



Office of the
Saskatchewan Information
and Privacy Commissioner

REVIEW REPORT 258-2024

College of Registered Nurses of Saskatchewan

February 12, 2025

Summary:

The Applicant attempted to submit a formal access to information request under *The Freedom of Information and Protection of Privacy Act* (FOIP) to the College of Registered Nurses of Saskatchewan (CRNS). The CRNS responded to the access request by indicating to the Applicant that it is not subject to FOIP or *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The CRNS instead processed the access request under *The Health Information Protection Act* (HIPA). The CRNS cited subsection 38(1)(d)(iii) of HIPA as a reason for refusing access to personal health information. The Applicant requested a review by the A/Commissioner. The A/Commissioner found that the CRNS is not subject to FOIP or LA FOIP but that it is subject to HIPA. The A/Commissioner recommended that the CRNS take no further action regarding the Applicant's access request. The A/Commissioner also recommended that going forward, the CRNS amend its practices to ensure it issues accurate responses to access requests pursuant to subsection 36(1) of HIPA. He also recommended that CRNS implement practices to ensure it promptly responds to access requests within the legislated timeline set out in section 36 of HIPA.

I BACKGROUND

[1] On August 29, 2024, the College of Registered Nurses of Saskatchewan (CRNS) received the following access to information request from the Applicant:

We are applying to access information under the
“FREEDOM OF INFORMATION ACT”, under “RIGHT TO KNOW”, and
under “RIGHT TO ACCESS INFORMATION”.

This is a submission to
THE COLLEGE OF REGISTERED NURSES OF SASKATCHEWAN

in regard to information we have been trying to access since 2019 when we were sent a report by SRNA. Their report was full of allegations which attacked me and my family with incidents that had never happened.

Allegations were made by five Esterhazy Hospital nurses:
[Name of Nurse 1], [Name of Nurse 2], [Name of Nurse 3],
[Name of Nurse 4], and [Name of Nurse 5].

We have asked for the nurses to prove that what they alleged in the investigation and in the report was true. Neither SRNA nor the FIVE nurses who are GOVERNMENT EMPLOYEES have been forthcoming with the evidence we have been requesting.

Therefore we are applying to access this information under the “FREEDOM OF INFORMATION ACT”, under “RIGHT TO KNOW”, and under “RIGHT TO ACCESS INFORMATION”.

The information we are seeking should be available from the nurses themselves or from the COLLEGE OF REGISTERED NURSES OF SASKATCHEWAN who conducted the investigation. The CRNS (SRNA) Council includes GOVERNMENT APPOINTED PUBLIC REPRESENTATIVES.

The November 2019 SRNA Report is available from [Name of Executive Director and Registrar of CRNS] CEO of CRNS.

[2] Enclosed with the Applicant’s letter were several documents, including a 12-page document where the Applicant explained in 38 parts the information they sought. Below are excerpts from the access request to show what information was sought by the Applicant:

- “[Nurse 1] has to explain this LIE”,
- “WE HAVE A RIGHT TO KNOW and we would like CRNS...to explain why [Nurse 1] hasn’t been disciplined”,
- “WE HAVE A RIGHT TO KNOW and we would like [Nurse 1] to explain how she can claim she adheres to the Code of Ethics”,
- “how does [Nurse 1] explain her charting on October 2, 2018...”,
- “I HAVE A RIGHT TO KNOW and I would like [Nurse 1] to explain why she claimed there was screaming and told that LIE to the RCMP when she was not even there as a witness”,

