



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## INVESTIGATION REPORT 123-2021, 239-2021

### Saskatchewan Health Authority

June 21, 2022

#### Summary:

The Complainant was an employee of the Saskatchewan Health Authority (SHA) and a social worker registered with the Alberta College of Social Workers (ACSW) and the Saskatchewan Association of Social Workers (SASW). The SHA had reported concerns regarding the Complainant to the ACSW and SASW. The ACSW undertook an investigation in which the SHA disclosed the personal information and personal health information of the Complainant and SHA clients/patients to the ACSW. The Complainant believed that her and the clients' privacy was breached. The Complainant raised her privacy concerns with the SHA, but was dissatisfied with the SHA's response so she requested the Commissioner investigate. The Commissioner found that the SHA had authority under *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) and *The Health Information Protection Act* (HIPA) to disclose personal information and personal health information in certain circumstances. However, he found that the SHA had not met its duty pursuant to section 10(1) of HIPA, that a privacy breach occurred when client information was disclosed by the SHA to the ACSW investigator when de-identified information would have served the purpose. He also found that the SHA did not meet its obligations pursuant to section 9 of HIPA or the requirements of section 6(2) of HIPA when it failed to inform the Complainant of the anticipated uses and disclosures of their personal health information related to an independent medical exam. The Commissioner made a number of recommendations, including that the SHA establish policies and/or procedures to ensure it is meeting its duty pursuant to section 10(1) of HIPA as well to ensure its disclosures to regulatory bodies are in compliance with section 23 of HIPA. He also recommended that the SHA send a letter to the Complainant to apologize for not meeting its duty under section 9 of HIPA and for not meeting the requirements of section 6(2) of HIPA.

## **I BACKGROUND**

[1] The Complainant was an employee of the Saskatchewan Health Authority (SHA) and a social worker registered with the Alberta College of Social Workers (ACSW) and the Saskatchewan Association of Social Workers (SASW). The Complainant provided services on both sides of the Alberta and Saskatchewan border within the City of Lloydminster.

[2] On April 5, 2019, when the Complainant was still an employee at the SHA, the Complainant had a meeting with the Executive Director of Continuing Care, a Labor Relations Consultant, and the Director of Acute Care. Also present at the meeting was a union representative from Health Sciences Association of Saskatchewan (HSAS). The Complainant described the purpose of the meeting as follows:

The purpose was to review my work performances to date, confirm charting expectations and discuss some concerns expressed by the management. Summarily, they did not feel I was working up to their expectations.

[3] The SHA described the purpose of the meeting as follows:

The intent of the meeting was to discuss a number of concerns the employer had with [Name of Complainant]'s professional competency and conduct. The discussions included concerns that had occurred back in the fall of 2018 as well as recent concerns.

[4] The Complainant was given a one-day suspension. The Complainant understood that once a social worker has been disciplined or suspended, they must be reported to their professional regulatory body. In this case, the professional regulatory body was ACSW and SASW.

[5] The SHA sent a letter dated April 16, 2019, to the Complainant as a follow-up to the April 5, 2019 meeting. In the letter, the SHA described concerns that it had with the Complainant. It provided examples to support its concerns, its expectations of the Complainant, and the consequences of not meeting the expectations. The letter also reminded the Complainant that it would be reporting its concerns to the ACSW and SASW.

- [6] In letters dated April 29, 2019, the SHA informed the ACSW and SASW of its concerns regarding the Complainant and that it had issued the Complainant a one-day suspension.
- [7] In a letter dated May 24, 2019, the ACSW informed the SHA that when it receives a notice of suspension regarding a social worker, it must treat the notice as a complaint under Alberta's *Health Professions Act*. The ACSW informed the SHA of the name of the investigator it had appointed to conduct an investigation.
- [8] In a letter dated July 31, 2019, the SASW informed the Complainant that it received a complaint from the SHA regarding the Complainant's social work practice and that the ACSW had received the identical complaint. The SASW informed the Complainant that the ACSW would complete the investigation into the matter and provide a report to the SASW and that "each regulating body will employ its own statutory authority in determining the course of the complaint, following receipt of an investigation report from the ACSW."
- [9] ACSW conducted its investigation. It conducted interviews with individuals on August 21, 2019 and September 5, 2019.
- [10] On September 27, 2019, ACSW's investigation report was completed. After reviewing the investigation report, ACSW's Complaint Director referred the matter to the Hearings Director to schedule a hearing.
- [11] On April 30, 2020, a Notice of Hearing was issued. It indicated that a hearing before the Hearing Tribunal of the ACSW was to occur on October 9, 2020.
- [12] The Hearing Tribunal issued a Consent Order, dated October 8, 2020, that outlined the sanctions against the Complainant.
- [13] In a letter dated March 5, 2021, the Complainant raised her privacy concerns with the SHA. The Complainant's concerns were as follows:

