



## INVESTIGATION REPORT 172-2018

### Saskatchewan Health Authority

February 21, 2020

**Summary:** The Complainant requested that the Saskatchewan Health Authority (SHA) investigate an alleged breach of their personal information and personal health information. The SHA determined that a breach did not occur. The Complainant requested an investigation by my office of their complaint. The Commissioner found that a breach did occur and that the SHA had not followed the recommended five steps for responding to a privacy breach. The Commissioner recommended that the SHA fully investigate the privacy breach and offer an apology to the Complainant.

#### I BACKGROUND

- [1] On August 31, 2018, my office received a complaint regarding an alleged breach of privacy. The Complainant alleged that the Saskatchewan Health Authority (SHA) breached their personal information and personal health information. The information allegedly disclosed was the Complainant's work schedule as well as their health status.
- [2] The Complainant first raised their concerns with the SHA's privacy officers on June 29, 2018. In a letter dated August 27, 2018, the SHA responded to the Complainant indicating that the SHA was unable to substantiate that a breach occurred.
- [3] On September 5, 2018, my office provided notification to both the SHA and the Complainant advising that my office would be conducting a privacy breach investigation pursuant to section 32 of *The Local Authority Freedom of Information and Protection of*

*Privacy Act (LA FOIP) and subsection 42(1)(c) and section 52 of The Health Information Protection Act (HIPA).*

- [4] My office requested that the SHA provide a copy of its internal privacy breach investigation report. Its response was received by my office on September 26, 2018. The SHA reiterated what it had indicated to the Complainant, that no privacy breach could be substantiated.

## **II DISCUSSION OF THE ISSUES**

- [5] The Complainant alleges that the SHA had improperly disclosed their personal information and personal health information, specifically their work schedule and that they were sick.

### **1. Do I have jurisdiction to investigate this matter?**

- [6] The SHA is a local authority for purposes of LA FOIP pursuant to subsection 2(f)(xiii), and a trustee for purposes of HIPA pursuant to subsection 2(t)(ii). I therefore find that I have jurisdiction to investigate this matter.

### **2. Does the work schedule qualify as personal information under LA FOIP?**

- [7] On October 27, 2017, the Complainant had called in to the nurse's station at the care home where they work, and indicated they were sick and would not be at work that day.

- [8] The Complainant indicated that their work schedule is not known to other staff and was then inappropriately shared with a coworker. They allege that this was a breach of personal information.

- [9] The SHA indicated, however, that work schedules are posted a week in advance. Subsection 23(2) of LA FOIP identifies information which is not personal information as follows:

**23(2) "Personal information"** does not include information that discloses:

(a) the classification, salary, discretionary benefits or employment responsibilities of an individual who is or was an officer or employee of a local authority;

[10] The hours that an employee is required to work would be considered a requirement and condition of their employment and therefore, constitutes employment responsibilities.

[11] Given the above, I find that the Complainant's work schedule does not constitute personal information and that a breach of personal information did not occur in this case.

**3. Was the Complainant's personal health information collected by the SHA?**

[12] What is really at issue is not the Complainant's work schedule, but the fact that the Complainant was not at work that day and whether the reason for this was shared without authorization.

[13] The SHA indicated that, at the morning huddle at 7:40 a.m., the Complainant's coworker was advised only that they would be working alone that day. There is no evidence for me to conclude that the supervisor shared with the coworker or any other individual the reason why the Complainant was away.

[14] Once learning that the Complainant would not be at work, the coworker then contacted the Complainant's spouse by telephone. It is my understanding that the Complainant's spouse, during the conversation, disclosed that the Complainant was sick.

[15] Subsection 2(m) of HIPA defines personal health information as follows:

**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;

[16] Being home sick is information with respect to the physical or mental health of the individual; therefore, I find that personal health information is present.

[17] Subsection 2(b) of HIPA defines “collect” as follows:

**2(b) “collect”** means to gather, obtain access to, acquire, receive or obtain personal health information from any source by any means;

[18] The personal health information was collected by the SHA, for a second time, when the coworker, on work time, contacted the Complainant’s spouse. This information and more was also later shared with the SHA, so I therefore find that the SHA had custody or control over the personal health information in question.

**4. Did a privacy breach occur?**

[19] The SHA indicated that the reason the coworker called the Complainant’s home was that the coworker was concerned that the Complainant may have forgotten that they were scheduled to work. As the Complainant had called in already to let their employer know that they would not be at work that day, the Complainant obviously already knew they were due at work that day and a further telephone call by the coworker was not required, nor was it the responsibility of the coworker to follow-up with the Complainant.

[20] Shortly after the call, the coworker went to the hardware store and, on their way there, just happened to spot the Complainant on a rooftop. The SHA advises that going to the hardware store ‘as is needed’ is a responsibility of the coworker. The Complainant has advised that they own a roofing company, which is also allegedly known to their coworkers.

[21] HIPA provides trustees with the authority to collect, use, and/or disclose personal health information in specific circumstances. A privacy breach occurs when personal health information is collected, used, and/or disclosed without authority under HIPA.

- [22] Need-to-know is the principle that personal information or personal health information should only be available to those employees in an organization that have a legitimate need-to-know that information for the purpose of delivering their mandated services.
- [23] The data minimization principle requires that a trustee collect, use or disclose the least amount of identifying information necessary for the purpose.
- [24] These principles are enshrined in section 23 of HIPA. Subsection 23(1) of HIPA provides as follows:
- 23(1)** A trustee shall collect, use or disclose only the personal health information that is reasonably necessary for the purpose for which it is being collected, used or disclosed.
- [25] Subsection 26(3) of HIPA also provides restrictions on use of an employee's personal health information as follows:
- 26(3)** Nothing in subsection (2) authorizes a trustee as an employer to use of 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.
- [26] The first collection by the Nurse at the nurse's station as to why the Complainant would not be at work was appropriate. However, when the coworker called the Complainant's home to inquire why they would not be at work that day without a need-to-know and then with that in mind, drove by the Complainant's other job to possibly catch them in the act, was not appropriate.
- [27] The coworker then contacted the Complainant's supervisor to advise them of what they saw, who then contacted the Manager and they both drove to the location. The coworker would have provided the address or location to the SHA as the Supervisor and Manager, who were not from this municipality, were able to find the exact location of the Complainant and also witness them at the roofing job.

[28] Although the Complainant's actions may not have been appropriate, it does not authorize the collection of personal health information by the SHA in this manner for the reasons noted. Even though the Complainant was concerned with the disclosure of their personal information and their personal health information, my office determined that the issue was the inappropriate collection of personal health information. I find that the coworker, as a representative of the SHA, collected information for purposes not authorized under HIPA and that a breach occurred as the coworker had no need-to-know.

**5. Did the SHA respond appropriately to this privacy breach?**

[29] My office recommends that local authorities take the following five steps when responding to a privacy breach:

- Contain the breach,
- Notify affected individuals,
- Investigate the breach,
- Prevent future breaches, and
- Write a privacy breach report.

[30] As the SHA had determined that a breach did not occur, it has not followed the five steps. I recommend, now that I have determined a breach occurred, that the SHA complete its own internal investigation into the incident and offer an apology to the Complainant.

**III FINDINGS**

[31] I find that a breach occurred.

[32] I find that the SHA has not followed the recommended five steps for responding to a privacy breach.

**IV RECOMMENDATIONS**

[33] I recommend that the SHA fully investigate the privacy breach.

[34] I recommend that the SHA offer an apology to the Complainant.

Dated at Regina, in the Province of Saskatchewan, this 21st day of February, 2020.

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