- “WE HAVE A RIGHT TO KNOW why CRNS disregarded this complaint since ‘ALL NURSES DO’ is in their mandate”,
- “we would like [Nurse 2] to confirm the alleged date and the alleged circumstances with her evidence. [Nurse 2] has to explain what my son was “upset with her about” and where and when this alleged assault took place.”
- “WE HAVE A RIGHT TO KNOW and we would like [Nurse 2] to list and explain what these ‘difficulties’ were and where and when these alleged difficulties happened?”
- “WE HAVE A RIGHT TO KNOW and [Nurse 2] has to explain what happened to all those ‘forms she alleges that she filed’.
- “I HAVE A RIGHT TO KNOW and [Nurse 2] has to explain this LIE.”
- “I HAVE A RIGHT TO KNOW and [Nurse 2] and I would like an explanation from [Nurse 2] about her mean, spiteful and distressing lie in this report.”
- “WE HAVE A RIGHT TO KNOW and we would like [Nurse 2] to explain the picture she posted on October 14, 2018 on Facebook...”
- “WE HAVE A RIGHT TO KNOW and we would like to know exactly when [Nurse 2] had those alleged ‘conversations with the [Applicant’s last name] family in the past.’”
- “[Nurse 1] and [Nurse 2] make the allegation that my son was allegedly angry when he allegedly assaulted them – we would like to know and WE HAVE A RIGHT TO KNOW what he was allegedly angry about....What were the ‘angry’ words he was allegedly saying to each of [Nurse 1] and [Nurse 2]?”
- “WE HAVE A RIGHT TO KNOW and we would like [Nurse 1] and [Nurse 2] to provide proof for what they allegedly did and the alleged dates when they “come in early and stayed late and gave up their lunch hours to help the [Applicant’s last name] Family...”.
- “WE HAVE A RIGHT TO KNOW and we would like [Nurse 3] to provide evidence for this allegation.”
- “I HAVE A RIGHT TO KNOW and I would like [Nurse 3] to describe WHY and HOW she went about orchestrating the invasion of my privacy on December 16, 2019.
- “I HAVE A RIGHT TO KNOW and I would like [Nurse 3] to list the alleged “options”....she alleges she actually gave us when she came and bullied my very sick husband and me on October 9, 2018 and threatened him with eviction.”

- “I HAVE A RIGHT TO KNOW and I would like [Nurse 4] to explain why she tried to sublet the nursing job of bathing patients to me...”
- “I would like [Nurse 5] to explain why...she offered my husband “*cheese and crackers*”...and then left the room without saying anything after he told her he needed to be helped to the bathroom.”
- “WE HAVE A RIGHT TO KNOW and we would like [Nurse 2] to explain how she could have been offering my husband a walk when it is clearly charted that that at the same moment my husband was **NOT IN HIS ROOM** but was being ambulated by another nurse in another wing of the hospital?
- “WE HAVE A RIGHT TO KNOW so [Nurse 2] and [Nurse 5] have to explain if it was appropriate and acceptable that [Nurse 5] offered my husband “*cheese and crackers*” and then ran away when he had just told her “*I’m not hungry and I need to go on the commode*”?
- “I HAVE A RIGHT TO KNOW and [Nurse 3] has to explain why the Office Staff and the x-ray tech...knew they had to red flag me and put me under surveillance when I entered the hospital...”
- “I HAVE A RIGHT TO KNOW who at the SRNA told this LIE to SHA?”
- “WE HAVE A RIGHT TO KNOW and we want CRNS to explain why [Nurse 1] has not been disciplined for LYING in the investigation which is a violation of the Nursing Code of Ethics?”
- “I have a right to know and I would like [Name of CRNS Executive Director and Registrar] to explain why she LIED to me.”
- “I have a right to know and I would like to know why [Nurse 5] alleged...that I had apologized to her.”
- “I have a right to know and I want [Nurse 1] and [Nurse 2] to explain exactly when these alleged encounters happened...”
- “We have a right to know why [Nurse 3]...allowed and condoned the mistreatment and abuse of my husband...”
- “We have a right to know and we would like [Nurse 1] and [Nurse 2] to explain why they were the only ones who accused us of yelling and screaming.”
- “We have a right to know why the investigator of these complaints...collected and recorded all these lies concocted by the nurses without ever recording any evidence.”

- “I HAVE A RIGHT TO KNOW what those alleged “recent past events” were.”

[3] In a letter dated November 1, 2024, the CRNS responded as follows:

Please be advised that pursuant to section 36(1)(b) of *The Health Information and Protection Act*, your request for access to information is being refused. The reasons and rationale for this are outlined below.

The following are preliminary points of clarification which I trust will assist you with understanding the response to your request for information:

1. The CRNS is not a “government institution” pursuant to section 2(1) of *The Freedom of Information and Protection of Privacy Act*. You appear to have misinterpreted section 2(d)(ii)(B) of the legislation. Similarly, the CRNS is not a “local authority” pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act*. The CRNS is not obligated to respond to access to information requests pursuant to these pieces of legislation.

