

SASKATCHEWAN

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

INVESTIGATION REPORT LA-2013-001

Providence Place For Holistic Health Incorporated

Summary:

The Complainant, an employee of Providence Place For Holistic Health Incorporated (Providence), discovered that her employer had disclosed her personal information and personal health information to an external party. The Commissioner found that Providence did not have the authority to disclose the information in the circumstances and that it had failed to take adequate steps to ensure the accuracy of the information prior to the disclosure. Further, due to Providence's lack of an appropriate policy and procedure to handle disclosure of personal information and personal health information to external parties, it failed to adequately protect its employees' privacy. The Commissioner recommended that Providence provide an apology letter to the Complainant for the breach of her privacy and that it develop appropriate policies and procedures tailored to its unique and specific needs.

Statutes Cited:

The Local Authority Freedom of Information and Protection of Privacy Act, S.S. 1990-91, c. L-27.1, ss. 2(f)(xiii), 23, 23(1)(k) 26, 28, 28(2), 28(2)(a), 28(2)(i)(i), 32(d); *The Freedom of Information and Protection of Privacy Act*, S.S. 1990-91, c. F-22.01; *The Health Information Protection Act* S.S. 1999, c. H-0.021, ss. 2(m), 2(m)(i), 2(t)(ii), 16, 19, 23, 25(3), 27, 27(2)(a), 27(2)(b), 27(4)(l), 42(1)(c), 52(b), 52(c), 52(d), 52(e); *The Workers' Compensation Act, 1979*, S.S. 1979, c. W-17.1, s. 52(f); *The Regional Health Services Act*, S.S. 2002, c.R-8.2, ss. 2(a), 2(h).

Authorities Cited:

Saskatchewan OIPC Review Reports H-2004-001, F-2004-006; Saskatchewan OIPC Investigation Reports H-2013-001, F-2012-002, F-2012-001, H-2011-001, H-2010-001, F-2009-001, F-2007-001, F-2005-001, H-2005-002.

Other Sources

Cited: Saskatchewan OIPC: *Advisory for Saskatchewan Health Trustees for Record Disposition, Advisory for Saskatchewan Physicians and Patients Regarding Out-Sourcing Storage of Patient Records, Report on Management of Access Request from Patients to Saskatchewan Regional Health Authorities, Helpful Tips: Best Practices – Mobile Device Security, Helpful Tips: Privacy Considerations – Faxing Personal Information and Personal Health Information, Helpful Tips: Privacy Breach Guidelines, FOIP FOLIO Newsletters*; Saskatchewan Workers' Compensation Board, *EI Employer's Initial Report of Injury form, Reporting a Claim*; Saskatchewan Ministry of Health, *Schedule A: 2010 Health Facilities/Services Operated by Health Care Organizations*.

I BACKGROUND

[1] On March 12, 2010 my office received a complaint from an employee of Providence Place For Holistic Health Incorporated (Providence).

[2] According to the Complainant, Providence breached her privacy when it provided the Saskatchewan Workers' Compensation Board (WCB) with information related to her work-related injury that she felt should not have been disclosed to WCB.

[3] The Complainant disagreed with Providence's decision to disclose to WCB the following information which was included on the *EI Employer's Initial Report of Injury form*¹ (WCB E1) filed by Providence with WCB:

[The Complainant] is a hockey coach for a minor hockey league in [a municipality]. This position may add to her shoulder problems due to the nature of coaching hockey.

[4] The Complainant first raised her concerns with Providence in late 2009. On December 3, 2009 Providence responded to the Complainant asserting it had the authority to disclose the Complainant's information to WCB under sections 28(2)(a) and 28(2)(i)(i) of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP).²

¹Saskatchewan Workers' Compensation Board (hereinafter WCB), *EI Employer's Initial Report of Injury form*, available at www.wcbsask.ca.

²*The Local Authority Freedom of Information and Protection of Privacy Act* (hereinafter LA FOIP), S.S. 1990-91, c.L-27.1.

- [5] Providence provided a letter to the Complainant dated December 3, 2009 stating the following:

As your employer, Providence Place is required to follow LAFOIP as well as the Workers' Compensation Act and Regulations. As your employer, we are required to file a report with the Saskatchewan Workers' Compensation Board. The report is referred to as E1 Employer's Initial Report of Injury.

Question 10 of the Employer's Initial Report of Injury requires your employer to respond to the following question: "Do you have any reason to believe that this is not a work-related incident?"

When we answer "yes" to this question, we must provide an attachment(s) with explanation. The attachment contains the reference to your involvement in minor hockey which we believe could add to your shoulder problems.

You told your manager about your involvement with minor hockey. Many people involved in minor hockey in our community would also be aware.

Providence Place disclosed the information to the Workers' Compensation Board in accordance with the Workers' Compensation Act and LAFOIP. Our conclusion is that Providence Place did not breach your privacy and no further review is required.

