

**REPORT ON MANAGEMENT OF  
ACCESS REQUESTS FROM PATIENTS TO  
SASKATCHEWAN REGIONAL HEALTH  
AUTHORITIES**



**SASKATCHEWAN INFORMATION AND  
PRIVACY COMMISSIONER**

**December 14, 2009**

*“As is typical of a provider-centred health system, patients’ health information has been considered the providers’ property. Patients wanting to access their medical records often face numerous hurdles in doing so. I strongly suggest that the Information and Privacy Commissioner be involved in formulating policy regarding appropriate access to health records. When almost every other industry in the developed world is utilizing technology to make information more readily accessible to its customers, we can expect that patients will soon demand easy and immediate access to their own health care records. Patients expect to be better informed about their health conditions and treatments.”<sup>1</sup>*

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<sup>1</sup> Patient First Review Commissioner’s Report of October 2009 – *For Patients’ Sake*, page 44.

# REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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## BACKGROUND

In late October 2009 the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) was alerted by the public to the use, by one of Saskatchewan's regional health authorities (RHA), of an access request form that was non-compliant with the requirements of *The Health Information Protection Act* (HIPA)<sup>2</sup>.

I canvassed the RHAs and learned that some other regional health authorities were also using a similar, non-compliant form. I notified the Privacy Officers of all regional health authorities of the issue and urged them to immediately take steps to remedy this problem. At that point, I commenced an own-motion investigation under sections 52 and 53 of HIPA that provide as follows:

*52 The commissioner may:*

*(a) offer comment on the implications for personal health information of proposed legislative schemes or programs of trustees;*

*(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.*

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<sup>2</sup> *The Health Information Protection Act*, [S.S. 1999, C. H-0.021, as amended].

**REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO  
SASKATCHEWAN REGIONAL HEALTH AUTHORITIES**

---

*53 The commissioner may:*

- (a) engage in or commission research into matters affecting the carrying out of the purposes of this Act;*
- (b) conduct public education programs and provide information concerning this Act and the commissioner's role and activities;*
- (c) receive representations concerning the operation of this Act.*

On November 16, 2009 I sent a letter to the Chief Executive Officers for all Saskatchewan regional health authorities requesting that they provide the following to our office prior to November 30, 2009:

- Copy of the access form each regional health authority required patients to sign in order to get copies of their own personal health information.*
- Confirmation of the date that this form came into use.*
- Copy of each regional health authority's brochure or information pursuant to section 9 of HIPA that communicates to the public information about their right of access and any provision for fees and fee waivers.*

I received a full response from Keewatin Yatthe Health Region, Sun Country Health Region, Prairie North Health Region, Kelsey Trail Health Region, Saskatoon Health Region, Prince Albert Parkland Health Region, Five Hills Health Region, Mamawetan Churchill River Health Region, Sunrise Health Region , Cypress Health Region, Heartland Health Region, and Regina Qu'Appelle Health Region.

Since at least one of the regional health authorities suggested to our office that it was relying on information provided by the CIO Privacy Forum hosted by Saskatchewan Health, on the same date I contacted the Privacy Officer for Saskatchewan Health to inform the Ministry of the identified problem.

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*

# REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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## ISSUES

**What are the relevant statutory provisions applicable to patient/client access to their own personal health information?**

**What are the ‘best practices’ for dealing with patient/client access to their own personal health information?**

**How do our regional health authorities measure up?**

- **Do they have an appropriate, clear and simple Access Form?**
- **Is there appropriate notice to patients/clients of their access and amendment rights?**

## ANALYSIS

**What are the relevant statutory provisions applicable to patient/client access to their own personal health information?**

The relevant clauses in the preamble to HIPA are:

*WHEREAS the Legislative Assembly recognizes the following principles with respect to personal health information:*

*THAT personal health information is private and shall be dealt with in a manner that respects the continuing interests of the individuals to whom it relates;*

*THAT individuals shall be able to obtain access to records of their personal health information; ...*

*THAT trustees shall be open about policies and practices with respect to the collection, use and disclosure of personal health information;*

Section 12 of HIPA provides 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.*

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*

**REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO  
SASKATCHEWAN REGIONAL HEALTH AUTHORITIES**

---

Part V of HIPA addresses individuals' access to personal health information and provides as follows:

***Access of Individuals to Personal Health Information***

***Interpretation of Part***

**31** *In this Part:*

(a) **“applicant”** means an individual who makes a written request for access to personal health information about himself or herself;

(b) **“written request for access”** means a request made pursuant to section 34.

***Right of access***

**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.*

***Oral request for access***

**33** *Nothing in this Act precludes:*

(a) *an individual from making an oral request for access to personal health information about himself or herself that is contained in a record in the custody or control of a trustee; or*

(b) *a trustee from responding to an oral request.*

***Written request for access***

**34(1)** *An individual may, in accordance with the regulations, make a written request for access to personal health information about himself or herself that is contained in a record in the custody or control of a trustee.*

(2) *A written request for access must:*

(a) *be made to the trustee that the applicant believes has custody or control of the record containing the personal health information; and*

(b) *contain sufficient detail to enable the trustee to identify the personal health information requested.*

(3) *An applicant must prove his or her identity to the satisfaction of the trustee.*

(4) *The right to make an application for review pursuant to section 42 applies only to written requests for access.*