2. The CRNS is a “trustee” pursuant to *The Health Information Protection Act* [“HIPA”] and the legislation requires CRNS’ compliance. The HIPA outlines the rights of individuals who provide personal health information, the duties of trustees to protect that personal health information, the limits on collection, use, and disclosure of personal health information by trustees, and the access of individuals to personal health information.

3. The SRNA/CRNS Report you refer to in your request is a Written Report of the Investigation Committee pursuant to section 28(3)(b) of *The Registered Nurses Act, 1988* [“RNA”] (as it was in 2019) and, pursuant to section 28(6) of the RNA, this Written Report was to provided to council of the CRNS, yourself as the person who made the initial report (complaint) against the nurse(s), and the nurse(s) who were the subject of the complaint.

4. SRNA/CRNS Bylaw IX Section 4 Subsection (4) requires the Investigation Committee to hold in confidence all documentation and information received.

...

The CRNS collected all information, personal health information or otherwise, to use solely for the purpose of complying with its statutory responsibility “for the discipline of health professionals or for the quality or standards of professional services provided by health professionals” and therefore, pursuant to section 38(1)(d)(iii) of HIPA is entitled to refuse access to personal health information requests.

Lastly, an individual’s right to access ‘personal health information’ pursuant to *HIPA* does not include a right to receive explanations or evidence relating to a regulatory investigation. Of your requests for information, there is very little (if any) information

sought which could be interpreted as seeking personal health information (of either yourself or your husband) as defined by *HIPA*. Your request did not seek any specific personal health information and therefore did not comply with s. 34(2)(b) of *HIPA* which requires your request to contain sufficient detail to enable the trustee (the CRNS) to identify the personal health information requested. Further, according to your correspondence and multiple references to the content of your husband's patient chart, it is already in your possession. I was also able to confirm that your husband's patient chart for purposes of the CRNS investigation was provided by you. Therefore, any personal health information of your husband which you may seek from the CRNS, if it exists, would be included in the patient chart that you already have in your possession.

[Underline in original]

- [4] On November 4, 2024, the Applicant requested a review by my office.
- [5] On December 5, 2024, my office notified both CRNS and the Applicant that my office would be undertaking a review.
- [6] On December 23, 2024 and January 24, 2025, the Applicant provided submissions to my office.
- [7] On January 9, 2025, the CRNS provided its submission to my office. The CRNS did not agree to share the submission with the Applicant.

II RECORDS AT ISSUE

- [8] There are no records at issue in this review. At issue is whether the CRNS is subject to *The Freedom of Information and Protection of Privacy Act* (FOIP), to *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) or to *The Health Information Protection Act* (HIPA). If CRNS is subject to any one of these Acts, then I will consider whether CRNS has processed the Applicant's access request in accordance with that Act.

III DISCUSSION OF THE ISSUES

1. Is the CRNS subject to FOIP, LA FOIP or HIPA?

[9] Normally, my office establishes where the entity who received the access to information request is subject to FOIP, LA FOIP and/or HIPA. If so, then my office establishes that it has jurisdiction over the matter.

[10] In this case, the Applicant took issue with CRNS' position that the CRNS is not subject to FOIP or LA FOIP and that it instead processed the access request under HIPA. In an email dated November 4, 2024 to my office, the Applicant said:

Attached is the correspondence I received on November 1, 2024, from the lawyer for the College of Registered Nurses of Saskatchewan regarding my application to them under Canada's Freedom of Information Act. My request has been dismissed. **My Request for information was made under *The Freedom of Information and Protection of Privacy Act* (FOIP). It appears that the CRNS response is all about HIPA. CRNS twisted everything around to suit their own narrative.**

In addition to the Information [sic] I have asked for under FOIP in my October 10, 2024 submission to OIPC, **I am now requesting a review of SRNA/CRNS's non-compliance to our request under Freedom of Information Act (FOIP).**

[Bold and underline in original]

[11] Therefore, I must determine if CRNS is subject to FOIP, LA FOIP and/or HIPA.

a. Is the CRNS subject to FOIP?