- [6] My office provided notification letters to both Providence and the Complainant dated July 15, 2010. The letters advised that my office would be conducting a privacy breach investigation. In the notification letter to Providence my office requested Providence provide my office with copies of its internal policies and procedures that specifically relate to LA FOIP, *The Health Information Protection Act (HIPA)*³ and *The Workers' Compensation Act, 1979 (WCA)*.⁴

- [7] On August 27, 2010 we received the first submission from Providence. Providence stated in its letter that:

The Alleged Breach of Privacy complaint from [the Complainant] was investigated and a letter of response was sent to [the Complainant] dated December 3, 2009. A copy of this letter is attached.

³*The Health Information Protection Act* (hereinafter HIPA), S.S. 1999, c. H-0.021.

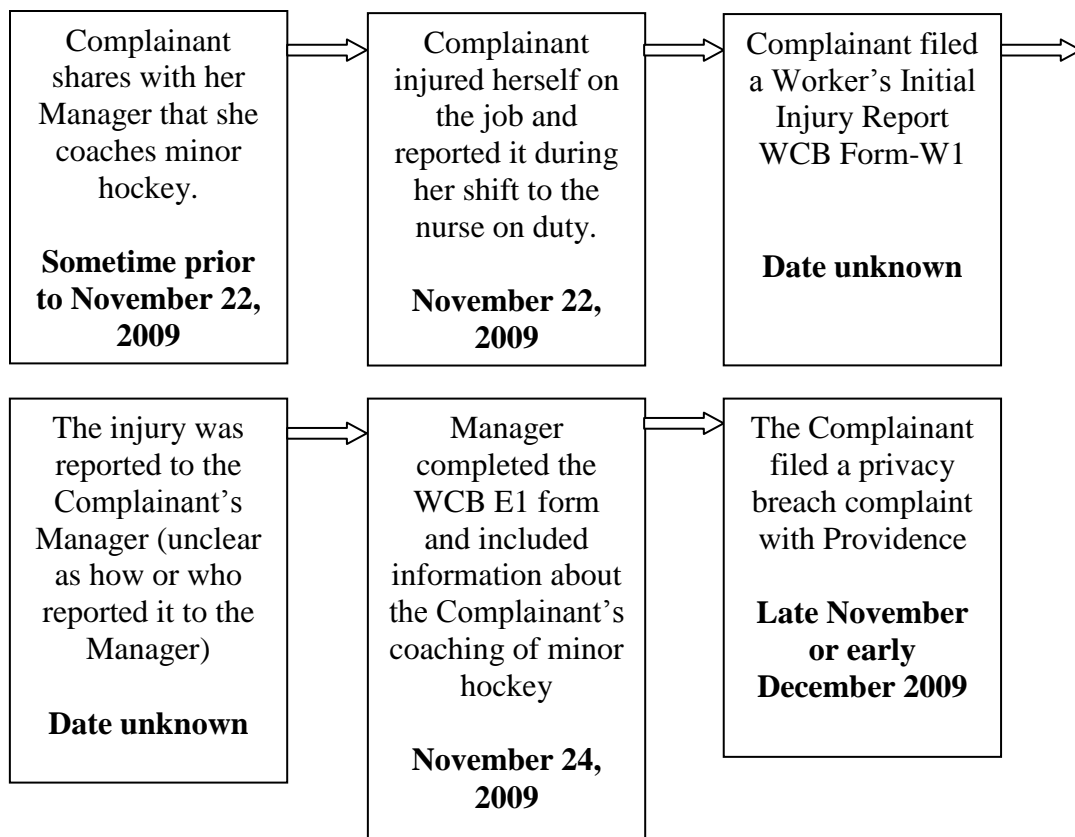
⁴*The Workers' Compensation Act, 1979* (hereinafter WCA), S.S. 1979, c. W-17.1.

Your question regarding copies of policies and procedures regarding LA FOIP, Providence Place has taken the position to refer to LA FOIP Legislation on a case by case basis when faced with decisions of compliance to LA FOIP Legislation and *The Workers Compensation Act, 1979*.

[8] On March 7, 2011 my office sent a letter to Providence requesting further information.

[9] My office received a second submission dated August 29, 2011 from a law firm acting on behalf of Providence via fax on August 29, 2011 and by mail on August 31, 2011. The submission did not include a copy of the internal policies and/or procedures related to LA FOIP or HIPA as previously requested.

[10] The following appears to be the course of events and the flow of information in this case:



II ISSUES

1. Which law or laws apply in this case?
2. Did Providence Place For Holistic Health Incorporated disclose the personal information and personal health information in question in accordance with section 28 of *The Local Authority Freedom of Information and Protection of Privacy Act* and section 27 of *The Health Information Protection Act*?
3. Did Providence Place For Holistic Health Incorporated have sufficient safeguards in place as required by section 16 of *The Health Information Protection Act*?

III DISCUSSION OF THE ISSUES

[11] My authority to investigate the identified issues is found in sections 32(d) of LA FOIP as follows:

32 The commissioner may:

...