- SHA employees disclosed information regarding matters, including disciplinary action, that were grieved through the union. The Complainant believed these matters were “sealed” and the disclosure of such information would have been contradictory to the HSAS collective agreement (Concern 1).
- The SHA asked that the Complainant to participate in an independent medical exam (IME). The Complainant was assured that her information would be confidential. However, the SHA disclosed information related to the IME to the ACSW investigator. (Concern 2).
- The SHA disclosed client information to the ACSW investigator without redactions or the clients’ permission (Concern 3).
- The SHA conducted an audit of the Complainant’s work, which included going through client files. The SHA conducted the audit without the clients’ permission (Concern 4).

[14] In an undated letter, which was attached to an email dated August 13, 2021, the SHA responded to the Complainant. Regarding the Complainant’s first concern, the SHA asserted that the section 28(2)(i)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) authorized the disclosure. The SHA also cited clause 8.04 of the “HSAS-SAHO” Collective Agreement for April 1, 2018 to March 31, 2024.

[15] Regarding the Complainant’s second concern, the SHA asserted that section 27(5)(c) of *The Health Information Protection Act* (HIPA) authorized the SHA to disclose the Complainant’s personal health information to the ACSW.

[16] Regarding the Complainant’s third concern, the SHA asserted that it disclosed clients’/patients’ names to the ACSW because the ACSW may have needed to contact them as witnesses for ACSW’s investigation. The SHA cited section 27(4)(h) of HIPA as authorization for the SHA to disclose clients’ personal health information. The SHA also cited sections 55(2) and 63(1) of Alberta’s *Health Professions Act*. However, the SHA noted that it “did not safeguard the personal health information in accordance with section 16 of HIPA” when it disclosed clients’ files to the ACSW without redactions. The SHA indicated that: 1) it would notify its clients that their personal health information was disclosed to the ACSW, 2) it would request that the Complainant return copies of the

clients' information and the SHA will provide the Complainant with redacted copies; the same would be asked of the ACSW, and 3) that the SHA will amend its processes by providing education to the Home Care and the Long Term Care facilities in Lloydminster area on the release of information; it would also be providing this education to "everyone".

[17] Regarding the Complainant's fourth concern, the SHA asserted that section 26(2)(a) and 27(3)(b) of HIPA authorized the SHA to use the clients' personal health information for the purpose of the audit.

[18] On August 16, 2021, the Complainant contacted my office and indicated that they were dissatisfied with SHA's response to their privacy concerns.

[19] On September 9, 2021, my office notified the Complainant and the SHA that it would be undertaking an investigation into the disclosure of the Complainant's information to the ACSW (Concerns 1 and 2).

[20] On October 7, 2021, my office notified the SHA that it would also be undertaking an investigation into the use of client information for the purpose of an audit as well as the disclosure of client information to the ACSW (Concerns 3 and 4).

## **II DISCUSSION OF THE ISSUES**

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

#### **a. LA FOIP**

[21] The SHA qualifies as a "local authority" as defined by section 2(f)(xiii) of LA FOIP. I note that the Complainant's first concern involves information regarding performance matters that were grieved through the union, including disciplinary action. I find that such information constitutes "employment history" and therefore qualifies as "personal information" as defined by section 23(1)(b) of LA FOIP, which provides:

23(1) Subject to subsections (1.1) and (2), “**personal information**” means personal information about an identifiable individual that is recorded in any form, and includes:

...

(b) information that relates to the education or the criminal or **employment history of the individual** or information relating to financial transactions in which the individual has been involved;

[Emphasis added]

[22] As the SHA is a local authority and there is personal information involved, LA FOIP is engaged in this matter. Further, I find that I have jurisdiction to investigate this matter under LA FOIP.