[12] Section 5 of FOIP provides individuals with the right to access records that are in the possession or control of a government institution as follows:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a government institution.

[13] Therefore, government institutions are subject to FOIP. Subsection 2(1)(d) of FOIP defines "government institutions" as follows:

2(1) In this Act:

...

(d) “**government institution**” means, subject to subsection (2):

(i) the office of Executive Council or any department, secretariat or other similar agency of the executive government of Saskatchewan; or

(ii) any prescribed board, commission, Crown corporation or other body, or any prescribed portion of a board, commission, Crown corporation or other body, whose members or directors are appointed, in whole or in part:

(A) by the Lieutenant Governor in Council;

(B) by a member of the Executive Council; or

(C) in the case of:

(I) a board, commission or other body, by a Crown corporation; or

(II) a Crown corporation, by another Crown corporation;

[14] In their submission, the Applicant asserted that the CRNS qualifies as a “government institution” pursuant to subsection 2(1)(d)(ii) of FOIP and provided reasons to support their assertion. They said:

Argument 1: This argument is comprised of definitions in FOIP, the Registered Nurses Act, and the CRNS Bylaw I Council Section 1(4).

FOIP 2(1)(d)(ii)(A) says a “government institution” means ...ANY PRESCRIBED PORTION of a board, commission, ...or OTHER BODY, whose MEMBERS....are APPOINTED,in part by the Lieutenant Governor in Council.

Registered Nurses Act, Council, 7(2)(a)(b) and 8(1) says The council consists of: the number of persons elected or appointed in accordance with the bylaws; AND the persons appointed pursuant to section 8. The Lieutenant Governor in Council may appoint not more than three persons who are residents of Saskatchewan as members of the council.

CRNS Bylaw 1 – Council (4) Up to 3 PUBLIC MEMBERS may be appointed by the Lieutenant Governor in Council pursuant to Section 8(1) of the Act.

This undoubtedly shows that CRNS is subject to FOIP as up to 3 MEMBERS (ANY PRESCRIBED PORTION) of their Council (OTHER BODY) may be APPOINTED IN PART by the Lieutenant Governor.

The CRNS has 11 members on its Council. They are the Council Chair, Council Chair-Elect, 5 Members-at-Large, the Executive Director, and 3 PUBLIC REPRESENTATIVES. The 3 PUBLIC REPRESENTATIVES ARE the 3 Council members appointed by the Lieutenant Governor. The 8 other Council members consist of 2 NP's and 6 RN's.

It is abundantly clear that CRNS meets the FOIP definition of a "Government Institution". That definition requires that a board or other body (in this case the CRNS Council) member or members in whole or in part be appointed by the Lieutenant Governor. The CRNS has 3 members of its council appointed by the Lieutenant Governor. They are [Name of Public Representative 1], Public Representative, Term: 2018-2026. [Name of Public Representative 2], Public Representative, Term: 2023-2026 and [Name of Public Representative 3] Public Representative, Term: 2023-2026. There can be no question as to whether or not CRNS is a "Government Institution" as it meets the requirements under FOIP, therefore FOIP applies to CRNS.

The language concerning whether the 3 public Council members may be appointed or are appointed has no bearing on whether or not CRNS meets the definition of a "Government Institution". The fact is that there are 3 public representatives on the CRNS Council today, with at least one person from the year 2018, that ARE appointed by the Lieutenant Governor.

Argument 2. FOIP (2) states that a "Government Institution" does not include (a) a corporation the share capital of which is owned in whole or in part by a person other than the Government of Saskatchewan or an agency of it; (b) the Legislative Assembly Service or, subject to subsections 3(3) and (4), offices of members of the Assembly or members of the Executive Council; or (c) the Court of Appeal, the Court of King's Bench or the Provincial Court of Saskatchewan. Even though CRNS is defined as a corporation in the Registered Nurses Act, CRNS is a Regulatory Body known as a College and does not have share capital owned by a person or persons. CRNA is a not-for-profit organization and is exempt from income tax under Section 149(1)(l) of the Income Tax Act. The CRNS is not part of the Legislative Assembly Service, offices of the Assembly, or a member of the Executive Council. The CRNS is not part of the Court of Appeal, the Court of King's Bench, or the Provincial Court of Saskatchewan. The CRNS is not on the FOIP "does not include" list, therefore FOIP applies to CRNS.