(d) from time to time, carry out investigations with respect to personal information in the possession or under the control of local authorities to ensure compliance with this Part.⁵

[12] As well, I have authority to investigate under sections 42(1)(c), 52(b), 52(c), 52(d) and 52(e) of HIPA:

42(1) A person may apply to the commissioner for a review of the matter where:

...

(c) the person believes that there has been a contravention of this Act.

...

52 The commissioner may:

...

⁵*Supra* note 2.

- (b) after hearing a trustee, recommend that the trustee:
 - (i) cease or modify a specified practice of collecting, using or disclosing information that contravenes this Act; and
 - (ii) destroy collections of personal health information collected in contravention of this Act;
- (c) in appropriate circumstances, comment on the collection of personal health information in a manner other than directly from the individual to whom it relates;
- (d) from time to time, carry out investigations with respect to personal health information in the custody or control of trustees to ensure compliance with this Act;
- (e) comment on the implications for protection of personal health information of any aspect of the collection, storage, use or transfer of personal health information.⁶

1. Which law or laws apply in this case?

[13] Sections 2(a) and 2(h) of *The Regional Health Service Act* states that:

2 In this Act:

(a) “**affiliate**” means a person who, immediately before the coming into force of this section, is the operator of a hospital approved pursuant to *The Hospital Standards Act* or a not-for-profit special-care home licensed pursuant to *The Housing and Special-care Homes Act*, and includes any successor to the operator but does not include a regional health authority or a prescribed person;

...

(h) “**health care organization**” means:

(i) an affiliate; or

(ii) a prescribed person that receives funding from a regional health authority to provide health services;⁷

⁶*Supra* note 3.

⁷*The Regional Health Services Act*, S.S. 2002, c. R-8.2. Further, the Ministry of Health lists Providence Place For Holistic Health Incorporated (hereinafter Providence) as a Special-Care Home in its *Schedule A: 2010 Health Facilities/Services Operated by Health Care Organizations*, available at www.health.gov.sk.ca/adx/adxGetMedia.aspx?DocID=1437.

[14] On the website for Providence it states:

Owned and operated by Providence Place for Holistic Health Inc. through an affiliation agreement with the Five Hills Regional Health Authority.

...

We are sponsored by the Saskatchewan Catholic Health Corporation with funding flowing through the Five Hills Health Region, and enjoy a positive relationship as an affiliate of this Region.⁸

[15] Section 2(f) of LA FOIP defines a “local authority” as follows:

2 In this Act:

...

(f) “**local authority**” means:

...

(xiii) a regional health authority or an affiliate, as defined in *The Regional Health Services Act*;⁹

[16] Therefore, Providence, an affiliate, is a local authority as defined in section 2(f)(xiii) of LA FOIP.¹⁰

[17] HIPA states:

2 In this Act:

...

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

...

(ii) a regional health authority or a health care organization;¹¹

[18] Therefore, Providence, a health care organization, is also a trustee as defined by section 2(t)(ii) of HIPA.¹²

⁸Providence website www.provplace.ca. Accessed on August 9, 2012.

⁹*Supra* note 2.

¹⁰We note that section 2(f)(xv) of LA FOIP was repealed in June 2011.

¹¹*Supra* note 3.

[19] Our customary analysis when dealing with a complaint under Part IV of LA FOIP and HIPA is to first determine whether there is “personal information” and/or “personal health information” involved and then to consider which of the three primary privacy activities are engaged, i.e. collection, use and/or disclosure.

[20] The definition of “personal information” is in section 23 of LA FOIP and provides 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 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 or 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;

¹²We note that section 2(t)(iii) of HIPA was repealed.

(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.

(1.1) On and after the coming into force of subsections 4(3) and (6) of *The Health Information Protection Act*, with respect to a local authority that is a trustee as defined in that Act, "**personal information**" does not include information that constitutes personal health information as defined in that Act.

(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;

(b) the personal opinions or views of an individual employed by a local authority given in the course of employment, other than personal opinions or views with respect to another individual;

(c) financial or other details of a contract for personal services;

(d) details of a licence, permit or other similar discretionary benefit granted to an individual by a local authority;

(e) details of a discretionary benefit of a financial nature granted to an individual by a local authority;

(f) expenses incurred by an individual travelling at the expense of a local authority;

(g) the academic ranks or departmental designations of members of the faculties of the University of Saskatchewan or the University of Regina; or

(h) the degrees, certificates or diplomas received by individuals from the Saskatchewan Institute of Applied Science and Technology, the University of Saskatchewan or the University of Regina.

(3) Notwithstanding clauses (2)(d) and (e), "**personal information**" includes information that:

(a) is supplied by an individual to support an application for a discretionary benefit; and

(b) is personal information within the meaning of subsection (1).¹³

[21] HIPA defines “personal health information” in section 2 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;

(ii) information with respect to any health service provided to the individual;

(iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;

(iv) information that is collected:

(A) in the course of providing health services to the individual; or

(B) incidentally to the provision of health services to the individual; or

(v) registration information;¹⁴

[22] The information in question in this case is the following:

[The Complainant] is a hockey coach for a minor hockey league in [a municipality]. This position may add to her shoulder problems due to the nature of coaching hockey.