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*

**REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO  
SASKATCHEWAN REGIONAL HEALTH AUTHORITIES**

---

***Duty to assist***

*35(1) Subject to sections 36 to 38, a trustee shall respond to a written request for access openly, accurately and completely.*

*(2) On the request of an applicant, a trustee shall:*

*(a) provide an explanation of any term, code or abbreviation used in the personal health information; or*

*(b) if the trustee is unable to provide an explanation in accordance with clause (a), refer the applicant to a trustee that is able to provide an explanation.*

***Response to written request***

*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.*

*(2) A trustee that transfers a written request for access pursuant to clause (1)(d) must notify the applicant of the transfer as soon as reasonably possible, and the trustee to whom the written request for access is transferred must respond to it within 30 days after the date of transfer.*

*(3) The failure of a trustee to respond to a written request for access within the period mentioned in subsection (1) or (2) is deemed to be a decision to refuse to provide access to the personal health information, unless the written request for access is transferred to another trustee pursuant to clause (1)(d).*

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

---

### ***Extension of time***

*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.*

### ***Refusing access***

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

*(a) in the opinion of the trustee, knowledge of the information could reasonably be expected to endanger the mental or physical health or the safety of the applicant or another person;*

*(b) disclosure of the information would reveal personal health information about another person who has not expressly consented to the disclosure;*

*(c) disclosure of the information could reasonably be expected to identify a third party, other than another trustee, who supplied the information in confidence under circumstances in which confidentiality was reasonably expected;*

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

*(i) for the purpose of peer review by health professionals, including joint professional review committees within the meaning of The Saskatchewan Medical Care Insurance Act;*

*(ii) for the purpose of review by a standards or quality of care committee established to study or evaluate health services practice in a health services facility or health services agency, including a committee as defined in section 10 of The Evidence Act; or*

*(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;*



**REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO  
SASKATCHEWAN REGIONAL HEALTH AUTHORITIES**

---

*(e) the information was collected principally in anticipation of, or for use in, a civil, criminal or quasi-judicial proceeding; or*

*(f) disclosure of the information could interfere with a lawful investigation or be injurious to the enforcement of an Act or regulation.*

*(2) Where a record contains information to which an applicant is refused access, the trustee shall grant access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access.*

*(3) Where access to personal health information is refused pursuant to clause (1)(d), a trustee must refer the applicant to the trustees from which the personal health information was collected.*

**Fee**

*39 A trustee may charge a reasonable fee not exceeding the prescribed amount to recover costs incurred in providing access to a record containing personal health information.*

**Right of amendment**

*40(1) An individual who is given access to a record that contains personal health information with respect to himself or herself is entitled:*

*(a) to request amendment of the personal health information contained in the record if the person believes that there is an error or omission in it; or*

*(b) if an amendment is requested but not made, to require that a notation to that effect be made in the record.*

*(2) A request for amendment must be in writing.*

*(3) Within 30 days after a request for amendment is received, the trustee shall advise the individual in writing that:*

*(a) the amendment has been made; or*

*(b) a notation pursuant to clause (1)(b) has been made.*

*(4) Subject to subsection (6), where a trustee makes an amendment or adds a notation pursuant to clause (1)(b), the trustee must, where practicable, give notice of the amendment or notation to any other trustee or person to whom the personal health information has been disclosed by the trustee within the period of one year immediately before the amendment was requested.*

*(5) A trustee that receives a notice pursuant to subsection (4) must make the amendment or add the notation to any record in the custody or control of the trustee that contains personal health information respecting the individual who requested the amendment.*

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

---

(6) *A trustee is not required to notify other trustees where:*

*(a) an amendment or a notation cannot reasonably be expected to have an impact on the ongoing provision of health services to the individual; or*

*(b) the personal health information was disclosed to the other trustees for any of the purposes or in any of the circumstances set out in subsection 27(2).*

*(7) An amendment required to be made pursuant to this section must not destroy or obliterate existing information in the record being amended, other than registration information.*

### WHAT ARE THE BEST PRACTICES FOR DEALING WITH PATIENT/CLIENT ACCESS TO THEIR OWN PERSONAL HEALTH INFORMATION?

Our office has provided commentary and tools to assist all trustees in Saskatchewan achieve HIPA compliance particularly in the context of access to information requests from patients. These tools and commentary include:

- Initial meeting with CIO Privacy Forum, spring of 2004;
- HIPA Conference-*Making it Work*, Regina, fall of 2004;
- OIPC Investigation Report H-2005-002 (Saskatchewan Cancer Agency), page 14;
- Meeting hosted by OIPC for Privacy Officers of all regional health authorities, Regina, June 23, 2005;
- FOIP FOLIO, October 2005, page 5;
- OIPC 2004-05 Annual Report, page 34;
- Presentation 'Orientation to Health Information and HIPA' G. Dickson, July 26 and 27, 2006 for regional health authorities HIPA Coordinators, Regina;
- April 16, 2007 Presentation "Access Requests vs. Disclosure" Prairie Health Information Day, Regina;
- June 11, 2007 meeting with Saskatchewan Health and CIO Privacy Forum to review OIPC suggested revisions to HIPA Privacy Manual and Toolkit developed by Privacy Forum;

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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- Presentation 'Access Requests vs. Disclosures' G. Dickson, Prairie Health Information Day, Regina, 2007;
- OIPC Report H-2008-001 (Saskatoon Regional Health Authority), [81] and [111] to [114];
- OIPC Report H-2008-002 (Dr. Val Harding).

