



INVESTIGATION REPORT 269-2018

Saskatchewan Health Authority

May 9, 2019

Summary:

On November 13, 2018, the Complainant wrote to the Saskatchewan Health Authority (SHA) to raise privacy concerns involving their personal information. On October 25, 2018, the SHA responded to the Complainant and denied the allegations. The SHA explained to the Complainant that only de-identified information had been used by the SHA. Dissatisfied with the SHA's response, the Complainant requested that my office investigate the matter. The Commissioner found that the SHA had in fact only used de-identified information and so the records that the Complainant alleged contained their personal information, did not actually contain personal information as defined in subsection 23(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner also found that copies of other records provided by the Complainant did not support the Complainant's allegations that the SHA did not honor their request regarding the use of their personal information. The Commissioner recommended the SHA take no action in this matter.

I BACKGROUND

- [1] An incident involving the Complainant's parent occurred on June 16, 2016, which prompted the Complainant to look into the care provided to their parent at the Moose Jaw Regional Hospital, including the events leading up to the death of their parent and the actions taken by staff at the Hospital. This led to the Complainant meeting with various individuals from the Five Hills Health Region, now the Saskatchewan Health Authority (SHA).
- [2] One such meeting occurred on September 14, 2016, in which the Complainant met with two individuals from the SHA, including an SHA Quality Care Coordinator. At this

meeting, the Complainant verbally shared the details of the events of June 16, 2016, as the Complainant experienced and observed them. Following this meeting, the Complainant provided the SHA with a copy of a seven-page document, which the Complainant referred to as their ‘testimony’, and which the Complainant had read out loud during the September 14, 2016 meeting.

- [3] On September 19, 2016, the Complainant wrote an email to the SHA to advise the SHA that they were retracting their ‘testimony’. The SHA wrote back to the Complainant on September 22, 2016 to confirm that the Complainant’s ‘testimony’ had been retracted as requested and would no longer be shared or used by the SHA as a teaching tool or for any other purpose.
- [4] The Complainant met again with staff from the SHA on August 23, 2018. During this meeting, the Complainant alleges that an SHA employee verbally thanked the Complainant for allowing the SHA to use their information to implement the “Stop the Line” initiative in January 2017.
- [5] On September 13, 2018, the Complainant wrote to the SHA to raise privacy concerns regarding the alleged use of the Complainant’s ‘testimony’ after the Complainant had expressly requested that their ‘testimony’ not be used in 2016. The Complainant referred to the verbal comments made by the SHA employee on August 23, 2018 to support their concerns. The Complainant also met with the SHA’s privacy and access officer on September 26, 2018 to further discuss their privacy concerns.
- [6] On October 25, 2018, the SHA wrote to the Complainant in response to the Complainant’s privacy concerns. In their letter, the SHA advised the Complainant that their ‘testimony’ of September 14, 2016 had not been used by the SHA after the Complainant had asked the SHA not to use it. The SHA’s letter also advised the Complainant that an employee of the SHA had given a presentation to directors and managers sometime in 2017 related to the “Stop the Line” initiative that was being implemented – an initiative to improve protocols related to patient safety and welfare. The SHA advised the Complainant that during the presentation, details of the Complainant’s parent’s case was shared. The letter further

explained that neither the Complainant's name, nor the Complainant's parent's name was used in the presentation.

[7] On November 13, 2018, dissatisfied with the response from the SHA, the Complainant wrote to my office to request that my office investigate the alleged unauthorized use of their personal information by the SHA. The Complainant also expressed concerns regarding potential inappropriate uses of their parent's personal information and/or personal health information.

[8] My office took the necessary steps during a separate review requested by the Complainant to confirm that the Complainant does not have any right of access to their deceased parent's personal information and/or personal health information, including that the Complainant is not the Executor/Executrix. For this reason, the Complainant does not have the right to request that my office investigate potential inappropriate uses of their deceased parent's personal information and/or personal health information. As such, these matters fall outside the scope of this investigation and will not be discussed in this report.

[9] On November 29, 2018 and March 20, 2019, my office notified both the SHA and the Complainant of its intention to investigate potential privacy breaches related to the Complainant's personal information pursuant to section 32 of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).