[23] The statement “[The Complainant] is a hockey coach for a minor hockey league in [a municipality]” is the Complainant’s personal information as defined by section 23(1)(k) because there is both the name of an individual linked with other information about that individual of a personal nature. Therefore, as there is personal information involved, LA FOIP is engaged on the facts in this case.

¹³*Supra* note 2.

¹⁴*Supra* note 3.

[24] The statement “[t]his position may add to her shoulder problems...” constitutes personal health information under section 2(m)(i) of HIPA because this concerns the individual’s physical health. Therefore, as there is personal health information involved, HIPA is also engaged on the facts in this case.

[25] Specifically, Part IV of LA FOIP and HIPA are of focus as it relates to the protection of personal information and personal health information in the possession/custody or control of a local authority and trustee.

2. Did Providence Place For Holistic Health Incorporated disclose the personal information and personal health information in question in accordance with section 28 of *The Local Authority Freedom of Information and Protection of Privacy Act* and section 27 of *The Health Information Protection Act*?

[26] I have previously defined “disclosure” as follows:

[179] Disclosure is not defined by FOIP. We have however defined disclosure as follows:

Disclosure is the sharing of personal information with a separate entity, not a division or branch of the public body or trustee in possession or control of that record/information.¹⁵

[emphasis added]

[27] Disclosure occurred in this case when Providence shared the Complainant’s personal information and personal health information with an external party - WCB.

[28] Normally our analysis would first consider whether there had been a collection of personal information and/or personal health information. In this case, it appears that the information about the Complainant’s extracurricular activity (i.e. coaching a hockey

¹⁵Office of the Saskatchewan Information and Privacy Commissioner (hereinafter SK OIPC), Investigation Report F-2007-001. Also discussed in SK OIPC Investigation Reports F-2012-002 at [36] and H-2013-001 at [36]. All Reports are available at www.oipc.sk.ca/reviews.htm. I have said previously that words and phrases that are common to both statutes should be interpreted in a considerable fashion. Therefore, this definition of disclosure would be the same for LA FOIP.

team) was not initially collected by Providence but rather was something shared between individuals in discussing non-work-related personal matters and activities. In the particular circumstances of this case however, I find that at some point prior to the disclosure of the Complainant's personal information and personal health information to WCB, the role of the Manager changed from that of a colleague receiving personal information unrelated to job responsibilities to that of an officer of Providence collecting personal information for the purpose of making 'official' representations to WCB on behalf of Providence. Presumably, neither the Complainant nor her Manager would have contemplated such representations to WCB or the need for same at the time of the informal exchange of the personal information.

[29] At the moment when the Manager decided to disclose the personal information to WCB, she was acting on behalf of Providence as an employer. The Manager was completing a form on behalf of Providence and can therefore not be viewed as anything but a representative of Providence.

[30] I note that there is no evidence or even a suggestion by Providence that the Manager ever discussed with the Complainant her 'shoulder injury' in relationship to her extra-curricular activities. The suggestion that the Complainant's work-related injury may be the result of her involvement as a coach in hockey appears to be nothing more than a totally gratuitous opinion that has no factual basis. I find that there is no obvious nexus between acting as a hockey coach in one's personal time and a specific shoulder injury. There is no evidence that coaching a hockey team is inherently more likely to contribute to a shoulder injury than many thousands of normal or routine activities that may involve some physical activity.

[31] Both LA FOIP and HIPA speak to the obligation required of local authorities and trustees to ensure the accuracy of personal information and personal health information if it decides to collect, use and/or disclose it.

[32] For example, section 26 of LA FOIP states:

26 A local authority shall ensure that personal information being used by the local authority for an administrative purpose is as accurate and complete as is reasonably possible.¹⁶

[33] Further, sections 19 and 25(3) of HIPA state:

19 In collecting personal health information, a trustee must **take reasonable steps to ensure that the information is accurate and complete.**

...

25(3) Where a trustee collects personal health information from anyone other than the subject individual, the trustee must take reasonable steps to **verify the accuracy** of the information.¹⁷

[emphasis added]

[34] It does not appear that Providence took steps to ensure that there was some corroborating evidence to suggest that the Complainant's involvement in coaching minor hockey contributed to her shoulder injury. Assumptions were made on the part of the Manager with no apparent evidence to support those assumptions.

[35] In my Investigation Report F-2009-001, I discussed the need to ensure accuracy of personal information:

[91] The relevant discussion of the duty to ensure accuracy in the Overarching Privacy Framework is as follows:

7. Accuracy

Personal information shall be as accurate, complete and up-to-date as is reasonably necessary for the purposes for which it is to be used.

Commentary

The extent to which personal information is accurate, complete, and up-to-date will depend upon the use of the information, taking into account the interests of the individual. **Information shall be sufficiently accurate, complete, and up-to-date to minimize the possibility that inappropriate information may be used to make a decision about the individual.**

¹⁶Supra note 2.

