

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

REVIEW REPORT 070/2014

Financial and Consumer Affairs Authority

Summary:

In April 2014, an Applicant submitted a request to Financial & Consumer Affairs Authority (FCAA) to have her personal health information changed and/or removed from two FCAA records. The FCAA denied the Applicant's request and instead made a notation on file pursuant to subsection 40(1)(b) of *The Health Information Protection Act* (HIPA). The Applicant requested a review by the Office of the Saskatchewan Information and Privacy Commissioner (OIPC). The Commissioner found that the information accurately reflected the views and/or impressions of the author at the time the record was created and therefore did not qualify to be changed and or removed pursuant to subsection 40(1)(a) of HIPA. Given that the FCAA already indicated it made the notation on file, the Commissioner made no recommendations.

I BACKGROUND

- [1] In a letter dated April 7, 2014, the Applicant requested that her personal health information held by Financial and Consumer Affairs Authority (FCAA) be changed and/or removed.
- [2] FCAA responded to the Applicant by letter dated April 28, 2014 advising that it would not make the changes requested but would place a notation on file.
- [3] My office received a Request for Review along with numerous supporting documents from the Applicant on May 2, 2014 and May 5, 2014. Additional documents were received from the Applicant on September 22, 2014.

[4] My office issued notification letters to both the Applicant and the FCAA on July 28, 2014, indicating our intention to commence a review. My office requested that the FCAA provide a submission addressing the reasons why the FCAA rejected the Applicant's correction request.

[5] On October 3, 2014, my office received a submission from the FCAA.

II RECORDS AT ISSUE

[6] The Applicant has requested the FCAA change information in an FCAA letter to the Applicant dated April 3, 2013 and a document titled, *Reasons for the Hearing Panel Concerning a Motion for the Recusal of Gordon D. Hamilton, Panel Chair* dated September 9, 2013.

III DISCUSSION OF THE ISSUES

[7] The FCAA is a "trustee" pursuant to subsection 2(t)(i) of *The Health Information Protection Act* (HIPA).

1. Did the FCAA meet its obligations under section 40 of HIPA?

[8] Section 40 of HIPA provides:

40(1) An individual who is given access to a record that contains personal health information with respect to himself or herself is entitled:

- (a) to request amendment of the personal health information contained in the record if the person believes that there is an error or omission in it; or
- (b) if an amendment is requested but not made, to require that a notation to that effect be made in the record.

(2) A request for amendment must be in writing.

(3) Within 30 days after a request for amendment is received, the trustee shall advise the individual in writing that:

- (a) the amendment has been made; or
- (b) a notation pursuant to clause (1)(b) has been made.

(4) Subject to subsection (6), where a trustee makes an amendment or adds a notation pursuant to clause (1)(b), the trustee must, where practicable, give notice of the amendment or notation to any other trustee or person to whom the personal health information has been disclosed by the trustee within the period of one year immediately before the amendment was requested.

(5) A trustee that receives a notice pursuant to subsection (4) must make the amendment or add the notation to any record in the custody or control of the trustee that contains personal health information respecting the individual who requested the amendment.

(6) A trustee is not required to notify other trustees where:

(a) an amendment or a notation cannot reasonably be expected to have an impact on the ongoing provision of health services to the individual; or

(b) the personal health information was disclosed to the other trustees for any of the purposes or in any of the circumstances set out in subsection 27(2).

(7) An amendment required to be made pursuant to this section must not destroy or obliterate existing information in the record being amended, other than registration information.

[9] Subsection 40(1)(a) of HIPA provides an individual with the right to request a trustee to correct his/her personal health information where the individual believes there has been an error or omission. Subsection 40(1)(b) of HIPA requires a trustee to make a notation on file if the correction was requested but not made.

[10] The following criteria must be considered with the right of correction:

- i. the information at issue must be personal health information;
- ii. the information must be inexact, incomplete or ambiguous; and
- iii. the correction cannot be a substitution of opinion.

[11] In each case, the appropriate method for correcting personal health information should be determined by taking into account the nature of the record, the method indicated by the requester, if any, and the most practical and reasonable method in the circumstances. (Ontario IPC Order MO-2120 at p. 3)

i. Is the information at issue personal health information?