The following quotations are from a number of different reports and other resources that have been published on our OIPC website [www.oipc.sk.ca](http://www.oipc.sk.ca). In addition, we have encouraged all regional health authorities' Privacy Officers to become familiar with those resources by means of our monthly e-newsletter, the Saskatchewan *FOIP FOLIO*. More than 60 past issues of the *FOIP FOLIO* are archived on our website at [www.oipc.sk.ca/newsletters.htm](http://www.oipc.sk.ca/newsletters.htm).

### **OIPC Report H-2008-002 (Dr. Val Harding)<sup>3</sup>**

*[21] The right of an individual to access his personal health information in the custody or control of a trustee under HIPA is one of the most important features of HIPA. We have in past Reports [H-2007-001 (Saskatchewan Cancer Agency) and H-2008-001 (Saskatoon Regional Health Authority)]<sup>11</sup> discussed the threshold that must be met to justify withholding records under section 38(1)(a) of HIPA.*

### **OIPC Report H-2008-001 (Saskatoon Regional Health Authority)<sup>4</sup>**

*[81] Prior to submitting his first written request, on October 26, 2004, the Applicant met with the Region's CSR. During this meeting, after having the Applicant sign a Consent for Disclosure of Personal Health Information Form (consent form), the CSR released copies of some documents to the Applicant. The CSR recorded what*

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<sup>3</sup> SK OIPC Report H-2008-002 (Dr. Val Mary Harding, carrying on business as Harding Psychological Services and also as Lebell & Associates) available online at: <http://www.oipc.sk.ca/Reports/H-2008-002.pdf>.

<sup>4</sup> SK OIPC Report H-2008-001 (Saskatoon Regional Health Authority) available online at: <http://www.oipc.sk.ca/Reports/H-2008-001.pdf>

**REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO  
SASKATCHEWAN REGIONAL HEALTH AUTHORITIES**

---

*transpired at the meeting in the following email to another Region employee as follows:*

*I met with [the Applicant] on October 26, 2004 at 1100hrs...I went over his chart with him. ... [The Applicant] signed a consent for release of information form and I provided him with copies of the nursing notes, SW [Social Worker] notes, Physician Orders and Progress Notes and Admission notes.*

*...*

*[111] The Region further complicated the application process by introducing a consent form. Before providing copies of records sought by the Applicant, the Region required the Applicant to complete this form.*

*[112] On learning of the Region's reliance on this form, we advised the Region as follows:*

*The Applicant filled out the form twice requesting access to information on June 4, 2005 and December 1, 2004. **It appears that the region is utilizing one form for providing access and for facilitating disclosures.***

*In the PPCC [Prevention Program for Cervical Cancer] report on page 24, the Commissioner wrote, "(13) That the Agency revise its form for access to information by an individual woman to: reflect the clear difference between a right of access provided by section 32 of HIPA and the discretionary disclosure provided for by section 27; and reflect the provisions for a surrogate to make such an access request pursuant to section 56 of HIPA." **Has the region considered revising this form in light of the Commissioner's recommendation?***

*...*

*(emphasis added)*

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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[114] *Use of this form creates problems as it does not distinguish between access and disclosure. I commented in one of my Annual Reports that we have encountered a number of trustees that “were not treating a request from an individual to access their own personal health information any differently than a disclosure of that same information to some outside agency. In fact they are different activities. An access request is a matter of right while disclosure is discretionary. “Access” in privacy parlance has a specific meaning. It should be defined as the action by a data subject to see or obtain a copy of his/her personal health information. “Disclosure” means sharing personal health information outside of the organization. The form even contains the word disclosure in its title. If the Region feels it is necessary to document every time it provides an applicant with copies of portions of his/her chart, a simple notation could be made instead on the file or in a log elsewhere. I find that the manner in which the form was used is inappropriate and misleading.*  
(emphasis added)

### OIPC Investigation Report F-2007-001 (Saskatchewan Workers’ Compensation Board)

[80] *On page 6 of this Policy, the section, Third Party Release of Information is problematic since it appears to conflate **access** by a claimant to his or her own personal information with **disclosure** to a third party.*

[81] *Access, in the context of privacy best practices, is viewed as a fundamental right of the individual that will be subject to narrowly defined exceptions. Normally, access means the data subject will be able to view all of the information pertaining to that individual in the possession or under the control of the government institution. The reason why access is sought is irrelevant. Access is not given conditionally or qualified by such things as the purpose for the request, undertakings as to what use the information may be put to, or indemnification or release of claim against the government institution.*

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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[82] *Disclosure, on the other hand, is occasionally mandatory, but most often is a discretion for the government institution to exercise dependent on the particular circumstances. It is subject to the requirement to disclose the least amount of identifying information necessary for the purpose. Conditions are routinely imposed on what use or disclosure may occur with that information. The rule of need-to-know applies. In other words, information shared as a disclosure to a third party should only be disclosed to someone who has a legitimate need-to-know that information.*

### **OIPC Investigation Report H-2005-002 (Saskatchewan Cancer Agency)<sup>5</sup>**

- (13) *That the Agency revise its form for access to information by an individual woman to:*
- *Reflect the clear difference between a right of access provided by section 32 of HIPA and the discretionary disclosure provided for by section 27; and*
  - *Reflect the provisions for a surrogate to make such an access request pursuant to section 56 of HIPA.*

### **Saskatchewan FOIP FOLIO, October 2006.<sup>6</sup>**

*We encounter some confusion among public bodies over the difference between access and disclosure. "Access" in the privacy world typically refers only to the individual, sometimes known as the data-subject, attempting to get their hands on the information about them held by a public body or trustee. In some circumstances, it may be a surrogate, acting on behalf of the individual, seeking access. This should not be confused with the situation where a third party, either with or without the individual's consent, seeks some or all of the individual's*

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<sup>5</sup> SK OIPC Report H-2005-002 (Saskatchewan Cancer Agency) at page 14, available online at: <http://www.oipc.sk.ca/Reports/H-2005-002.pdf>

<sup>6</sup> SK OIPC, *Saskatchewan FOIP FOLIO* (October 2006) at page 5. Available online at [www.oipc.sk.ca](http://www.oipc.sk.ca) under the *Newsletters* tab.