¹⁷Supra note 3.

When updating personal information, always consider the reason or purpose it was collected. It is not necessary to routinely update personal information, unless such a process is necessary to fulfill the purposes for which the information was collected.

Personal information that is used on an ongoing basis, including information that is disclosed to third parties, should generally be accurate and up-to-date, unless limits to the requirement for accuracy are clearly set out.

[92] I also considered the important ‘data minimization’ rule and the ‘need-to-know’ rule that underlie Part IV of FOIP. Data minimization means that an organization should always collect, use and disclose the least amount of personal information necessary for the purpose. The need-to-know rule is that personal 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.

...

[95] In my review of the materials related to the Complainant, I found the following:

...

- An email in a claims file for the Complainant that contains a set of very general but highly prejudicial statements about the Complainant that was volunteered by a member of the public never apparently examined for accuracy but nonetheless left for review by virtually anyone processing his claim. I acknowledge that WCB would have no control over what unsolicited information is sent to it by third parties. My concern however is that WCB retained this email on its claims file. There it would have been accessible to anyone working on the file.
- Apparent indiscriminate collection of information from third parties related to perceptions of the motives and intentions of the Complainant.¹⁸

[emphasis added]

[36] Therefore, I find that Providence did not take appropriate steps to ensure that the personal information and personal health information used on the WCB E1 form was accurate and complete as required by section 26 of LA FOIP and sections 19 and 25(3) of HIPA.

[37] In its submission dated August 29, 2011 the law firm on behalf of Providence stated the following with regards to its authority to disclose the Complainant’s personal information and personal health information to WCB:

¹⁸SK OIPC, Investigation Report F-2009-001, available at www.oipc.sk.ca/reviews.htm.

...The opinion may be “personal information” within the meaning of s. 23(1)(h) of LAFOIP and the reference to the shoulder problem is “personal health information” within the meaning of s. 2(m) of HIPA. However, the disclosure of the opinion and the fact that she had a shoulder problem is expressly authorized pursuant to s. 28(2)(a) and (i)(i) of LAFOIP and s. 27(2)(a) and (b) and 27(4)(l) of HIPA.

[38] The relevant sections of LA FOIP relied on by Providence are as follows:

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:

(a) for the purpose for which the information was obtained or compiled by the local authority or for a use that is consistent with that purpose;

...

(i) for the purpose of complying with:

(i) an Act or a regulation;¹⁹

[39] The relevant sections of HIPA relied on by Providence are as follows:

27(2) A subject individual is deemed to consent to the disclosure of personal health information:

(a) for the purpose for which the information was collected by the trustee or for a purpose that is consistent with that purpose;

(b) for the purpose of arranging, assessing the need for, providing, continuing, or supporting the provision of, a service requested by the subject individual;

...

...

(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:

...

(l) where the disclosure is permitted pursuant to any Act or regulation;²⁰

[40] Further, Providence stated in its submission dated August 29, 2011 that:

¹⁹*Supra* note 2.

²⁰*Supra* note 3.

[The Complainant] was advancing a claim for compensation to the WCB. Under *The Workers' Compensation Act*, as an employer, Providence was obligated to provide particulars of the injury or claim for compensation that the Board may require. Section 52 of *The Workers' Compensation Act* states:

52 Each employer shall, within five days from the date he becomes aware of an injury which prevents a worker from earning full wages or which necessitates medical aid, notify the board in writing of:

(a) the nature, cause and circumstances of the injury;

(b) the time of the injury;

(c) the name and address of the injured worker;

(d) the place where the injury happened;

(e) the name and address of any physician who attends the worker for his injury;

(f) any further particulars of the injury or claim for compensation that the board may require.

...

As part of the completion of a compensation claim, Providence, as an employer, is obligated to provide a description of the injury, how it happened and whether the employer had any reason to believe the injury was not work related. The disclosure of the injury is specifically required pursuant to s. 52(a) of *The Workers' Compensation Act* ("WCA") and is expressly authorized pursuant to s. 28(2)(i)(i) of LAFOIP and s. 27(4)(l) of HIPA.

...

In terms of the opinion that [the Complainant's] activities as a minor hockey league coach may add to her shoulder problem is information that is directly sought by the WCB in the form Providence, as an employer, is obligated to complete by the WCB Board. The form requires the employer to provide any information that the injury may not be wholly a work related accident. Through [the Complainant] herself, Providence was aware that she was actively involved in minor hockey league coaching and the Nurse Manager had the opinion that this may contribute to the shoulder problem. This is not an unreasonable opinion given that minor league hockey coaching involves strenuous activities, such as on ice drills during practice where the coach is involved. This is relevant information that falls squarely within the ambit of s.52(f) of the WCA.

[41] The WCB E1 form states the following at question 10:

10. Do you have any reason to believe that this is not a work-related incident? Yes No
If “yes”, provide attachment(s) with explanation.²¹

[42] Providence did not provide a copy of the completed WCB E1 form or the attachment which explained why it felt that the Complainant’s involvement in coaching hockey caused reason to believe the injury was not work-related. There must be some sort of evidence to support such an assertion.