Argument 3: CRNS has confirmed it is a "trustee". HIPA defines a "trustee" as (i) a government institution; and (xiii) a health professional body that regulates members of a health profession pursuant to an Act;. [sic] HIPA makes it clear that a health professional body that regulates members of a health profession pursuant to an Act is equal to a government institution, therefore FOIP applies to CRNS.

Argument 4. On the CRNS Liaison application form it is stated that CRNS adheres to PIPEDA and PRIVACY LEGISLATION. FOIP is privacy legislation, therefore FOIP applies to CRNS.

Argument 5: CRNS is not listed in the Appendix, Part 1 Boards, Commissions, Crown Corporations and Other Bodies Prescribed as Government Institutions [*Section 3*] in the FOIP REGULATIONS. This has no bearing on whether CRNS is a “Government Institution” or not. There is no criteria shown in the Appendix for what qualifies a board, commission, Crown Corporation, or other body to be on the list other than that they are “Prescribed”. “Prescribed” means “directed”, “specified”, “ordered”, or “designated”. Whether CRNS is on the FOIP REGULATIONS Appendix list or not is IRRELEVANT. It is the FOIP ACT that determines if an entity is a “Government Institution” for FOIP to apply, not the FOIP REGULATIONS. The FOIP ACT has defined a “Government Institution” and CRNS complies with that definition.

Argument 6: The CRNS was established by Provincial Legislature in 1917. The CRNS is governed by the Registered Nurses Act, 1988, as well as bylaws approved by the Saskatchewan Minister of Health. The Provincial Government of Saskatchewan is directly involved with the governance of the CRNS by the participation of the Minister of Health. Because of the participation of the Saskatchewan Minister of Health with CRNS it would be inconceivable that FOIP would not apply to CRNS.

Conclusion: CRNS meets the definition of a “Government Institution” of the FOIP Act. CRNS is not on the FOIP “does not include” list. CRNS is a “trustee”, the same as a “Government Institution” being a “trustee” according to HIPA. CRNS states that it adheres to Privacy Legislation. The FOIP ACT determines if an entity is a “Government Institution”, not the FOIP Regulations. The Saskatchewan Minister of Health is directly involved with the Governance of CRNS. The only objective conclusion that can be reached is that CRNS is a “Government Institution” and is subject to FOIP.

[15] The Applicant has argued that CRNS qualifies as a “government institution” as defined by subsection 2(1)(d)(ii) of FOIP, which captures prescribed bodies within the definition of “government institution”. Subsection 2(1)(h) of FOIP defines the term “prescribed” as follows:

2(1) In this Act:

...

(h) “**prescribed**” means prescribed in the regulations;

[16] Section 3 of *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations) provides:

3 For the purposes of subclause 2(1)(d)(ii) of the Act:

(a) the bodies set out in Part I of the Appendix; and

(b) subsidiaries of government institutions that are Crown corporations;
are prescribed as government institutions.

[17] Based on a review, the CRNS is not a body set out in PART I of the Appendix. As such, the CRNS does not qualify as a “government institution” as defined by subsection 2(1)(d)(ii) of FOIP and section 3 of the FOIP Regulations. Therefore, I find that the CRNS is not subject to FOIP.

b. Is the CRNS subject to LA FOIP?

[18] Similar to section 5 of FOIP, section 5 of LA FOIP provides individuals with the right of access to records that are in the possession or control of a local authority:

5 Subject to this Act and the regulations, every person has a right to and, on an application made in accordance with this Part, shall be permitted access to records that are in the possession or under the control of a local authority.

