Dr. Malhotra undertook the steps she did with the patient records seized by my office that are subject to this investigation.

[54] First, Dr. Malhotra's submission states that she used Pharmasave's confidential shredding for "day-to-day destruction of PI [personal information] and PHI [personal health information]" where the shredding was managed by a company called Shred-it. The pharmacist from Pharmasave confirmed this information and added that Dr. Malhotra paid

for “one-third of the total cost, representing the extra cost of her added third bin for the months of July and August”.

[55] Secure shredding through a place such as Shred-it has a cost involved. Dr. Malhotra had to have known because she contributed to that cost, at least for the months of July and August. Dr. Malhotra’s submission indicates she was aware the materials were going for shredding to Shred-it and were in a locked bin to be “properly destroyed”. Taking the records to a community dumpster did not have a cost for Dr. Malhotra, and the records very obviously were not locked up or secured, or at least Dr. Malhotra does not appear to have checked into this. These factors alone should have made her question if the records she was taking to Greenland’s dumpsters were going to be “properly destroyed” as with the records managed by Shred-it.

[56] Further, Dr. Malhotra’s submission included six copies of documents called, “Confidentiality Agreement for Employees”. The names are redacted, but it appears Dr. Malhotra had staff sign these agreements in which they agree to keep patient information confidential and secure, and to be familiar with office “policies and procedures”. Dr. Malhotra stated her privacy policy from 2017 to August 2022 was the “SMA’s (Saskatchewan Medical Association) Checklist for compliance with HIPA”. Dr. Malhotra included a copy of the checklist, which states as follows:

9. The office should follow accepted guidelines for the retention and destruction of personal information.

- Guidelines for retention are usually those determined by the licensing authority or other professional oversight body.
- Destruction of personal information should always be by a method that removes personal identifiers and minimizes the chance of any inadvertent disclosure of information.
- If the office utilizes a third party to store or destroy records, there should be a signed agreement in which the third party agrees to maintain confidentiality with respect to the information in those records.

- [57] Based on the guidelines, it appears Dr. Malhotra followed recommended practice for disposing of day-to-day patient records when she utilized Shred-it's services through Pharmasave. She should have, however, had her own agreement with Shred-It for this type of service to be fully compliant. She also should have continued using Shred-It, or any service that provides confidential shredding, for all records she was sending for destruction.
- [58] Dr. Malhotra states that she accepts full responsibility for what occurred and appears to understand where she erred. Multiple factors contributed to the root cause of this privacy breach. Primarily, Dr. Malhotra contravened both section 16 and subsection 17(2)(b) of HIPA when she failed to ensure she had proper procedures and safeguards in place when disposing of the records in question. She also appears to have contravened her own office's policies and procedures for disposing patient records securely. Dr. Malhotra also failed to ensure MOA and MOA's partner understood proper protocols for handling the records and did not provide reasons for not doing so. There are also questions about why she did not apply the same procedures to destroy the records in this investigation as she typically had with past records. Because she was unable to fully explain why things went wrong, I find that she did not undertake an adequate investigation.

Prevented future breaches

- [59] The most important part of responding to a privacy breach is to implement measures to prevent future breaches from occurring. Essentially, this is what steps can be taken to prevent a similar privacy breach from occurring. To assist, some questions trustees can ask are:

- Can your organization create or make changes to policies and procedures relevant to this privacy breach?
- Are additional safeguards needed?
- Is additional training needed?
- Should a practice be stopped?

(Privacy Breach Guidelines, p. 7)

[60] Regarding the remaining records that were in Dr. Malhotra's custody and control as she closes her clinic, Dr. Malhotra's lawyer stated as follows:

Dr. Malhotra has taken the following actions to prevent any further Breaches:

- She has created a Confidentiality Agreement, a Procedure Document for Chart Management, and a Privacy and Security Policy;
- She has retained a Registered Nurse to handle destruction of the remaining records in accordance with the Procedure Document for Chart Management and *HIPAA*;
- She has arranged for Crown to obtain and destroy the remaining records in accordance with *HIPAA*; and
- She has retired from practice.

...

Dr. Malhotra contacted Crown Shred & Recycling Inc. ("Crown") and engaged their services for the supply of locked bins to the Clinic. The charges to be destroyed were placed in the locked bins and Crown was contacted to pick up the bins when they were full. Crown was instructed to securely shred the contents as the bins contained PHI.