#### **b. HIPA**

[23] 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 under the control of the trustee.

[24] First, I must determine if personal health information is present. As described in the background of this Investigation Report, the Complainant’s second concern involves information related to the IME, which is a medical exam. The Complainant’s third and fourth concerns involve information regarding documentation from clients’ files, including information about clients’ physical and mental health. I find that information related to a medical exam and the documentation from clients’ files qualifies as personal health information as defined by section 2(m)(i) 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;

[25] Second, I must determine if a trustee is present. Section 2(t)(ii) of HIPA 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;

[26] I find that the SHA qualifies as a trustee as defined by section 2(t)(ii) of HIPA.

[27] Third, I must determine if the SHA has custody or control over the personal health information. Since the personal health information originated from the SHA to the ACSW, then I find that the SHA had custody and control over the personal health information.

[28] All three elements are present in order for HIPA to be engaged. Therefore, I find that I have jurisdiction to investigate this matter under HIPA.

## **2. Did privacy breaches occur?**

[29] A privacy breach occurs when personal health information is collected, used, and/or disclosed without authority under HIPA or LA FOIP. Below, I will analyze each of the Complainant’s concerns to determine if privacy breaches occurred.

### **a. Use**

#### **i. Did the SHA have authority under HIPA to use personal health information?**

[30] As described in the background, the Complainant’s fourth concern was about how her former manager at the SHA conducted an audit of client files. The audit was to review the Complainant’s charting methods. The Complainant asserted that such an audit was without “authorization”, and that the audit breached the privacy of clients.

[31] Section 2(u) of HIPA defines “use” as follows:

**2** In this Act:

...

(u) “**use**” includes reference to or manipulation of personal health information by the trustee that has custody or control of the information, but does not include disclosure to another person or trustee.

[32] In order to use personal health information for the purpose of an audit, the SHA must have authority pursuant to section 26 of HIPA.

[33] In its submission, the SHA asserted that sections 26(2)(a) and 27(3)(b) of HIPA authorized the use of the clients’ personal health information for such an audit. Specifically, the SHA said:

SHA can use personal health information for the purpose of evaluating a health professional [sic] ethical practices as per 26(2)(a) and 27(3)(b) of HIPA. This was not a breach of patient privacy.

[34] The SHA did not provide any further information.

[35] Section 26(2)(a) of HIPA provides:

**26(2)** A trustee may use personal health information:

(a) for a purpose for which the information may be disclosed by the trustee pursuant to section 27, 28 or 29;

[36] In order to rely on section 26(2)(a) of HIPA to use personal health information, the SHA must identify a provision (or provisions in sections 27, 28, or 29) that authorizes the use. In this case, the SHA identified section 27(3)(b) of HIPA which provides as follows:

**27(3)** A trustee shall not disclose personal health information on the basis of a consent pursuant to subsection (2) unless:

...

(b) in the case of a trustee who is a health professional, the trustee makes the disclosure in accordance with the ethical practices of the trustee’s profession.

[37] Section 27(3)(b) of HIPA applies to “a trustee who is a health professional”. In this case, the trustee is the SHA. I note that section 2(t)(xii) of HIPA provides that “a health professional” is a person licensed or registered pursuant to an Act for which the minister is



responsible or is a member of a class of persons designed as health professionals in the regulations. Section 2(t)(xii) of HIPA provides as follows:

**2** In this Act:

...

(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

(B) a member of a class of persons designated as health professionals in the regulations;

[38] Since section 2(t)(xii) of HIPA refers to *The Health Information Protection Regulations* (HIPA Regulations), I note that section 6.1(1)(c) of the HIPA Regulations defines “health professional” as follows:

**6.1(1)** In this section and in sections 6.2 and 6.3:

...

(c) “health professional” means a person who:

(i) is licensed pursuant to an Act for which the minister is responsible; and

(ii) is authorized by *The Drug Schedules Regulations, 1997* to prescribe or dispense a drug

[39] Based on the above, the SHA does not qualify as a “health professional”. Therefore, the SHA cannot rely on sections 26(2)(a) and 27(3)(b) of HIPA as its authority for using client information as part of its audit. I find that the SHA has not demonstrated that it had authority under HIPA to use the clients’ personal health information as part of its audit.

