



## INVESTIGATION REPORT 265-2021, 002-2022

### Saskatchewan Health Authority, Border-line Housing Company

June 15, 2022

**Summary:** The Complainant, an employee of Border-Line Housing Company (1975) Inc. (BLH), had concerns regarding the Saskatchewan Health Authority's (SHA) Policy Directive entitled, "Proof of Full COVID-19 Vaccination" (Policy). The board members of BLH carried a motion to adopt SHA's Policy. The Complainant's position was that SHA's Policy violated *The Health Information Protection Act* (HIPA). The Complainant raised their concerns with the SHA, but was ultimately dissatisfied with SHA's response. Therefore, they complained to the Commissioner. The Commissioner found that the SHA and BLH had authority to collect the vaccination status or test results of employees pursuant to section 24(3) of HIPA, section 3-8(a) of *The Saskatchewan Employment Act* and sections 4(1) and (1.1) of *The Employers' COVID-19 Emergency Regulations*. He recommended that the SHA and BLH take no further action.

#### I BACKGROUND

- [1] On October 1, 2021, the Saskatchewan Health Authority (SHA)'s Policy Directive entitled, "Proof of Full COVID-19 Vaccination" (Policy) came into effect. The Policy required "team members", including employees, to provide proof of full COVID-19 vaccination or to participate in the SHA COVID-19 monitored testing program at the team member's own cost.
- [2] On October 14, 2021, an employee (Complainant) of Border-line Housing Company (1975) Inc. (BLH) in Carnduff, Saskatchewan contacted a SHA Privacy Officer requesting a copy of SHA's Policy. The employee also expressed concerns over SHA's Policy.

- [3] The SHA Privacy Officer provided a copy of the Policy and explained the following explanation to the Complainant:

As an employer in Saskatchewan, the SHA is following the Saskatchewan Government legislation. Saskatchewan issued [\*The Public Employers' COVID-19 Emergency Regulations\*](#) and [\*The Employers' COVID-19 Emergency Regulations\*](#) (both effective October 1, 2021). These are the 2 sources of legal authority for employers to require proof of vaccination or a negative test within 72 hours prior to your shift. This is not conducted under *The Health Information Protection Act* but through *The Public Health Act, 1994*.

No one is required to be vaccinated as they have the option to be tested.

Dr. Shahab issued the [\*Public Health Order – Proof of COVID-19 Vaccination or Negative Test and Public Health Order – Mandatory Isolation and Face Covering\*](#) (both dated September 30, 2021).

- [4] The Complainant then submitted the following complaint to the SHA:

This is my formal written Complaint to SHA Privacy Department in regards to SHA's Employee Vaccine Mandate.

It is my understanding that the Vaccine mandate policy brought forth by SHA, under the “legal authority” of the Saskatchewan Public Health Vaccine Passport Emergency Order, violates the Saskatchewan Protection of Privacy Act [sic] and HIPPA [sic].

This mandate will put me in a position to be discriminated against, and harassed [sic], intimidated and coerced, and my human and civil rights violated by managers and fellow employees, as well as members of the public, solely based on my private medical information.

Under the Saskatchewan Privacy Act [sic], I am protected from mandates and policies that threaten, intimidate or coerce me into disclosing my private health and medical information. Saskatchewan Law and Human Rights legislation supercedes and nullifies any and all policies that violate my privacy rights, and human rights.

Can SHA Privacy department please provide me with documentation under HIPPA [sic], the Saskatchewan Protection of Privacy Act [sic], Saskatchewan Department of Labor and Labor Laws, and UNESCO'S Declaration of Bioethics and Human Rights, that authorizes SHA to make threats of disciplinary action including termination, for failure to submit to vaccine mandates, and unlawful demands to disclose private health and medical information?

I am requesting a formal review and investigation into these unlawful policies being enforced upon me, against my conscience, against my will, and better judgment.

[5] On October 20, 2021, the SHA responded as follows:

...

As an employer in Saskatchewan, the SHA is required to adhere to *The Saskatchewan Employment Act* and is following [\*The Employers' COVID-19 Emergency Regulations\*](#) (effective October 1, 2021). *The Saskatchewan Employment Act* requires the SHA to ensure the health, safety and welfare of its team members to the extent reasonably possible. [\*The Employers' COVID-19 Emergency Regulations\*](#) provides legal authority for the SHA to require proof of vaccination or a negative test at least every seven days before being allowed into the workplace.

No one is required to be vaccinated or to provide proof of vaccination as the Policy Directive provides the option to be tested as described in *The Employers' COVID-19 Emergency Regulations*.

The SHA will be securely storing the information related to you as a team member. Access to identifiable information will be established on a need to know basis only for the purposes of administering and enforcing the policy directive.

Concerns related to Human Rights violations regarding COVID19 mandates are dealt with by the Saskatchewan Human Rights Commission as identified at <https://saskatchewanhumanrights.ca/education-resources/covid-19-and-human-rights/>

[6] The Complainant continued to exchange emails with the SHA Privacy Officer, but was ultimately dissatisfied with the SHA's response.

[7] On October 20, 2021, the Complainant requested that my office undertake an investigation into the matter.

[8] On October 25, 2021, my office notified the SHA and the Complainant that my office would be undertaking an investigation.