There is no agreement or contract with Crown. Dr. Malhotra was advised by Crown that they only use contacts/agreements with regular customers. A copy of the Crown Invoice is attached, which describes the services they were engaged to perform.

[61] The Crown invoice describes that Crown managed the "SAFE SECURE DESTRUCTION OF PERSONAL HEALTH INFORMATION" of five, locked bins. Crown then issued a "Certificate of Destruction" dated September 23, 2022. Dr. Malhotra confirmed she has no records left in her office to go for secure shredding. This process is compliant with subsection 17(2)(b) of HIPA.

[62] For her current patients, Dr. Malhotra had a process in place to forward their file for secure storage to a company called "Records Management Ltd" in Ontario. The company describes that it offers complete records management for medical practices. Dr. Malhotra stated she sent "142 banker boxes of charts" to Records Management Ltd., following the terms of its service agreement, a copy of which Dr. Malhotra provided to my office. The agreement states as follows:

Records Management Ltd. hereby agrees that it will not use or disclose any identifiable information (whether received or created before or after the date of this agreement) except for the purposes necessary to perform services for the medical practice of Dr. Lalita Malhotra, as set out in the service contract...

...

Records Management Ltd. represents that it has safeguards in place, equal or superior to the medical practice named below, to protect the security of patient information. Records Management Ltd. agrees to securely dispose of identifiable patient information once it is no longer required for the purposes specified in the Service Contract and to notify the medical practice within a reasonable time thereafter that this has been done and how it has been done.

- [63] Dr. Malhotra's agreement with Records Management Ltd. further describes that records are to be destroyed based on a schedule, that no agents or employees of the company are permitted to read any document, that records will be maintained in a secure location, that records will be destroyed in a "manner that they cannot be reconstructed" and that it will comply with the requirements of PHIPA (Ontario's *Personal Health Information Privacy Act*). Dr. Malhotra also confirmed with my office that she has since forwarded these records and has none left. This process is compliant with subsections 18(1) and (3) of HIPA, which provide as follows:

18(1) A trustee may provide personal health information to an information management service provider:

- (a) for the purpose of having the information management service provider process, store, archive or destroy the personal health information for the trustee;
- (b) to enable the information management service provider to provide the trustee with information management or information technology services;
- (c) for the purpose of having the information management service provider take custody and control of the personal health information pursuant to section 22 when the trustee ceases to be a trustee; or
- (d) for the purpose of combining records containing personal health information.

...

(3) An information management service provider shall not use, disclose, obtain access to, process, store, archive, modify or destroy personal health information received from a trustee except for the purposes set out in subsection (1).

[64] Given what Dr. Malhotra has outlined for records that remained in her custody and control, I find she has taken appropriate prevention steps and has complied with what is required of her pursuant to HIPA.

[65] The question now turns to Dr. Malhotra's plan to manage the records that my office seized. During my office's investigation, an issue came to light regarding the age of some records. My office noted some are dated less than six years. Sections 23.1(f) and (f.1) of the College's *Regulatory Bylaws for Medical Practice in Saskatchewan* state as follows:

23.1 (f) For the purpose of this paragraph the "last entry in the record" means the last entry or document received by the member which relates to the care provided by the member. A member shall retain the records required by this bylaw for six years after the date of the last entry in the record. Records of pediatric patients shall be retained until 2 years past the age of majority or for six years after the date of the last entry in the record, whichever is the later date.

...

23.1 (f.1) The requirement to retain records in paragraph (f) also applies to deceased patients.

[66] It appears, then, that Dr. Malhotra attempted to dispose of records that, according to this bylaw, are not yet eligible for destruction. As such, my office asked Dr. Malhotra if she would agree, upon assuming custody and control of the records, to sort through the records and manage their retention or destruction accordingly. Dr. Malhotra provided my office with the following statement she signed on October 8, 2022:

I, Dr. Lalita Malhotra, agree not to destroy or dispose of any of the patient records currently in the custody of the Office of the Saskatchewan Information and Privacy Commissioner until I have taken the necessary steps to determine which of the records are eligible for destruction in accordance with Sections 23.1(f) and (f.1) of the CPSS's *Regulatory Bylaws for Medical Practice in Saskatchewan*. I agree to complete this review by no later than January 31, 2023. When records are eligible for destruction, I will ensure those are destroyed in a secure, confidential manner pursuant to subsection 17(2)(b) of HIPA and will retain appropriate records of destruction.