[12] Subsection 2(m) of HIPA defines “personal health information” 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;
- (iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of 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;

[13] The Applicant asserted in her letter to the FCAA dated April 7, 2014 that two things were incorrect: that she had not attended or completed a specific medical treatment and that her physician had informed the FCAA that she could have attended a Hearing and was not ill. Based on this, it appears the information in question relates to the personal health information of the Applicant.

ii. Is the information inexact, incomplete or ambiguous?

[14] Subsection 40(1) of HIPA uses the terms “error” and “omission”. An *error* is a mistake or something wrong or incorrect. An *omission* means that something is missing, left out or overlooked.

[15] The Applicant must establish that there are errors or omissions in the personal health information that are subject to correction. In this case, the records involve an FCAA Hearing Panel proceeding in which the Applicant was the subject of.

[16] In its submission, the FCAA asserted that the April 3, 2013 and September 9, 2013 records which are subject of the correction request and this review share similar characteristics to the investigatory records described in this office’s recent Review Report F-2014-004 and Ontario Information and Privacy Commissioner’s Order MO-2766. The FCAA asserted that in each of these reports, the applicants requested that records related to the investigation of a matter were to be amended to reflect the applicant’s view of the “correct” facts, and in each case the Privacy Commissioner declined to require such amendments be made. In addition, the FCAA asserted that the April 3, 2013 record is a

letter to the Applicant in furtherance of the Hearing Panel's investigation of the Applicant's claims and requests permission to gather more information. Further, the September 9, 2013 decision of the Hearing Panel records the Hearing Panel's findings with regard to the Applicant's adjournment requests. In both cases, the records reflect the views of the FCAA Hearing Panel whose impressions are set out.

[17] Records of an investigatory nature cannot be said to be "incorrect", "in error", "incomplete", "inexact" or "ambiguous" if they simply reflect the views of the individuals whose impressions are being set out. In other words, it is not the truth of the recorded information that is determinative of whether a correction request should be granted, but rather whether what is recorded accurately reflected the FCAA Hearing Panel's observations, perception of events and impressions as they existed at the time the records were created.

[18] Further, information that falls into the category of professional opinion or professional observation, such as a physician's psychiatric or medical diagnosis or a physician's notes, generally represent a physician's perceptions, interpretations, impressions or understandings at the time. Such information would generally not be subject to correction.

[19] The Hearing Panel received information from a physician which was then reflected in the records subject to this review. The FCAA asserted that the information provided to it from the physician was accurately reflected in the records. Therefore, the question is, do the statements reflect the views or impressions of the Hearing Panel as they existed at the time the records were created?

[20] The Applicant's submissions to my office focused largely on trying to prove that the physician did not give the information to the FCAA and that the FCAA lied and knowingly made up the information. In addition, the Applicant raised a number of issues in the submission that did not fall within my office's jurisdiction including complaints about FCAA Hearing processes (why it did or did not do certain things in its Hearing proceedings). The purpose of this review is to consider whether the specific information in the two records meets the test for correction. Despite the extensive amount of

information provided by the Applicant, there was no proof provided to support the Applicant's allegations including the allegation that the FCAA made the information up. In addition, the Applicant did not point to what information was incorrect in each of the two records.

[21] The records are a letter and a Hearing Panel decision created by the FCAA Hearing Panel. Information in the two records appears to constitute the views and impressions of the FCAA Hearing Panel which are partly based on information it received from a physician.

[22] Therefore, I find that the information in dispute appears to accurately reflect the views and impressions of the FCAA Hearing Panel at the time the records were created.

[23] Since all three requirements of the test for correction must be satisfied, it is not necessary to consider the third requirement.

IV FINDINGS

[24] I find that the information in question does not qualify for correction under subsection 40(1)(a) of HIPA.

V RECOMMENDATIONS

[25] Given that the Financial and Consumer Affairs Authority has already indicated it made the notation in question, I make no recommendations in this review.

Dated at Regina, in the Province of Saskatchewan, this 5th day of November, 2014.

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