[19] Therefore, local authorities are subject to LA FOIP. Subsection 2(1)(f) of LA FOIP defines “local authority” as follows:

2(1) In this Act:

...
(f) “**local authority**” means:

- (i) a municipality;
- (ii) **Repealed.** 2002, c.C-11.1, s.389.
- (iii) **Repealed.** 2002, c.C-11.1, s.389.
- (iv) a committee of a council of a municipality;
- (v) any board, commission or other body that:

(A) is appointed pursuant to *The Cities Act*, *The Municipalities Act* or *The Northern Municipalities Act, 2010*; and

(B) is prescribed;

- (vi) the board of a public library within the meaning of *The Public Libraries Act, 1984*;
- (vii) the Northern Library Office established pursuant to *The Public Libraries Act, 1984*;
- (viii) any board of education or conseil scolaire within the meaning of *The Education Act*;
- (viii.1) a police service or regional police service as defined in *The Police Act, 1990*;
- (ix) a regional college within the meaning of *The Regional Colleges Act*, other than the Saskatchewan Indian Community College;
- (x) the Saskatchewan Polytechnic;
- (xi) the University of Saskatchewan, including Saint Thomas More College;
- (xii) the University of Regina, including:
 - (A) Campion College; and
 - (B) Luther College with respect to its post-secondary level activities;
- (xiii) the provincial health authority or an affiliate, as defined in *The Provincial Health Authority Act*;
- (xiii.1) subject to subsection (2), Health Shared Services Saskatchewan within the meaning of *The Health Shared Services Saskatchewan (3sHealth) Act*;
- (xiv) **Repealed.** 2002, c.R-8.2, s.83.
- (xv) **Repealed.** 2002, c.R-8.2, s.120.
- (xvi) **Repealed.** 2002, c.R-8.2, s.83.
- (xvii) any board, commission or other body that:
 - (A) receives more than 50% of its annual budget from the Government of Saskatchewan or a government institution; and
 - (B) is prescribed;

[20] Based on the above definition, I find that the CRNS does not qualify as a local authority as defined by subsection 2(1)(f) of LA FOIP. To be thorough, I note that subsection 2(1)(i) of LA FOIP defines the term “prescribed” as follows:

2(1) In this Act:

...

(i) “**prescribed**” means prescribed in the regulations;

[21] Section 3 of *The Local Authority Freedom of Information and Protection of Privacy Regulations* (LA FOIP Regulations) provides as follows:

3(1) For the purposes of subclause 2(f)(v) of the Act, the bodies set out in Part I of the Appendix are prescribed as local authorities.

(2) For the purposes of subclause 2(f)(xvii) of the Act, the bodies set out in Part II of the Appendix are prescribed as local authorities.

[22] Based on a review, the CRNS is not a body set out in PARTS I or II of the Appendix of the LA FOIP Regulations. As such, the CRNS does not qualify as a “local authority” as defined by subsection 2(1)(f) of LA FOIP or section 3 of the LA FOIP Regulations. Therefore, I find that the CRNS is not subject to LA FOIP.

c. Is the CRNS subject to HIPA?

[23] Sections 12 and 32 of HIPA provide individuals with a right to access their personal health information in the custody or under the control of a trustee as follows:

12 In accordance with Part V, an individual has the right to request access to personal health information about himself or herself that is contained in a record in the custody or control of a trustee.

...

32 Subject to this Part, on making a written request for access, an individual has the right to obtain access to personal health information about himself or herself that is contained in a record in the custody or control of a trustee.

[24] As such, HIPA applies to trustees. Subsection 2(1)(t)(xiii) of HIPA provides:

2(1) In this Act:

...

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

...

(xiii) a health professional body that regulates members of a health profession pursuant to an Act;

[25] The CRNS is the health professional body that regulates registered nurses pursuant to *The Registered Nurses Act*, 1988. Therefore, the CRNS qualifies as a “trustee” as defined by subsection 2(1)(t)(xiii) of HIPA. Therefore, I find that the CRNS is subject to HIPA.

[26] Since CRNS is subject to HIPA and not FOIP or LA FOIP, then I must consider whether HIPA is engaged in this particular matter and if the CRNS properly processed the Applicant’s access request under HIPA.