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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*information from the public body or trustee; this would be a “disclosure”. Access is a right that all of us enjoy and unless there is a prescribed reason in the statute as to why access can be denied, is mandatory. Most disclosures are discretionary. In other words, it is for the public body or trustee to consider the discretionary power and then to decide whether, in the circumstances, disclosure will or will not be made.*

***A best practice would be to ensure that in any brochures, websites or other information for the public, “access” is used only in the context of the individual getting their own information.***

***The difference between access and disclosure is important for another reason under HIPA. When individuals exercise their right to seek access to their personal health information, they are entitled to their entire file regardless of their motivation or reason for seeking their file. On the other hand, when an insurance company, lawyer, or relative (or any other third party) requests records or information and produces a consent signed by the individual, this would be a “disclosure”. Unlike “access”, the general duties of a trustee under HIPA will apply. It becomes important for the trustee to understand why the information is requested.***

*Imagine that your doctor receives a request from an insurer dealing with your claim for compensation arising from a leg fracture. The fracture occurred when you fell on ice on private property. Imagine that the insurance company requests from your doctor all of your health record. The request may be accompanied by a general consent form signed by you that is not limited in any way. That would capture everything from a wart removal more than 15 years ago to a consultation to deal with anxiety from a marital spat or a workplace problem. Such a request from the insurer is a request for disclosure, not an access request under Part V of HIPA. As a trustee under HIPA, the doctor’s office should consider phoning the patient to clarify the purpose of the request. Once the purpose of the request is clarified, the doctor should only disclose the part of the patient’s health record that is determined to be relevant*

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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*to the injury in question, Otherwise, the trustee may be disclosing some personal health information to a non-trustee that the recipient would have no legitimate 'need to know'. (emphasis added)*

### **2004 – 2005 Annual Report**

*Our office has encountered a number of trustees that have not yet met all of the general duties. For example:*

- Some trustees do not have clear policy and forms to enable access and correction of personal health information by the subject individuals. In some cases trustees were not treating a request from an individual to access their own personal health information any differently than a disclosure of that same information to some outside agency. In fact they are different activities. An access request is a matter of right while disclosure is discretionary.*
- Some HIPA coordinators don't have obvious leadership roles in their respective trustee organization. In some cases, it appears that responsibility for HIPA compliance is vested in a committee of senior managers rather than the HIPA coordinator.*
- Some trustees fail to communicate to individuals their rights and remedies under HIPA.*
- A number of trustees have not yet completed the development of tools and training that are required to achieve full compliance with HIPA.*

*I am sympathetic to health regions, colleges and other trustees who are attempting to implement a complex new law with no new resources and with limited access to appropriate expertise. The response of Saskatchewan Health has largely been to initiate and support a large group known as the CIO Privacy Forum. This includes representatives of health*

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*



## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

---

regions, the Saskatchewan Cancer Agency, colleges and health profession regulatory organizations. Saskatchewan Health facilitates and hosts meetings of this group and provides legal advice. A number of subcommittees have been tasked with responsibility to develop tools for trustees.

*I have two comments with respect to the CIO Privacy Forum:*

- 1) *I understand the value in collaboration and cooperation among trustees and the kind of information sharing that follows. I am concerned however that in the startup of a new law like HIPA, there is a need for focused expertise for the timely development of implementation tools. In my view, at the time HIPA was proclaimed there was a need for a comprehensive manual with sample forms, practical examples and clear direction. The fact that one and one-half years after proclamation, many trustees are still dealing with an assortment of “draft” forms and incomplete policies suggests that more leadership from the department would have helped.*
- 2) *If the department didn't have the expertise or resourcing required to develop the manual, sample forms, etc., to coincide with proclamation of HIPA it should have contracted for that expertise to ensure that the efforts of trustees could be focused on comprehensive training rather than struggling to develop materials and policies on their own or even collectively through the CIO Privacy Forum.*

***When we make inquiries of many trustees, we are advised that they may not have this or that policy but that they are waiting for certain tools and policies to be developed by the CIO Privacy Forum. In our experience, it takes considerably longer to develop forms and procedures when they are done by committee. The responsibility for complying with HIPA however is vested in each trustee and cannot be sub-delegated to some third party.***

*I recommend that Saskatchewan Health proceed forthwith to produce a comprehensive manual to explain what HIPA entails in practical terms. This manual should include case studies, sample forms and appropriate advice on how to apply HIPA. Such a manual should*

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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*be made available to every trustee in the province. In addition, the website of Saskatchewan Health needs to be bolstered to provide practical information about HIPA to health sector workers or individual patients or clients. I encourage the department to overhaul its website to make it more useful and relevant to anyone seeking more information on how HIPA works in practice. I also recommend that the department prepare comprehensive HIPA training materials including audio-visual material that can be accessed by trustees at little or no cost.*