[10] On January 3, 2019 and April 3, 2019, the SHA provided submissions to my office. In their submissions, the SHA explained that information the Complainant had provided as part of their 'testimony' in 2016 was de-identified and used by the SHA to create a document in support of the "Stop the Line" initiative. The SHA provided a copy of this document to my office.

[11] My office received another document created by the SHA in support of the "Stop the Line" initiative from the Complainant which the Complainant alleged contained information from their 'testimony'. My office shared a copy of this other document with the SHA during this investigation. The SHA stated in their submissions that no other documents

were created by the SHA based on the Complainant's 'testimony'. In its submissions, the SHA asserts that since the SHA used de-identified information, the information does not constitute personal information within the meaning of subsection 23(1) of LA FOIP and therefore, the SHA did not inappropriately use the Complainant's personal information.

II DISCUSSION OF THE ISSUES

1. Is LA FOIP engaged in these matters?

[12] *Part IV Protection of Privacy* of LA FOIP applies when three elements are present: 1) personal information; 2) a local authority; and 3) the personal information is in the possession or control of the local authority.

[13] In regards to the first element, subsection 23(1) of LA FOIP defines personal information as follows:

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:

(a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;

(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;

(c) information that relates to health care that has been received by the individual or to the health history of the individual;

(d) any identifying number, symbol or other particular assigned to the individual;

(e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;

(f) the personal opinions or views of the individual except where they are about another individual;

(g) correspondence sent to a local authority by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence

that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;

(h) the views or opinions of another individual with respect to the individual;

(i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;

(j) information that describes an individual's finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or

(k) the name of the individual where:

(i) it appears with other personal information that relates to the individual; or

(ii) the disclosure of the name itself would reveal personal information about the individual.

[14] The list of examples provided at subsection 23(1) of LA FOIP are not meant to be exhaustive. Other information may also qualify as personal information even if it is not listed in subsection 23(1) of LA FOIP. When determining whether personal information as defined in LA FOIP is present, I must assess whether the information relates to an identifiable individual and if the information is personal in nature.

[15] As stated in my office's *Guide to Exemptions*, available on my office's website, for there to be an identifiable individual, it must be reasonable to expect that an individual may be identified if the information were disclosed. The information must reasonably be capable of identifying particular individuals because it either directly identifies a person or enables an accurate inference to be made as to their identity when combined with other available sources of information, or due to the context of the information in the record. The term 'individual' relates only to natural persons and therefore does not include information about a sole proprietorship, partnership, unincorporated association or corporation. For the information to be personal in nature, the information must reveal something personal about the individual.

[16] As part of the SHA's submissions, the SHA confirmed that there was one document created after the Complainant withdrew their consent for the SHA to use their 'testimony'. The

document was used in support of the SHA's "Stop the Line" initiative. This document (Document A) is a three-page document entitled "Stop the Line Patient Story". It was created to provide a first-hand experience of how the "Stop the Line" initiative would benefit staff, patients and family members.

- [17] The document that was created by the SHA and which was provided to my office by the Complainant (Document B) was a document shared at trainer sessions within the SHA. Document B is a one-page document containing speaking notes used by the Quality Care Coordinator during a presentation to senior management. This document is a summary of actions taken to improve protocols following the incident involving the Complainant's parent that occurred on June 16, 2016.
- [18] Document A contains information that relates to two individuals, but the information does not permit the individuals to be identified – either directly or by making an accurate inference as to their identity when combined with other available sources of information. For example, the document states, "The patient is an 83 year old [individual] who was transferred to us from a tertiary facility." and "[Patient's child] is an ICU Nurse in the Saskatoon Health Region." This information could refer to any patient transferred from any tertiary facility. These are not characteristics that are highly uncommon in the population, and therefore this information would not reveal the specific identity of the patient, nor the nurse.
- [19] The process of removing information that would enable the identification of a specific individual is referred to as de-identifying information. De-identification is used to protect privacy and while the goal is to ensure individuals cannot be identified, there may still be an inherent risk of re-identification. De-identification is not a guarantee of anonymity however when appropriate de-identification methods are used, the risk of re-identification is minimized as much as possible. De-identification to protect privacy continues to be an acceptable and reasonable process of protecting privacy. I note that, to further de-identify information in Document A, the SHA could have referred to the patient as "over 80", rather than provide the patient's exact age, and could have referred to the patient's child as a "nurse" and omitted "ICU". That said, I find that the SHA has appropriately de-identified

the personal information of the Complainant in Document A. Therefore, I find that Document A does not contain personal information as defined in subsection 23(1) of LA FOIP.