[43] Providence indicates that its disclosure “falls squarely within the ambit of s.52(f) of the WCA”. However, section 52(f) of the WCA noted above requires Providence to provide “any further **particulars of the injury or claim** for compensation **that the board may require**.”²² [emphasis added]

[44] The WCB guide for Employers, titled *Reporting A Claim*²³ provides the following recommendations to Employers when an injury occurs at the workplace:

Within five days of being aware of the incident, you must make a report to the WCB. This includes all incidents that require medical attention and fatalities. Failing to do this could result in fines up to \$1,000.

Conduct an internal investigation as to the cause(s) and factors contributing to the incident and determine procedures or modifications to prevent similar incidents in the future.

Keep accurate records of all incidents.²⁴

[emphasis added]

[45] It appears WCB requires information based on factual evidence and not speculation, assumption or opinion from those not qualified to give them. It would be the role of the Complainant’s physician to assess the injury based on empirical evidence and not the Manager’s mere speculation based on second hand information.

²¹Supra note 1.

²²Supra note 4.

²³WCB, *Reporting a Claim*, available at www.worksafesask.ca/UWCB-reporting-claim.

²⁴Ibid. at p. 30.

[46] It is possible that Providence may have had authority to disclose the Complainant's personal information and personal health information under sections 28(2)(i)(i) of LA FOIP and section 27(4)(l) of HIPA had the information been accurate, complete and based on some sort of evidence.

[47] An additional consideration is that even with the duty to disclose information about the injury provided for in the WCA, this does not displace the obligation of any trustee pursuant to section 23 of HIPA for data minimization. That requires Providence to disclose the least amount of personal health information necessary for the purpose. Information about extracurricular activity of an employee where there is no reasonable nexus with the injury in question if disclosed would offend that data minimization principle.

[48] Providence cannot rely on these sections or any others for the requisite authority to disclose the Complainant's personal information and personal health information because it did not first ensure that the information was accurate and complete.

[49] Further, it does not appear that Providence can rely on section 52(f) of the WCA as support for having disclosed the Complainant's personal information and personal health information. Section 52(f) suggests that the WCB board may require further particulars regarding an injury. It does not suggest that Providence can voluntarily disclose personal information or personal health information that may not be accurate or complete and cannot be supported by evidence.

[50] Therefore, I find that Providence did not have the authority to disclose the Complainant's personal information and personal health information under LA FOIP and HIPA because it did not first take reasonable steps to ensure the accuracy of the information.

3. Did Providence Place For Holistic Health Incorporated have sufficient safeguards in place as required under section 16 of *The Health Information Protection Act*?

[51] In its submission received August 27, 2010 Providence indicated the following:

Your question regarding copies of policies and procedures regarding LA FOIP, Providence Place has taken the position to refer to LA FOIP Legislation on a case by case basis when faced with decisions of compliance with LA FOIP Legislation and *The Workers' Compensation Act, 1979*.

[52] It is imperative that Providence have established written policies and procedures to guide its employees with what is required by law with regards to privacy protection for personal information and personal health information when disclosing to external parties such as WCB.

[53] Section 16 of HIPA reads as follows:

16 Subject to the regulations, a trustee that has custody or control of personal health information must establish policies and procedures to maintain administrative, technical and physical safeguards that will:

- (a) protect the integrity, **accuracy** and confidentiality of the information;
- (b) protect against any reasonably anticipated:
 - (i) threat or hazard to the security or integrity of the information;
 - (ii) loss of the information; or
 - (iii) unauthorized access to or use, disclosure or modification of the information; and
- (c) otherwise ensure compliance with this Act by its employees.²⁵

[emphasis added]

[54] I have discussed in Investigation Report F-2007-001 what is required of a trustee in order to comply with section 16 of HIPA. This includes having written policies and procedures:

[48] As of this date, there have been no regulations enacted under HIPA that are relevant to the standards required of a health information trustee such as WCB for *administrative, technical or physical safeguards*". Our office has concluded in past

²⁵*Supra* note 3.

Reports that section 16 requires that a trustee establish **written policies and procedures**.²⁶

[emphasis added]

[55] Further, in Investigation Report H-2011-001, I detail the requirements of section 16 of HIPA.²⁷

[56] LA FOIP does not contain the same explicit language as that in section 16 of HIPA; it is my view nonetheless that it is implicit that all local authorities must also have adequate safeguards in place to protect personal information in its possession or control.²⁸ Therefore, I would expect that to be compliant with Part IV of LA FOIP, a local authority would have **written** policies and procedures for its employees.

[57] Without written policies and procedures a local authority and trustee has not taken reasonable steps to safeguard personal information or personal health information in its possession/custody and control.

[58] Following a serious privacy breach in early 2011, I issued an advisory to all health trustees in the province of Saskatchewan on April 12, 2011 alerting them to the need for written policies and procedures:

We therefore recommend that all trustees and trustee organizations IMMEDIATELY implement the following procedures:

1. Ensure that someone in the organization is formally designated as the Privacy Officer with specific responsibility for HIPA compliance, particularly the safe retention and disposition of personal health information.