2. Did CRNS meet its obligations under HIPA in responding to this access to information request?

[27] The CRNS qualifies as a “trustee” as defined by subsection 2(1)(t)(xiii) of HIPA. Subsection 36(1) of HIPA indicates that a trustee must respond in one of four ways to an Applicant. It provides:

36(1) Within 30 days after receiving a written request for access, a trustee must respond to the request in one of the following ways:

(a) by making the personal health information available for examination and providing a copy, if requested, to the applicant;

(b) by informing the applicant that the information does not exist or cannot be found;

(c) by refusing the written request for access, in whole or in part, and informing the applicant:

(i) of the refusal and the reasons for the refusal; and

(ii) of the applicant’s right to request a review of the refusal pursuant to Part VI;

(d) by transferring the written request for access to another trustee if the personal health information is in the custody or control of the other trustee.

[28] Although CRNS cited subsection 36(1)(b) of HIPA in its letter dated November 1, 2024, to the Applicant, its letter appears to have been a response pursuant to subsection 36(1)(c) of HIPA instead. That is, the CRNS was refusing access to personal health information and cited subsection 38(1)(d)(iii) of HIPA as its reason for the refusal. Subsection 38(1) of HIPA provides a trustee the discretion to refuse access to personal health information in certain circumstances. Specifically, subsection 38(1)(d)(iii) of HIPA provides as follows:

38(1) Subject to subsection (2), a trustee may refuse to grant an applicant access to his or her personal health information if:

...

(d) subject to subsection (3), the information was collected and is used solely:

...

(iii) for the purposes of a body with statutory responsibility for the discipline of health professionals or for the quality or standards of professional services provided by health professionals;

[29] By quoting subsection 38(1)(d)(iii) of HIPA in its response to the Applicant, CRNS implied that personal health information responsive to the access request existed. This is confusing since it said it was responding pursuant to subsection 36(1)(b) of HIPA – that is, records do not exist. How can personal health information responsive to the access request exist and simultaneously not exist?

[30] In its submission, CNRS explained:

The CRNS acknowledges that the November 1, 2024, response may have been ambiguous. The response intended to assert that if there were records, 38 1dii [sic] would apply generally speaking. **A search has been conducted - records do not exist.**

[Emphasis added]

[31] Further in its submission, CRNS described its search efforts as follows:

The CRNS uses a document management system called Laserfiche. It is a robust document repository where all CRNS records are filed and stored. All records are managed in an easy-to-navigate folder-based interface making it easy to find information. Policies provide for a CRNS-wide records folder and template structure, retention and disposition of records; and accurate and secure placement and filing of data, documents, and information using an approved record naming convention which allows for an easy search function. The repository allows for records to be easily identified, located, and retrieved.

Records management policies guide the process by which the CRNS identifies and manages all records throughout their life cycle. The process includes a comprehensive plan created for the systematic control of the creation, maintenance, use, retention and disposition of records.

A thorough search was conducted including a line-by-line review of the records.

The records requested do not exist. The investigation file contains the complete record of information that was collected during the course of the investigation of the complaint mentioned in the introduction. There is no personal health information of the applicant in the file.

[Emphasis added]

[32] If CRNS's position was that "records do not exist," then CRNS should have responded to the Applicant's access request pursuant to subsection 36(1)(b) of HIPA. That is, it should have indicated to the Applicant that the information sought does not exist.

[33] In the course of my review, my office asked CRNS to explain its efforts to clarify with the Applicant what personal health information they seek. It stated:

Over the last several years, the CRNS has attempted to respond to the applicant's queries regarding the investigation's outcome. Despite these efforts, it appears that the applicant does not feel that they have been provided with the answers that they are seeking and continues to ask the same questions repeatedly.

[34] In their submission, the Applicant explained to my office precisely what information they sought:

#1. We want the SRNA/CRNS to justify with evidence every allegation made against our family by the nurses who lied in that November 2019 SRNA Report that they sent to me and my family.