[20] Document B contains a summary of facts related to the June 16, 2016 incident and actions taken by the SHA to improve protocols following that incident. For example, Document B states:

2. Bed alarm did not go off during the first power outage experienced by the newly constructed facility.

- The problem was with the sensitivity setting which caused the generators to start unnecessarily. Coincidentally, there was a fault in the controller of the transfer switch that caused it to fail and end up partially switched between one power source and the other leaving the circuits it supports without power.
- The system was tested after repair and there has not been any further problems with the power system.

[21] The section of Document B that refers to the patient/family story, and so potentially identifiable individuals, states:

Post Fall Care - Contributing Factors and Actions Taken

1. No formalized process in place to Stop the Line.

- Stop the Line has been rolled out and the patient/family story was shared at our trainer sessions. Their story provided us with a first-hand experience of how Stop the Line availability would benefit our staff, patients and family members.
- In January 2017, a Medical Integration Leader was hired to oversee the care of adult medical patients. The implementation of this position has improved timely responses to concerns as they arise and supports the further development of our care team to understand and embrace patient- and family-centered care.

[22] The information related to the patient/family story does not reveal any information about specific individuals. Based on the contents of Document B, I find that this document does not relate to an identifiable individual and the information it contains is not personal in nature. Therefore, I find that Document B does not contain personal information as defined in subsection 23(1) of LA FOIP.

[23] Because of the meeting the Complainant attended with staff from the SHA, the Complainant is aware that information they provided to the SHA was used to implement

the SHA's "Stop the Line" initiative. The Complainant also has intimate knowledge of their parent's medical care and the incident of June 2016. For these reasons, the Complainant is able to make inferences about the information in Document A and Document B and to know that these documents refer to them and the information they provided. Other individuals who do not have the same knowledge as the Complainant would not be able to reasonably know who are the individuals referred to in Document A and Document B.

[24] Given that Document A and Document B do not contain personal information as defined in LA FOIP, I find that the first element is not present and so *Part IV Protection of Privacy* of LA FOIP does not apply to these documents. Where the first element is not present, it is not necessary to assess whether the second and third elements are also present. I find that LA FOIP is not engaged in matters related to these two documents.

2. Did the SHA use the Complainant's 'testimony' after the Complainant withdrew their consent for the SHA to use this information?

[25] As stated in the paragraph [2] of this Report, the Complainant's 'testimony' is a seven-page document that the Complainant wrote themselves and that the Complainant proactively provided to the SHA. The Complainant's 'testimony' is their account of the events of June 16, 2016, as the Complainant experienced and observed them. This information would qualify as personal information of the Complainant, as per subsection 23(1) of LA FOIP.

[26] The obligations imposed on the SHA by *Part IV Protection of Privacy* of LA FOIP applies to these matters as the SHA is a local authority as defined by subsection 2(f)(xiii) of LA FOIP, and the Complainant's personal information was in their possession and control.

[27] In their submission, the SHA asserts that the SHA honored the Complainant's request to stop using the Complainant's 'testimony' after the the Complainant withdrew their consent for the SHA to use this information. The Complainant provided their 'testimony' on September 14, 2016 and withdrew their consent on September 19, 2016. The Complainant

provided my office with copies of several documents that the Complainant alleges refers to their 'testimony' being used after they withdrew their consent.

[28] One of the documents provided by the Complainant, which the Complainant drafted themselves, states that the Complainant initiated a formal complaint with Accreditation Canada who is, according to this institution's website, a "Not-for-profit organization that is dedicated to working with patients, policy makers and the public to improve the quality of health and social services for all." The Complainant also provided my office with a copy of an email dated April 26, 2018 that was sent from the SHA to Accreditation Canada. This email has an attached letter summarizing all the work done by the SHA to respond to the Complainant's various concerns to the SHA. Some of the information in the letter may have been derived from the Complainant's 'testimony'.