*I would encourage the department to continue its support of the CIO Privacy Forum but to enable that to be more of a clearing-house for experiences and shared learning rather than the body responsible for designing forms and materials that should properly be the responsibility of the department.”<sup>7</sup>*

(emphasis added)

*Although we have received few formal complaints under HIPA, we have spent a good deal of time working with trustee organizations and individual trustees to meet statutory requirements. Major problem areas identified to date include the following:*

- **ACCESS**

*We have encountered a number of trustees who have not responded to access requests within the statutory 30-day period. Other trustees have refused access altogether or have insisted that the applicant disclose the reasons for the access request before complying. In most of these cases, we have been able to refer these complainants to the appropriate regulatory body or college pursuant to section 42(2)(f). That provides as follows:*

*42(2) The commissioner may refuse to conduct a review or may discontinue a review if, in the opinion of the commissioner, the application for review:*

...

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<sup>7</sup> SK OIPC, *Annual Report 2004-2005* at page 34. Available online at <http://www.oipc.sk.ca/Reports/AnnualReport04-05.pdf>

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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*(f) concerns a professional who is governed by a health professional body or prescribed professional body mentioned in clause 27(4)(h) that regulates its members pursuant to an Act, and the applicant has not used a complaints procedure available through the professional body*

*Almost all of these complaints appear to have been satisfactorily resolved with the assistance of the professional body.”<sup>8</sup>*

### **2003 - 2004 Annual Report**

*Saskatchewan Health has worked very hard to build consensus among trustees on the types of tools necessary for implementation of HIPA. That is an important value and a noble goal. Nonetheless, it has been many months since this new law came into force and the pace of implementation is too slow. HIPA sets out important rights for patients in terms of the protection of their most sensitive personal data. This takes on added importance as this province moves towards an electronic health record – a development described in the Fyke Report as the “cornerstone of an efficient and responsive health care delivery system”<sup>9</sup>*

### **THE CIO PRIVACY FORUM**

It is apparent that a number of Privacy Officers are not familiar with the HIPA resources that our office has produced over the last six years. It has been suggested to me that regional health authority privacy officers have been relying instead on information they take from the CIO Privacy Forum.

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<sup>8</sup> Ibid at page 36.

<sup>9</sup> SK OIPC, *Annual Report 2003-2004* at page 15. Available online at <http://www.oipc.sk.ca/Reports/AnnualReport03-04.pdf>

## **REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES**

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The CIO Privacy Forum was created prior to my appointment in November 2003. It is hosted by Saskatchewan Health's Privacy Officer and includes the Privacy Officers for each Regional Health Authority. Our office is not represented at this Forum, but on rare occasions we have been invited to attend for a specific issue or discussion. Unfortunately, when HIPA was proclaimed on September 1, 2003 there were none of the necessary policies, forms, procedures, and granular training material in place.

The approach of Saskatchewan Health was to delegate to the Privacy Forum responsibility to develop those missing instruments. Unfortunately, there was a lack of expertise in privacy and health information with the result that there have been deficiencies in many of the tools that were developed by the Privacy Forum. On occasion, Saskatchewan Health would provide us with copies of certain materials and invite our feedback. On each such occasion we did provide detailed information on changes that we urged all regional health authorities to implement in those instruments.

Frequently, we have been advised by regional health authorities that they understood that if they were following advice from the Privacy Forum they were automatically in full compliance with HIPA. We have consistently advised Saskatchewan trustees that Saskatchewan Health is responsible for administration of the statute but the only explicit oversight role in HIPA was assigned to an independent officer of the Legislative Assembly, the OIPC. We have stressed that our office, in that oversight role, applies the applicable law and best practices based on our interpretation of the relevant statutes, the existing jurisprudence and privacy best practices that have been developed in Canada over the last 27 years. We will not be bound by interpretations by the Ministry or regional health authorities unless we have already determined those interpretations are appropriate and accurate.

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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When I was first invited to speak with the Privacy Forum in 2004 I specifically cautioned all members that the predictable problem areas that would warrant special attention on a priority basis would likely be (1) Access, (2) consent, (3) disclosure and (4) security. The identification of those problem areas reflects the extensive experience in Canada and elsewhere with privacy legislation. There would be particular importance in ensuring that there are appropriate policy, forms and procedures to manage access efficiently and smoothly.

### ACCESS WAS VIEWED AS FUNDAMENTAL FROM THE OUTSET

Access by the individual to his or her own personal health information is a vital element of HIPA. In moving Second Reading of Bill 29, *The Health Information Protection Act*, on April 26, 1999 the Government Member who introduced the Bill stated as follows:

*Since 1995, the Department of Health has worked to develop a comprehensive framework of health information management principles and broad policies within the public sector. These principles, Mr. Speaker, are consistent with the best national and international information management principles in the world today.*

*These principles include: accountability to the individual; collection, use and disclosure of personal health information only for legitimate health purposes; the right of individuals to access their own information; and that health professionals hold personal health information in trust for individuals, and manage it accordingly.*

...