2. **Ensure that the trustee organization has written policies and procedures as prescribed by section 16 of HIPA including physical, administrative and technical measures reasonable for the protection of personal health information.**

²⁶SK OIPC, Investigation Report F-2007-001. Also discussed in SK OIPC Review Reports H-2004-001, F-2004-006 and Investigation Reports F-2005-001, H-2005-002. All Reports are available at www.oipc.sk.ca/reviews.htm.

²⁷SK OIPC, Investigation Report H-2011-001 at [91] to [177], available at www.oipc.sk.ca/reviews.htm.

²⁸I also noted that this is an expectation of government institutions subject to *The Freedom of Information and Protection of Privacy Act*, (hereinafter FOIP) S.S. 1990-91, c. F-22.01, in my Investigation Report F-2012-001 at [89], available at www.oipc.sk.ca/reviews.htm.

3. Ensure that every person in the trustee organization understands the difference between the historic culture of confidentiality and the new requirements of HIPA including the continuing responsibility for patient files pursuant to section 22 of HIPA.
4. Ensure that the trustee organization is in compliance with the transparency obligations in sections 9 and 10 of HIPA.
5. Ensure that there is a proper record retention and disposition schedule and that it is followed.
6. Ensure that all personal health information is properly and safely stored at all times.
7. Ensure that when disposing of personal health information all materials are shredded or otherwise completely destroyed.
8. Ensure that if the storage or destruction of patient files is outsourced or if an information management service provider is involved that there is a proper agreement that complies with sections 16, 17 and 18 of HIPA.²⁹

[emphasis added]

[59] Providence is expected to have written policies and procedures to safeguard and advise its employees on the proper handling of employee and patient personal information and personal health information. To not have them is to risk further privacy breaches as a result of misinformed staff or other preventable circumstances.

[60] In August 2012, my office provided its preliminary analysis to Providence. There were two recommendations made by my office to Providence: 1. that Providence provide an apology letter to the Complainant for the privacy breach; and 2. that it establish necessary policies and procedures. We referred Providence to the extensive resources that were available to assist it in establishing appropriate policies and procedures. Such resources include my Investigation Report H-2011-001 which cites numerous authorities to help trustee establish compliant written policies and procedures.³⁰

²⁹SK OIPC, *Advisory To Saskatchewan Health Trustees for Record Disposition*, at p. 3, available at www.oipc.sk.ca.

³⁰*Supra* note 27.

- [61] On September 17, 2012, my office received a response from the law firm on behalf of Providence indicating it disagreed with our analysis. Included in the response were sixty-six pages of policies from Five Hills Health Region dated from 2007. Upon review it was clear that Providence did not have its own policies and procedures and was using those from a different organization without having first adapted them to fit its own specific needs. Providence is a long-term care, geriatric assessment and day program facility focused on elder care.³¹ The policies and procedures of a large health region would not address the specific needs of Providence.
- [62] Following a phone conference on October 5, 2012, Providence agreed to provide the apology letter and its own policy and procedure that would provide guidance to employees at Providence with regards to non-consented disclosure to external parties (such as WCB) with regards to personal information and personal health information of its employees.
- [63] On October 24, 2012, Providence provided my office with a draft apology letter and a one page draft guideline which it described as "... guidelines to be used by Providence's staff in interpreting the various privacy policies that they do have." Providence indicated that it would be too difficult to redraft all the various policies that Providence was using. Had Providence provided what was required from our October 5, 2012 phone conference my inclination would have been to conclude the investigation at that stage and close the file.
- [64] On October 25, 2012, my office advised Providence that the apology letter was acceptable and should be forwarded in its final version to my office immediately. To date, this has not been received. My office also advised Providence that the guideline was high level and needed to be accompanied by a procedure for staff. We requested a detailed plan for the development of an accompanying procedure. Such a plan would include the timeline expected to complete the procedure.

³¹*Supra* note 8. Accessed on April 15, 2010.

[65] On December 24, 2012, after receiving nothing further from Providence, my office advised that it would proceed to issue this Report. Given that Providence was unable to provide what was requested in our phone conference of October 5, 2012, I had little confidence that it would complete the task of developing a comprehensive suite of policies and procedures contemplated by section 16 of HIPA or those implicitly required to comply with LA FOIP.

[66] It is not enough for a trustee to adopt the policies of another organization, unless it has first ensured those policies and procedures are tailored to meet the unique and specific needs of the trustee. Section 16 of HIPA requires that a trustee establish policies and procedures to maintain administrative, technical and physical safeguards. Relying on the work done by a separate organization is not adequate. Reasonable effort must also be taken to ensure policies and procedures are implemented and followed.