[40] While I have found that the SHA has not demonstrated its authority under HIPA to conduct its audit, I recognize the importance of ensuring its employees are managing client files appropriately. This could include conducting audits. I recommend that the SHA ensure it has authority under HIPA and any other applicable legislation prior to conducting such audits.

**b. Disclosures**

**i. Did the SHA have authority to disclose client information to the ACSW investigator?**

[41] As described in the background, the Complainant's third concern was about how the SHA disclosed client/patient information to the ACSW investigator without redacting the clients' personal health information or without the clients' permission.

[42] The SHA's response to the Complainant described two scenarios in which it disclosed client/patient information to ACSW:

- The SHA asserted that section 27(4)(h) of HIPA authorized it to disclose client/patient names to the ACSW because the ACSW may have needed to contact them as witnesses for the ACSW's investigation.
- The SHA admitted that its disclosure of client files to the ACSW without any redactions was a failure to safeguard personal health information in accordance with section 16 of HIPA.

[43] I will deal with each of these scenarios below.

**Scenario 1: Disclosure of client/patient names to the ACSW**

[44] The SHA indicated that it disclosed client/patient names to the ACSW in case the ACSW needed to contact them as witnesses for ACSW's investigation. The SHA cited section 27(4)(h) of HIPA as its authority for the disclosure of the clients'/patients' names. Section 27(4)(h) of HIPA provides:

**27(4)** A trustee may disclose personal health information in the custody or control of the trustee without the consent of the subject individual in the following cases:

...

(h) subject to subsection (5), where the disclosure is being made to a health professional body or a prescribed professional body that requires the information for the purposes of carrying out its duties pursuant to an Act with respect to regulating the profession;

[45] The SHA noted that ACSW's authority to collect information is pursuant to section 55(2) and 63(1) of Alberta's *Health Professions Act*:

**55(2)** The complaints director

...

(d) may conduct, or appoint an investigator to conduct, an investigation,

...

**63(1)** An investigator

(a) may, at any reasonable time,

(i) require any person to answer any relevant questions and direct the person to answer the questions under oath, and

(ii) require any person to give to the investigator any document, substance or thing relevant to the investigation that the person possesses or that is under the control of the person,

[46] In the background of this Investigation Report, I noted that the ACSW's letter dated May 24, 2019 to the SHA indicated that the ACSW was undertaking an investigation. Therefore, I am satisfied that the ACSW had undertaken an investigation pursuant to section 55(2) of Alberta's *Health Professions Act*.

[47] In the course of my office's investigation, my office had sought copies of correspondence between ACSW's investigator and SHA employees. However, my office did not receive copies of correspondence that indicated that the ACSW investigator sought names of clients/patients who could act as a witness. The SHA noted that the ACSW investigator met with SHA employees in-person or by telephone. Therefore, there are no notes of the ACSW investigator requesting the names of clients/patients who could act as witnesses or SHA disclosing such information.

[48] Nevertheless, I find that section 27(4)(h) of HIPA would have authorized the disclosure of names of clients who could act as witnesses if the ACSW investigator had requested such information.

[49] I note that section 10 of HIPA requires that trustees, such as the SHA take reasonable steps to ensure that the trustee is able to inform an individual about any disclosures of personal health information without consent. Section 10(1) of HIPA provides:

**10(1)** A trustee must take reasonable steps to ensure that the trustee is able to inform an individual about any disclosures of that individual’s personal health information made without the individual’s consent after the coming into force of this section.

[50] A reasonable step in ensuring that it can inform an individual that their personal health information has been disclosed without consent is to document such disclosures. Without making any notation of the disclosure of personal health information to the ACSW investigator, I find that the SHA has not met its duty pursuant to section 10(1) of HIPA. I recommend that the SHA establish a policy and/or procedure for documenting the disclosure of personal health information without consent so that it meets its duty pursuant to section 10(1) of HIPA.

### **Scenario 2: Disclosure of client files without redactions to the ACSW**

[51] In the course of ACSW’s investigation, SHA employees disclosed client files to the ACSW investigator. Identifiable information from the client files were not redacted prior to the disclosure.

[52] The SHA admitted that it “did not safeguard the personal health information in accordance with section 16 of HIPA”. As described in the background of this Investigation Report, the SHA made efforts to retrieve the client information from the parties to which the information was ultimately distributed, including the Complainant, and distribute de-identified copies. This suggests that de-identified copies of client information would have served the purpose. Section 23(4) of HIPA provides as follows:

**23(4)** A trustee must, where practicable, use or disclose only de-identified personal health information if it will serve the purpose.