*Individuals have the right to access their own personal health records held by an trustee in the system and to request amendments to those records if needed; individuals have the right to an appeal to an independent third-party arbitrator if they believe their personal health information is not being treated properly; individuals have the right to designate others to make decisions about their personal health information.”<sup>10</sup>*

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<sup>10</sup> Legislative Assembly of Saskatchewan, *Saskatchewan Hansard*, April 26, 1999 at page 762. Available online at: <http://www.legassembly.sk.ca/hansard/23L4S/990426H.PDF#page=15>

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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### NATIONAL STANDARDS

The essential reference for our office is HIPA. There is, however, no prescribed form in HIPA for an access request. In applying section 10 of *The Saskatchewan Evidence Act* and the ‘modern principle’ of interpretation however, we are also guided by several other resources that reinforce our particular interpretation of the relevant provisions of HIPA.

Our office has recommended that Saskatchewan trustees should be guided, subject to HIPA, by the *Guidelines for the Protection of Health Information*<sup>11</sup> developed by Canada’s Health Informatics Association (COACH). COACH, in its guidelines document, describes the overview of individual access as follows:

*The [Canadian Standards Association] enshrines in its Model Code, the philosophy of respect for individuals in a free society. The three principles supporting it are Openness, Individual Access and Challenging Compliance.*

*Only in the presence of Openness can Individual Access and Challenging Compliance take place. Individuals must be able to make informed decisions and, therefore, it is critical that individuals have knowledge not only about an organization’s information management procedures, but also about the existence and nature of their own personal information and the extent of access by others. Notification of indirect collections, uses and disclosures play an important part in an organization’s information management practices.*<sup>12</sup>

Among others, COACH suggests the following issues to consider:

*Organizations should formally document their procedures to receive and manage individuals’ access request and it is particularly useful to develop forms for such purposes.*<sup>13</sup>

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<sup>11</sup> Canada’s Health Informatics Association, *Guidelines for the Protection of Health Information*. Toronto (ON) Canada’s Health Informatics Association National Office 2009.

<sup>12</sup> Ibid at page 217.

<sup>13</sup> Ibid at page 217.

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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*The organization has a responsibility to facilitate the individual's right of access and correction.<sup>14</sup>*

The COACH guidelines for individual access include the following:

*Healthcare organizations should develop policies and procedures to receive and respond to individuals requesting copies of, or access to their personal records in the custody or control of the organization. Policies should include statements that are consistent with the CSA Model Code, for example:*

- The healthcare organization shall respect the individual's right of access and operate in an atmosphere of honesty and openness*
- The healthcare organization shall make every effort to respond to an individual applicant openly, completely and without delay.*

*Procedures should include processes that ensure consistent and timely processing of requests, for example*

- Develop a request form that assists the individual in providing the **necessary information to process the request.**<sup>15</sup>*

(emphasis added)

### HOW DO OUR REGIONAL HEALTH AUTHORITIES MEASURE UP?

- Is there an appropriate, clear and simple Access Form?**

The only examples I could find of an appropriate, clear and simple access form in use by any Saskatchewan regional health authority is that used by Sun Country Health Region and by Saskatoon Health Region but that is only in use in one of its facilities, namely City Hospital. For reasons described below, that Saskatoon form could be improved by

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<sup>14</sup> Ibid at page 220.

<sup>15</sup> Ibid at page 221.

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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ensuring that the reference to a hospital is in terms of where services were rendered rather than where the individual's personal health information may be stored.

There are major and minor problems with all other access forms that have been used by health regions for the last six years. We are left to wonder and speculate about how many Saskatchewan residents have been frustrated or denied in their efforts to exercise their access rights when they have been confronted by confusing, inaccurate and non-compliant forms. How many workers in our regional health authorities have been led by these defective access forms to assume that patients do not really have the kind of rights that HIPA codifies?

The Regina Qu'Appelle Health Region (RQHR) has provided us with a new draft *Request for Access to Personal Health Information* dated November 4, 2009 that it is currently "trialing" and I have provided feedback on that draft document. Saskatoon advises that it will immediately be utilizing their new access form in all of their facilities. Prince Albert Parkland has also advised that their access form is currently under revision. This would be very positive news but for the fact that HIPA is now more than six years old. If the Saskatchewan public cannot be assured of the right to access their own personal health information, there may be an erosion of public confidence in their regional health authorities.

### **Confusion that results by attempting to use a single form for patient access and for consented disclosure to third parties**

The best example of this would be the Regina Qu'Appelle *Consent for Release of Personal Health Information* that has been in use since August 2005. This form is inappropriate for purposes of an access request since it is obviously designed for consented disclosure of personal health information to a third party. This form requires that the patient/client consents to a facility or agency within that region "disclosing" to the patient/client their own information. It requires a time limited consent and a waiver of liability that has no place in the context of an access request. It purports to impose a

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*



## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

---

“confidentiality” limitation on the patient/client who actually owns their own personal health information and is, at law, free to do whatever they please with their own information.

On the other hand, Keewatin Yatthe Regional Health Region models both a simple and clear *Consent to Disclose Health or Personal Information* and a separate *Request for Access to Personal Health Information*. These documents have the distinct advantage of making it very clear to the patient/client what is the purpose and significance of each document. Similarly, Sun Country Health Region has separate simple forms for access by patients/clients and for disclosure to third parties. Sun Country’s *Consent for Release* would be improved if it referred to “disclosure” like Keewatin Yatthe has done instead of “release” which is not a term used in HIPA and could be understood by staff or the public to apply to both access and disclosure.