[67] If Dr. Malhotra carries through with her plan, I am satisfied that she will be compliant with her obligations pursuant to subsections 17(2)(b), 18(1) and (3) of HIPA. I recommend Dr. Malhotra follow through with her commitment.

IV FINDINGS

[68] I find I have jurisdiction.

[69] I find Dr. Malhotra did not undertake adequate efforts to contain the breach.

[70] I find Dr. Malhotra did not provide notice.

[71] I find Dr. Malhotra did not conduct an adequate investigation.

[72] I find Dr. Malhotra undertook adequate steps to prevent future breaches from occurring, and that she has a plan to safely store or destroy the remaining records.

V RECOMMENDATIONS

[73] I recommend that within 30 days of the issuance of this Report, Dr. Malhotra provide individual notification where she can, and that she also provide public notification in the Prince Albert newspaper.

[74] I recommend that, for the records my office returned to her on November 30, 2022, Dr. Malhotra follow through with her commitment to securely shred or to securely store those that are not yet eligible for destruction by her agreed upon date of January 31, 2023.

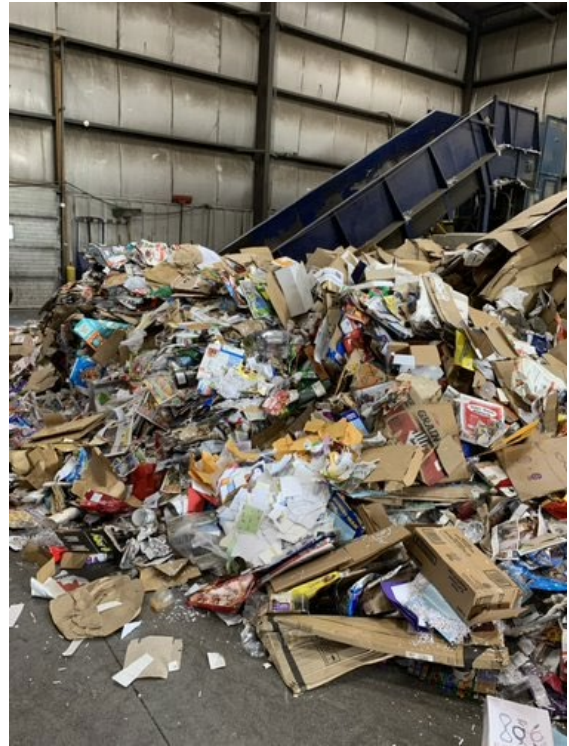
Dated at Regina, in the Province of Saskatchewan, this 5th day of December, 2022.

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

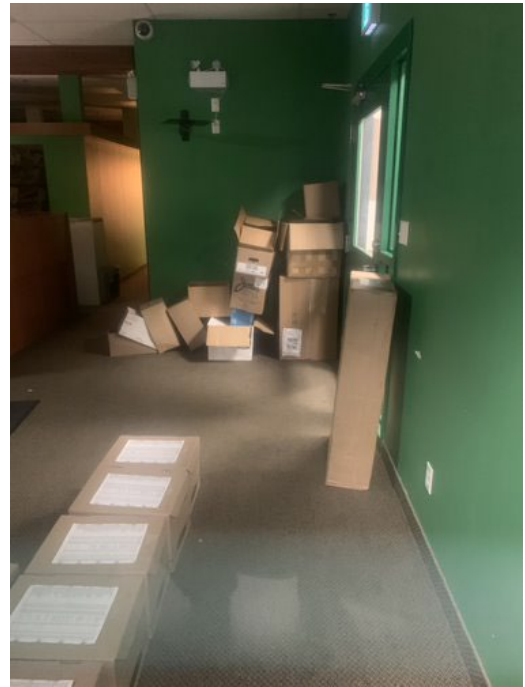
Appendix



First group of records found by Crown that were contained in a bale



Load of regular recycling brought in by
Greenland (12:30 pm) with additional
(second group) records showing



Top left: Greenland's dumpsters at 38 St. E, Prince Albert

Top: Dr. Malhotra's office on August 3, 2022; boxes shown to go for storage

Left: volume of records seized by my office