- [53] Since disclosing a de-identified version of client information would have served the purpose, I find that a privacy breach occurred when client information was disclosed by the SHA to the ACSW investigator.
- [54] As noted in the background, the SHA made efforts to retrieve the client information from the ACSW and the Complainant. Also, in letters dated April 7, 2022, the SHA notified the clients (the individuals affected by this privacy breach) that their information was shared with SHA managers and a health care regulatory body. The letters explained what happened and it also included my office's contact information; my office has not received any complaints from these affected individuals at the time of writing this Investigation Report.
- [55] In terms of preventing similar privacy breaches in the future, the SHA indicated that it would amend its processes by providing education not only to the Home Care and Long Term Care facilities in the Lloydminster area on the release of information, but also to "everyone". It is not clear what such education would be based upon. I recommend that if the SHA does not already have one, that the SHA establish a written policy and/or procedure in terms of what it discloses to regulatory bodies in the course of regulatory bodies' investigations. Such disclosures should be in compliance with section 23 of HIPA.

**ii. Did the SHA have authority to disclose the Complainant's personal health information to the ACSW investigator?**

- [56] As described in the background, the Complainant's second concern is about how the SHA disclosed her personal health information from an IME to the ACSW investigator. In the course of my office's investigation, the Complainant indicated to my office had she known that such information would be disclosed to the ACSW, then she would not have agreed to participate in the IME. What occurred is as follows:
- In a letter dated July 19, 2019 to the Complainant, the SHA explained it needed more information regarding the Complainant's medical condition, what restrictions the Complainant has, and possible accommodations that the SHA could make for her. The SHA offered the opportunity for the Complainant to participate in an IME as it felt that it had exhausted every other required option.

- In a letter dated July 31, 2019 to the Complainant, the SHA explained that the IME was scheduled for August 15 and August 16, 2019.
- In an email dated August 13, 2019, the Complainant's union representative emailed an Attendance Support Consultant at the SHA to set up a conference call.
- In an email dated August 14, 2019, the Attendance Support Consultant at the SHA responded to the union representative's email. The SHA provided assurance to the Complainant of employee confidentiality regarding the IME and that the SHA is only interested in information to support the Complainant's return-to-work.
- The Complainant makes the decision to participate in the IME. The Complainant's personal health information is collected as part of the IME.
- On August 21, 2019, the Director of Acute Care mentions to the ACSW investigator that the Complainant was given a paid leave of absence to allow for an IME but that they were unaware of the outcome of the IME.
- On September 5, 2019, a Labour Relations Consultant also mentions to the ACSW investigator that the Complainant was given a paid leave of absence to allow for an IME; however, they had not received the findings of the IME.
- On September 27, 2019, ACSW's investigation report was completed.
- On April 18, 2020, the ACSW Investigator contacted the Executive Director of Continuing Care by email requesting a copy of the report resulting from the IME.
- On or after May 4, 2020, the SHA provided a copy of the IME report to the ACSW investigator.

[57] In the course of my office's investigation, the ACSW explained that a Notice of Hearing was issued on April 30, 2020. In its preparation of the Notice of Hearing, the ACSW investigator was directed to obtain the IME report from the SHA, which was not available prior to the completion of the ACSW investigation report (completed on September 27, 2019).

[58] The SHA explained that it relied on section 27(5)(c) of HIPA for its disclosure of the IME report to the ACSW. Section 27(5)(c) of HIPA provides:

27(5) For the purposes of clause (4)(h), where the personal health information in question is about a member of the profession regulated by the health professional body or prescribed professional body, disclosure may be made only:

...

(c) if the trustee has reasonable grounds to believe that the personal health information is relevant to the ability of the subject individual to practise his or her profession, on the request of the health professional body or prescribed professional body.

[59] In order for a disclosure to be authorized by section 27(5)(c) of HIPA, the trustee must demonstrate:

- 1) that it has reasonable grounds to believe that the personal health information is relevant to the ability of the subject individual to practise his or her profession, and
- 2) the health professional body or prescribed professional body requested such information.