- **Confusion over the title of the access request form**

In Prince Albert Parkland, the access form is entitled “*Authorization for Release of Information*”. This would not be appropriate unless this is the form utilized for consented disclosure of personal health information to a third party. Why would any individual have to “authorize” the region to accommodate that individual’s access request? Release of information is usually discussed in the context of disclosure to a third party. As noted earlier, disclosure is an entirely different activity than responding to any individual’s access request. In the RQHR, the form is entitled *Consent for Release of Personal Health Information*. This is problematic and confusing for staff and patients alike.

A positive example is provided by Mamawetan Churchill River that appropriately styles its document as *Request for Access to Personal Health Information* and has a separate document entitled *Consent for Disclosure of Personal Health Information*. This is consistent with the best practice that we have been promoting for all Saskatchewan trustees. Unfortunately, there is language in the Mamawetan Consent for Disclosure

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

---

form that only applies to the patient request for access and suggests that that form could also be used for access purposes. The title of the forms used in Keewatin Yatthe, Sun Country, Kelsey Trail, Prairie North, Sunrise, Cypress, Heartland, and Five Hills health regions are appropriate.

### **Confusion over what is improper to include in an access request form**

The Prince Albert Parkland access form includes the item, *Reason for requesting the above information:* \_\_\_\_\_ .

This is inappropriate since a trustee is not entitled under Part V of HIPA to require a reason for any access request or to judge the sufficiency of any reason for access. In the RQHR access form, there is provision for identifying the purpose for release of information to anyone other than the individual patient but this is confusing since this has no place in an access request. This has been discussed in a number of our previous Reports including Reports H-2008-001 and H-2007-001.<sup>16</sup>

### **Confusion over geographic scope of a HIPA access request**

The access forms in use in Keewatin Yatthe, Kelsey Trail, Prairie North, Heartland, Cypress, Prince Albert Parkland, Mamawetan Churchill River, Regina Qu'Appelle and Five Hills health regions all include the following:

*Regional Program/Facility from which you are requesting access to personal health information:* \_\_\_\_\_ or similar wording.

This question presumably is intended to assist the Privacy Officer or health records person identify where to look for responsive records. However, under HIPA an individual who requests access from a RHA to their own personal health information is

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<sup>16</sup> All of our Reports are available on our website at <http://www.oipc.sk.ca/reviews.htm>

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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entitled to **all of that information in the custody or control of the RHA** unless they voluntarily elect to seek something less.

Patients cannot be expected to know whether some of their records have been moved to another facility, a records storage area, the region head office, etc. In the course of our health region and hospital tours around the province we have encountered many cases where records for treatment provided in one facility are temporarily or permanently stored in some other building within that region. It may be appropriate to ask where services have been provided to the patient. That would likely be helpful to the RHA in quickly determining where to search for responsive records. Nonetheless, regions are required to put in place procedures to ensure that they can respond to applicants in respect of all responsive records regardless of where those records may be physically located.

### **Confusion over content scope of a HIPA access request**

The note *“Details of Requested Information (Include date(s) and report(s) requested...Please describe in as much detail as possible, the information you want access to”* or a variation of this wording appears in the request form utilized in Kelsey Trail, Keewatin Yatthe, Heartland, Prairie North, Sun Country, Cypress, Five Hills, Mamawetan Churchill River, Prince Albert Parkland and Sunrise health regions. This makes sense in a form for consented disclosure to a third party but it does not accommodate the right of the patient to all of their information unless they choose to narrow their request.

This concern could be mitigated if health records staff were trained to explain to patients/clients that they were entitled to see all of their information in the custody or control of the region or they could access only certain portions of that record. I do not know whether that would be the case in all Saskatchewan regional health authorities.

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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The Five Hills requirement is that the applicant “*(Must state specific date(s) and report(s) requested).*” In my experience, patients may not recall the specific date even if they are only interested in a particular portion of their health record. It may be that the best they can do is to offer an approximate time. Similarly, they may not know what information is in a report, or a letter or some other document. Somehow Five Hills Health Region needs to communicate to its residents that their access request is not conditional upon providing a precise date and a precise description of any given document. There is a need for flexibility on the part of trustees in handling access requests to meet the access provisions in HIPA. Unless the region can find an appropriate way of communicating that message of flexibility it should ensure that the wording in its access form is more general and less prescriptive.

The Heartland requirement that “*all requests for information must contain sufficient detail to allow the health region to locate the personal health information requested*” places an unreasonable burden on the individual and relieves the region of ensuring it has an adequate region-wide record system. Furthermore, the phrase in Heartland health region policy 5.5 that “*only personal health information requested by an individual will be released*” is inconsistent with HIPA insofar as it suggests the patient/client is only entitled to a portion of their record.

Section 34(2)(b) of HIPA should not be viewed as a means of shifting responsibility for locating the personal health information of a patient/client. This subsection permits the regional health authority to ask for general information about the kinds of health services and location where services were provided. It would be inconsistent with the purpose and scheme of HIPA to interpret section 34(2)(b) to require a patient/client to identify where records are stored, what form or format they may be in, precise dates when records are created or whether records are in hard copy or electronic media. The patient/client may know what kinds of information about their health has been collected at different points in their care history but have little or no knowledge of how that information is recorded by care providers and what type of records exist at the point of the access request.

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

---

The responsibility of the regional health authority under section 16 of HIPA is to ensure that it has adequate record keeping systems, procedures, policies and practices such that it can readily locate and retrieve the personal health information of any applicant guided by that general information it obtains from the applicant.