[29] The SHA's letter to Accreditation Canada begins by stating, "As requested, this letter will serve as an outline of concern casework carried out as a result of concerns received by [Complainant] regarding [their parent's] admission to the...hospital June 16-18, 2016." Based on the SHA's letter, the SHA appears to be responding to a request from Accreditation Canada, after the Complainant initiated a formal complaint with that institution. I find that without conducting a full investigation into the sharing of information between the SHA and Accreditation Canada, it is unclear whether these documents would support the Complainant's allegation that the SHA did not honor their request regarding the use of their 'testimony'. If the Complainant has privacy concerns regarding the sharing of information between the SHA and Accreditation Canada, which appears to have resulted from the formal complaint the Complainant filed with Accreditation Canada, I would encourage the Complainant to raise these separate privacy concerns with my office.

[30] Another document provided by the Complainant to allegedly show the SHA did not honor their request is an email dated January 20, 2017, which was sent from the SHA Quality Care Coordinator to the Complainant. This email contains a copy of the Coordinator's meeting notes from a meeting that took place between the Complainant and the Coordinator on November 29, 2016. The purpose of the meeting was to follow up on concerns raised by the Complainant via their 'testimony'. According to the Coordinator's meeting notes

other individuals were also present at this meeting, including a friend of the Complainant and two other SHA employees – one of which was the SHA employee who thanked the Complainant for allowing the SHA to use their information in support of the “Stop the Line” initiative on August 23, 2018.

[31] The Complainant highlighted the section of the meeting notes that state that SHA informed the Complainant that there was a “Stop the Line Event” coming in January 2017. The meeting notes refer to some issues and concerns raised by the Complainant in their ‘testimony’, which would be expected however given the purpose of the meeting and who was in attendance. I find that the copy of the email dated January 20, 2017 does not support the Complainant’s allegations that the SHA did not honour their request regarding the use of their ‘testimony’.

[32] The Complainant raised concerns with the SHA and my office about the SHA employee who verbally thanked the Complainant on August 23, 2018 for allowing the SHA to use their information to implement the “Stop the Line” initiative. According to the Complainant, this interaction demonstrates the SHA did not honor their request regarding their ‘testimony’. As stated in the preceding paragraph, the email from the SHA to the Complainant of January 20, 2017, indicates the SHA employee who thanked the Complainant in 2018 was present at a meeting where information related to the Complainant’s ‘testimony’ would have been discussed. In 2018, this employee would have already been privy to information related to the Complainant’s ‘testimony’ and to the fact that the SHA was going to be implementing the “Stop the Line” initiative based on information provided by the Complainant. As previously stated, the story ultimately used by the SHA contained de-identified information related to the Complainant. For these reasons, I am not persuaded by the allegation that the SHA employee verbally thanking the Complainant on August 23, 2018 for allowing the SHA to use their story is evidence that the SHA did not honor the Complainant’s request regarding the use of their ‘testimony’.

III FINDINGS

- [33] I find that the SHA has appropriately de-identified the personal information of the Complainant in Document A. Therefore, I find that Document A does not contain personal information as defined in subsection 23(1) of LA FOIP.
- [34] Based on the contents of Document B, I find that this document does not relate to an identifiable individual and the information it contains is not personal in nature. Therefore, I find that Document B does not contain personal information as defined in subsection 23(1) of LA FOIP.
- [35] Given that Document A and Document B do not contain personal information as defined in LA FOIP, I find that the first element is not present and so *Part IV Protection of Privacy* of LA FOIP does not apply to these documents. Consequently, I find that LA FOIP is not engaged in matters related to these two documents.
- [36] I find that without conducting a full investigation into the sharing of information between the SHA and Accreditation Canada, it is unclear whether this sharing would support the Complainant's allegation that the SHA did not honor their request regarding the use of their 'testimony'.
- [37] I find that the email from the SHA to the Complainant of January 20, 2017, does not support the Complainant's allegations that the SHA did not honour their request regarding the use of their 'testimony'.
- [38] I am not persuaded by the allegation that the SHA employee verbally thanking the Complainant on August 23, 2018 for allowing the SHA to use their story is evidence that the SHA did not honor the Complainant's request regarding the use of their 'testimony'.

IV RECOMMENDATION

- [39] I recommend that the SHA take no further action.

Dated at Regina, in the Province of Saskatchewan, this 9th day of May 2019.

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