[60] In its submission, the SHA explained:

[Name of Complainant] had an appointment on August 15, 2019 for the IME. This appointment was for [Name of Complainant] to participate in an Independent Medical Exam (IME) which was requested and paid for by management (the employer) in order to help them manage the employee/employer relationship. Attendance Support Consultant, Attendance & Accommodations sent a referral to the medical specialist with a specific list of questions that they were wanting answered in order to try to support [Name of Complainant] and work through some ongoing matters in the workplace. The ACSW investigator requested a copy of the IME and the SHA disclosed as per section 27(5)(c) of HIPA. SHA appropriately used and disclosed the IME report when it was shared with SHA Labour Relations and Regulatory Bodies.

[61] Based on a review of the letters dated April 29, 2019 from the SHA to the ACSW and SASW, the SHA had concerns regarding the Complainant's ability to practice social work. In the context of such concerns and the ACSW's investigation, it is conceivable that the SHA had reasonable grounds to believe that the personal health information in the IME report would be related to the Complainant's ability to practice social work.

[62] Further, I note that the ACSW investigator had requested the IME report in an email dated April 18, 2020 to the Executive Director of Continuing Care.

[63] Therefore, I find that section 27(5) of HIPA authorized the SHA to disclose the Complainant's personal health information in the IME report.

[64] However, I note the Complainant's concern. In the email dated August 14, 2019, the Attendance Support Consultant at the SHA had assured the Complainant of employee confidentiality and that the information from the IME would only be used for the purpose of return-to-work. She was not informed that such personal health information would be disclosed to the ACSW. Section 9(2) of HIPA requires that trustees take reasonable steps to inform the individual of the anticipated uses and disclosures of the information by the trustee:

9(2) When a trustee is collecting personal health information from the subject individual, the trustee **must** take reasonable steps to inform the individual of the anticipated use and disclosure of the information by the trustee.

[Emphasis added]

[65] When I consider the context of the SHA's concerns regarding the Complainant outlined in its letters dated April 29, 2019 to the ACSW and SASW, I had found that it is conceivable that the SHA had reasonable grounds to believe that the personal health information in the IME report would be related to the Complainant's ability to practice social work. In the same vein, then, the SHA should have reasonably anticipated that the personal health information collected as part of the IME would be disclosed to ACSW as part of ACSW's investigation. However, it did not. The SHA simply assured the Complainant of employee confidentiality and that the information would be used for return-to-work purposes only. I find that the SHA did not meet its obligation pursuant to section 9 of HIPA. The failure to meet its obligation under section 9 of HIPA had a serious impact on the Complainant's ability to make an informed decision about whether she would participate in the IME. I recommend that the SHA send a letter to the Complainant to apologize for not meeting its duty under section 9 of HIPA.

[66] I note that SHA must have had the consent of the Complainant, an employee, to collect her personal health information for the IME pursuant to section 26(3) of HIPA:



**26(3)** Nothing in subsection (2) authorizes a trustee as an employer to use or obtain access to the personal health information of an individual who is an employee or prospective employee for any purpose related to the employment of the individual without the individual's consent.

[67] In order to obtain a valid consent, a trustee must ensure it meets all of the elements listed in sections 6(1)(a) through (d) of HIPA (*Guide to HIPA*, updated September 30, 2021 [Guide to HIPA], p. 18). Section 6(1) of HIPA provides:

**6(1)** Where consent is required by this Act for the collection, use or disclosure of personal health information, the consent:

- (a) must relate to the purpose for which the information is required;
- (b) must be informed;
- (c) must be given voluntarily; and
- (d) must not be obtained through misrepresentation, fraud or coercion.

[68] Further, section 6(2) of HIPA elaborates on what makes a consent “informed”:

**6(2)** A consent to the collection, use or disclosure of personal health information is informed if the individual who gives the consent is provided with the information that a reasonable person in the same circumstances would require in order to make a decision about the collection, use or disclosure of personal health information.

[69] I find that the SHA did not provide the Complainant with the information that a reasonable person in the same circumstances would require in order to make a decision about the collection of their personal health information. In other words, I find that the SHA did not meet the requirements of section 6(2) of HIPA when informing the Complainant of the anticipated uses and disclosures of her personal health information related to the IME. I recommend that the SHA send a letter to the Complainant to apologize for not meeting the requirements of section 6(2) of HIPA.