- #2. We want evidence for all the 38 points we submitted under Freedom of Information Laws.
- #3. We would like to see [Nurse 1] and [Nurse 2] and [Nurse 3] and the other Esterhazy hospital nurses admit that they LIED in the SRNA Investigation. We would like to see them retract their lies. We would like to see them disciplined in accordance with CRNS's own rules and regulations for violating their Code of Ethics.
- [35] CRNS' letter dated November 1, 2024, mentioned that the Applicant had provided their husband's personal health information to the CRNS for the purposes of CRNS' investigation. Therefore, CRNS has personal health information in its custody and control. Nonetheless, based on a review of the Applicant's 38-part access request as well as their submission, I note that the Applicant did not request access to personal health information as defined by subsection 2(1)(m) of HIPA. Rather, the Applicant sought explanations for the actions of the CRNS and nurses.
- [36] When receiving an access to information request, a trustee should search for responsive records. In this case, it appears CRNS did conduct a search even though the Applicant indicated they did not want personal health information. In its response, CRNS could have not only indicated that it found no records responsive to their request, remind her that no personal health information was requested and therefore, concluded records do not exist. In addition, as the Applicant was seeking explanations, not existing records as none were found, CRNS could have also indicated that it was under no obligation to create records to answer questions posed by the Applicant.
- [37] I recommend that, in the future, CRNS amend its practices to ensure it issues accurate responses to access requests pursuant to subsection 36(1) of HIPA.

3. Did the CRNS issue the section 36 response within the legislated timeline?

- [38] As I indicated, CRNS is a trustee under HIPA and it issued a response pursuant to section 36 of HIPA to the Applicant. I will consider whether CRNS complied with the requirements of section 36 of HIPA. When a trustee receives an access to information

request, it should provide a response within 30 calendar days to indicate if responsive records exist or not.

[39] Earlier, I quoted subsection 36(1) of HIPA, which provides that a trustee must respond to an applicant within 30 days of receiving an access request.

[40] Section 2-28 of *The Legislation Act* provides guidance on how to calculate 30 days. Based on *The Legislation Act*, the following can be applied for calculating 30 days under HIPA:

2-28(3) A period described by reference to a number of days between two events excludes the day on which the first event happens and includes the day on which the second event happens.

...

2-28(5) A time limit for the doing of anything that falls or expires on a holiday is extended to include the next day that is not a holiday.

2-28(6) A time limit for registering or filing documents or for doing anything else that falls or expires on a day on which the place for doing so is not open during its regular hours of business is extended to include the next day the place is open during its regular hours of business.

[41] If certain circumstances exist, the trustee can extend the response time up to an additional 30 days. Those limited circumstances are listed in subsection 37(1) of HIPA. However, where a trustee is going to extend the response time, notice must be given to the applicant within the initial 30 days. Section 37 of HIPA provides:

37(1) A trustee may extend the period set out in subsection 36(1) for a reasonable period not exceeding 30 days where:

(a) the request is for access to a large number of records or necessitates a search through a large number of records or there is a large number of requests, and completing the work within the original period would unreasonably interfere with the operations of the trustee; or

(b) consultations that are necessary to comply with the request cannot reasonably be completed within the original period.

(2) A trustee who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the request is made.

[42] CRNS should have responded to the Applicant's access request by September 28, 2024. However, CRNS did not respond until November 1, 2024.

[43] In its submission, CRNS explained:

The first Access to Information Request was received on August 29, 2024. The CRNS responded on November 1, 2024. The CRNS acknowledges that the legislated timeline was not met. The CRNS has received correspondence from the applicant frequently since 2019. Said correspondence contains the same or similar information regarding the applicant's disagreement with the outcome of the investigation and the Investigation Committee's subsequent decision. Therefore, careful attention to the detail of the August 29, 2024 correspondence was not considered.

[44] CRNS did not respond to the Applicant's access request within the legislated timeline set out in section 36 of HIPA. I recommend that CRNS implement practices to ensure it promptly responds to access requests within the legislated timeline set out in section 36 of HIPA when HIPA is engaged.

IV FINDINGS

[45] I find that the CRNS is not subject to FOIP.

[46] I find that the CRNS is not subject to LA FOIP.

[47] I find that the CRNS is subject to HIPA.

V RECOMMENDATIONS

[48] I recommend that the CRNS take no further action regarding the Applicant's access request.

[49] I recommend that, in the future, CRNS amend its practices to ensure it issues accurate responses to access requests pursuant to subsection 36(1) of HIPA.

[50] I recommend that CRNS implement practices to ensure it promptly responds to access requests within the legislated timeline set out in section 36 of HIPA when HIPA is engaged.

Dated at Regina, in the Province of Saskatchewan, this 12th day of February, 2025.

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