[67] A trustee's policies and procedures need to address: what is personal health information, the rules for collection, use and disclosure of personal health information, patient/employee access to and correction of that personal health information. Providence must also establish its own policies and procedures to safeguard personal information and personal health information in its possession/custody or control. Further, policies and procedures should not remain unchanged and immutable over time but rather change and evolve along with the organization.

[68] Several resources are available to assist Providence in developing and/or testing existing policies and procedures for purposes of compliance with section 16 of HIPA. These include several resources produced by my office:

- *Report on Management of Access Requests from Patients to Saskatchewan Regional Health Authorities*;³²
- *Advisory to Saskatchewan Health Trustees for Record Disposition* (April, 2011);³³
- *Advisory for Saskatchewan Physicians and Patients Regarding Out-Sourcing Storage of Patient Records*;³⁴

³²SK OIPC, *Report on Management of Access Requests from Patients to Saskatchewan Regional Health Authorities*, available at www.oipc.sk.ca/whats_new.htm.

³³*Supra* note 29.

- *Helpful Tips: Best Practices – Mobile Device Security*;³⁵
- *Glossary of Common Terms – The Health Information Protection Act (HIPA)*;³⁶
- *Helpful Tips: Privacy Considerations – Faxing Personal Information and Personal Health Information*;³⁷
- *Helpful Tips: Privacy Breach Guidelines*;³⁸
- Investigation Report H-2011-001;³⁹
- Investigation Report H-2010-001;⁴⁰ and
- 90+ archived issues of past FOIP FOLIO Newsletters.⁴¹

[69] There are also other resources available such as the Canadian Health Informatics Association (COACH) which produces a number of materials regarding the protection of personal health information.

[70] Therefore, I find that Providence did not have appropriate policies and procedures in place to protect the privacy of its employees.

³⁴SK OIPC, *Advisory for Saskatchewan Physicians and Patients Regarding Out-Sourcing Storage of Patient Records*, available at www.oipc.sk.ca/whats_new.htm.

³⁵SK OIPC, *Helpful Tips: Best Practices – Mobile Device Security*, available at www.oipc.sk.ca/resources.htm.

³⁶SK OIPC, *Glossary of Common Terms – The Health Information Protection Act (HIPA)*, available at www.oipc.sk.ca/resources.htm.

³⁷SK OIPC, *Helpful Tips: Privacy Considerations – Faxing Personal Information and Personal Health Information*, available at www.oipc.sk.ca/resources.htm.

³⁸SK OIPC, *Helpful Tips: Privacy Breach Guidelines*, available at www.oipc.sk.ca/resources.htm.

³⁹*Supra* note 27.

⁴⁰SK OIPC, Investigation Report H-2010-001, available at www.oipc.sk.ca/reviews.htm.

⁴¹SK OIPC, *FOIP FOLIO Newsletters*, available at www.oipc.sk.ca/newsletters.htm.

V FINDINGS

- [71] I find that Providence Place For Holistic Health Incorporated did not take appropriate steps to ensure that the personal information and personal health information of the Complainant disclosed on the Saskatchewan Workers' Compensation Board *EI Employer's Initial Report of Injury* form was accurate and complete as required by section 26 of *The Local Authority Freedom of Information and Protection of Privacy Act* and sections 19 and 25(3) of *The Health Information Protection Act*.
- [72] I find that Providence Place For Holistic Health Incorporated did not demonstrate that it had the authority to disclose the Complainant's personal information and personal health information under *The Local Authority Freedom of Information and Protection of Privacy Act* and *The Health Information Protection Act*.
- [73] I find that Providence Place For Holistic Health Incorporated did not have an appropriate policy and procedure in place to protect its employees' personal information and personal health information when it comes to non-consented disclosure to external parties.
- [74] I find that Providence Place For Holistic Health Incorporated did not have the broader suite of written policies and procedures unique and specific to its organization's needs as contemplated by section 16 of *The Health Information Protection Act* and implicitly required under *The Local Authority Freedom of Information and Protection of Privacy Act*.

VI RECOMMENDATIONS

- [75] I recommend that Providence Place For Holistic Health Incorporated provide a letter of apology to the Complainant for the breach of her privacy. The apology should include an acknowledgement of the breach and steps Providence Place For Holistic Health Incorporated intends to take to address the circumstances that lead to this privacy breach.

[76] I recommend that to ensure it is compliant with Part IV of *The Local Authority Freedom of Information and Protection Privacy Act* and *The Health Information Protection Act*, Providence Place For Holistic Health Incorporated establish the following:

- Written policies and procedures to protect its employees and patients' personal information and personal health information that are tailored, unique and specific to its organizations needs. Among the policies and procedures, the following should be included:
 - A specific policy and procedure to direct staff on non-consented disclosure of personal information and personal health information to external parties; and
 - A specific policy and procedure to ensure there is a reasonable degree of rigour taken to ensure accuracy of information collected, used and/or disclosed by Providence Place For Holistic Health Incorporated.

Dated at Regina, in the Province of Saskatchewan, this 16th day of April, 2013.

R. GARY DICKSON, Q.C.
Saskatchewan Information and Privacy
Commissioner