[70] I recommend that the SHA amend its policies and procedures so that it is in compliance with sections 6(1) and (2) of HIPA when obtaining consent from employees when

collecting their personal health information for any purpose related to the employment of the individual.

**iii. Did the SHA have authority to disclose the Complainant's personal information to the ACSW investigator?**

[71] As described in the background, the Complainant's first concern is about the disclosure of past disciplinary action, which she had grieved through the union. The Complainant understood that the matters were "sealed", and that the disclosure of such information would have been contradictory to the HSAS collective agreement.

[72] In its submission, the SHA cited section 28(2)(i)(i) of LA FOIP as its authority for the disclosure. Further, it cited clause 8.04 of the "HSAS-SAHO" collective agreement for April 1, 2018 to March 31, 2024 that authorized the disclosure.

[73] Section 28(2)(i)(i) of LA FOIP provides:

**28(2)** Subject to any other Act or regulation, personal information in the possession or under the control of a local authority may be disclosed:

...  
(i) for the purpose of complying with:

(i) an Act or a regulation;

[74] My office provides oversight for LA FOIP. Although the Complainant argued that the disclosure of her personal information was contradictory to the HSAS collective agreement, I can only determine if the disclosure was in compliance with LA FOIP or not. This may include determining if the language of the agreement has any bearing or not. After review of clause 8.04 of the "HSAS-SAHO" collective agreement for April 1, 2018 to March 31, 2024, I note that the clause does not address the disclosure of personal information to professional regulatory body.

[75] Earlier, I had noted ACSW's authority to collect information was pursuant to sections 55(2) and 63(a) of Alberta's *Health Professions Act*. Based on a review of ACSW's investigation report, I find that section 28(2)(i)(i) of LA FOIP authorized the SHA to disclose the

Complainant's personal information in order to comply with section 63(a) of Alberta's *Health Professions Act*.

### III FINDINGS

- [76] I find that I have jurisdiction to investigate this matter under LA FOIP and HIPA.
- [77] I find that the SHA has not demonstrated that it had authority under HIPA to use the clients' personal health information as part of its audit.
- [78] I find that section 27(4)(h) of HIPA would have authorized the disclosure of names of clients who could act as witnesses if the ACSW investigator had requested such information.
- [79] Without making any notation of the disclosure of personal health information to the ACSW investigator, I find that the SHA has not met its duty pursuant to section 10(1) of HIPA.
- [80] Since disclosing a de-identified version of client information would have served the purpose, then I find that a privacy breach has occurred when client information was disclosed by the SHA to the ACSW investigator.
- [81] I find that section 27(5) of HIPA authorized the SHA to disclose the Complainant's personal health information in the IME report.
- [82] I find that the SHA did not meet its obligation pursuant to section 9 of HIPA.
- [83] I find that the SHA did not provide the Complainant with the information that a reasonable person in the same circumstances would require in order to make a decision about the collection of her personal health information. In other words, I find that the SHA did not meet the requirements of section 6(2) of HIPA when informing the Complainant of the anticipated uses and disclosures of her personal health information related to the IME.

[84] I find that section 28(2)(i)(i) of LA FOIP authorized the SHA to disclose the Complainant's personal information in order to comply with section 63(a) of Alberta's *Health Professions Act*.

#### **IV RECOMMENDATIONS**

[85] I recommend that the SHA ensure it has authority under HIPA and any other applicable legislation prior to conducting its audits.

[86] I recommend that the SHA establish a policy and/or procedure for documenting the disclosure of personal health information without consent so that it meets its duty pursuant to section 10(1) of HIPA.

[87] I recommend that if the SHA does not already have one, that the SHA establish a written policy and/or procedure in terms of what it discloses to regulatory bodies in the course of regulatory bodies' investigations. Such disclosures should be in compliance with section 23 of HIPA.

[88] I recommend that the SHA send a letter to the Complainant to apologize for not meeting its duty under section 9 of HIPA and meeting the requirements of section 6(2) of HIPA.

[89] I recommend that the SHA amend its policies and procedures so that it is in compliance with sections 6(1) and (2) of HIPA when obtaining consent from employees when collecting their personal health information for any purpose related to the employment of the individual.

Dated at Regina, in the Province of Saskatchewan, this 21<sup>th</sup> day of June, 2022.

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