[9] I should also note that on November 3, 2021, the board members of BLH held a meeting in which they carried a motion to adopt SHA's Policy. Since the Complainant is an employee of BLH, my office also notified BLH of its investigation on January 6, 2022.

## II DISCUSSION OF THE ISSUES

### 1. Is HIPA engaged?

[10] *The Health Information Protection Act* (HIPA) is engaged when three elements are present: (1) personal health information, (2), a trustee, (3) the personal health information is in the custody or control of the trustee. If HIPA is engaged, then my office is able to determine if a privacy breach has occurred under HIPA. A privacy breach occurs when personal health information has been collected, used, and/or disclosed without authority under HIPA.

[11] First, the personal health information is defined by section 2(m) of HIPA, which provides:

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;

[12] I find that a person’s vaccination status or the results of tests for COVID-19 would qualify as “personal health information” as defined by section 2(m)(i) of HIPA.

[13] Second, “trustee” is defined by section 2(t)(ii) of HIPA as follows:

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] The SHA qualifies as the “provincial health authority” as defined by section 1-2 of *The Provincial Health Authority Act*. Further, BLH qualifies as a “health care organization” as defined by section 1-2 of *The Provincial Health Authority Act* and Table 3 of the Appendix of *The Provincial Health Authority Administration Regulations*. Therefore, I find that both

the SHA and BLH qualify as trustees as defined by section 2(t)(ii) of HIPA. Since the Complainant is an employee of BLH, my primary focus is on BLH.

[15] Third, I must determine if the personal health information is in the custody or control of BLH.

[16] The Complainant's concern is whether the SHA's Policy "violates" HIPA. There is no evidence that either the SHA and/or BLH obtained the Complainant's vaccination status or results of tests for COVID-19. As such, I find that the Complainant's personal health information at issue is *not* in the custody or control of the SHA or BLH.

[17] However, since BLH was engaged in the practice of collecting personal health information in accordance with the Policy, I find that HIPA is engaged.

**2. Did the SHA and BLH have authority under HIPA to collect the vaccination status or test results of employees?**

[18] I note the Complainant's position that SHA's policy "violates" HIPA. Therefore, I will analyze whether HIPA provided authority for the SHA and BLH to collect the vaccination status or test results of employees.

[19] I have found that a person's vaccination status or the results of tests for COVID-19 qualifies as "personal health information" as defined by section 2(m)(i) of HIPA.

[20] Section 24(3) of HIPA provides:

**24(3) Nothing in this Act** prohibits the collection of personal health information where that collection is authorized by another Act or by a regulation made pursuant to another Act.

[Emphasis added]

[21] Based on section 24(3) of HIPA, I need to determine if there was another Act or regulation that authorized the collection of employees' personal health information. Section 3-8(a) of *The Saskatchewan Employment Act* provides:

**3-8** Every employer shall:

(a) ensure, insofar as is reasonably practicable, the health, safety and welfare at work of all of the employer's workers;

[22] *The Employers' COVID-19 Emergency Regulations* (Emergency Regulations) came into effect on October 1, 2021, which applied to employers who were not a "public employer", pursuant to sections 2(2) and 3 of the Emergency Regulations:

**2(2)** For the purposes of the definition of "public employer" in subsection (1), public employer does not include the following:

(a) the provincial health authority, an affiliate, a health care organization or the cancer agency as those terms are defined in *The Provincial Health Authority Act*, except eHealth Saskatchewan;

...

**3** These regulations do not apply to a public employer.

[23] Sections 4(1) and (1.1) of the Emergency Regulations provided:

**4(1)** On and after October 1, 2021, an employer may, for the purposes of clause 3-8(a) of the Act, require all of its workers to comply with one of the following:

(a) to:

(i) be fully-vaccinated; and

(ii) if requested by the employer, provide satisfactory evidence to the employer in relation to the worker's vaccinations;

(b) to provide a valid negative COVID-19 test result to the employer at least every 7 days.

(1.1) If an employer requires its workers to comply with one of the requirements set out in subsection (1), the employer shall give each worker the option to comply with either clause (1)(a) or (b), but the worker must comply with at least one of those requirements within the period specified by the employer.

[24] Therefore, I find that the SHA and BLH had authority to collect the vaccination status or test results of employees pursuant to section 24(3) of HIPA, section 3-8(a) of *The Saskatchewan Employment Act* and sections 4(1) and (1.1) of the Emergency Regulations. In other words, I do not find that SHA's Policy "violates" HIPA as the Complainant asserted.

[25] I note that the Emergency Regulations were repealed effective February 14, 2022. SHA and BLHs' Policy expired on February 14, 2022. That is, BLH ceased the practice of collecting proof of full COVID-19 vaccination or COVID-19 test results on February 14, 2022.

### **III FINDINGS**

[26] I find that HIPA is engaged.

[27] I find that the SHA and BLH had authority to collect the vaccination status or test results of employees pursuant to section 24(3) of HIPA, section 3-8(a) of *The Saskatchewan Employment Act* and sections 4(1) and (1.1) of the Emergency Regulations.

### **IV RECOMMENDATION**

[28] I recommend that the SHA and BLH take no further action regarding this matter.

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

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