### **Confusion over terminology**

In Sunrise health region, the access form includes the following: *1. To which custodian are you making your request. (Please fill in the name of the individual or organization)*". 'Custodian' is not a term used in HIPA. It is a term used in Ontario and Alberta stand alone health information laws to refer to those bodies and agencies subject to those laws. Presumably, Sunrise health region intended to refer to "trustee" which is the relevant term in Saskatchewan. In that regard, since the access request is being made to the regional health authority there is only that one trustee. Hospitals and any other facilities owned and operated by the particular regional health authority are not separate trustees. This is the same problem as suggesting that access requests must be made to a particular hospital when HIPA is designed around responsibility being fixed on the region not the facility.

### **Is there proper notice to patients/clients of the Access process?**

Section 9 of HIPA provides that:

*9(1) An individual has the right to be informed about the anticipated uses and disclosures of the individual's personal health information.*

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

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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*(3) A trustee must establish policies and procedures to promote knowledge and awareness of the rights extended to individuals by this Act, including the right to request access to their personal health information and to request amendment of that personal health information.*

(emphasis added)

All regional health authorities have a written policy dealing with access to information by patients/clients. Our office has provided detailed advice to these organizations about what should be included in such policies. All regional health authorities have produced a brochure to summarize that policy for the public.

### CYPRESS HEALTH REGION

The most troubling of these brochures is the one that is in current use by Cypress Health Region.

The brochure is deficient. It makes no mention of HIPA, no mention of the fundamental rights guaranteed by HIPA and provides a confusing mix of statutory rights and information about the general responsibilities and role of the Quality Support Coordinator. This brochure makes no mention of the right to appeal to the Information and Privacy Commissioner if dissatisfied with the response of the region. There is no contact information for the OIPC. In sum, the brochure cannot reasonably be viewed as a satisfactory response to the requirements of section 9 of HIPA. In addition, it confuses the policy initiative for quality support with the statutory requirements of HIPA that are obviously paramount to any policy initiative. This brochure raises other questions about the confusion that can result when a region chooses to assign FOIP/ HIPA compliance to the Quality Support Coordinator without addressing the differences in those two mandates.<sup>17</sup>

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<sup>17</sup> OIPC Annual Report 2007-2008, page 15

## **REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES**

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This concern was identified during our Cypress Health Region tour in 2007 and we understood that a new brochure was being designed to comply with HIPA.

### **REGINA QU'APPELLE HEALTH REGION**

The RQHR booklet – *Your Privacy Rights in the Regina Qu'Appelle Health Region* is accessible, accurate and useful. It might be useful if reference to HIPA appeared at the beginning of the publication instead of page 11.

The RQHR Policy Reference Number 503-1 includes confusing information. Article 1.2 conflates access by an individual with consented disclosure to a third party. On page 3 in item 1.6, it would be useful to describe the process to sever information where that is authorized. This would detail that the information to be severed is 'blacked out' so it is apparent to the individual that something has been withheld and the insertion of the appropriate section number relied on by the Region in undertaking the severing.

### **SUN COUNTRY HEALTH REGION**

I have reviewed the brochure – *PRIVACY – Our Commitment to You*. This publication makes no mention of HIPA. There is no reference to the right to seek amendment of a person's health record. The first paragraph includes the statement: "*However your right of privacy must be a balance against our ability to provide quality services to you.*" This is inaccurate and unhelpful as it sets up a contest between quality service and privacy instead of promoting the notion that privacy is an integral element of quality service. Privacy relates to the measure of control exercised by patients/clients not to absolute secrecy even among members of the care team. In any event, if someone requests a health service, there is implied consent for the collection, use and disclosure of personal health information as required for the diagnosis, treatment and care of an individual.

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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Sun Country has done a nice job of making its privacy policy easily accessible on its website. It is useful to have included information about section 4 of HIPA and the statutory definition of “personal health information”. The policy also makes the point that the access request captures what is “in the custody or control of Sun Country Health Region” and the reader is invited to contact the Privacy Officer for more information.

Clause 2.0 appears to shift the onus to the applicant in terms of identifying where the applicant’s records may be located. “All requests for information are to be specific and only the specified information will be released.” I’m frankly not clear what the purpose is of such a direction. Since the applicant may want all of his or her personal health information, the applicant need only establish their identity. They should be invited to advise where they received service within the region. Beyond that, it is the responsibility of the region to ensure that all of the personal health information is located, assembled and then provided to the applicant. It is wise for any region to promote communication with the patient/client once an access request has been received. This is usually the most effective and efficient way of clarifying the information sought by the patient/client.

The duty to assist in section 35 of HIPA requires that the region responds to an applicant openly, accurately and completely. In other words, if someone seeks information related to a particular injury or course of treatment and that may have involved visits to a physiotherapy centre operated by the region as well as an acute care facility for surgery, the responsive record would be any records that could possibly relate to the surgery but also preparatory and subsequent treatment. In other words, the focus should be on going wider if in any doubt of what would be responsive, not narrowing or reading down the scope of the request.



## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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### **KELSEY TRAIL HEALTH REGION**

The brochure usefully includes a map of the region and identifies the centres in the region. It seems confusing to include the HealthLine information on the privacy brochure since I have no idea what role HealthLine would have for answering questions about HIPA. There is no reference to the right to seek correction of errors in one's record - an important right in HIPA. There is also no reference in the brochure to the statute itself.

The poster in Kelsey Trail is, for the most part, appropriate. I would suggest a clarification that in the first instance, the aggrieved citizen should seek a resolution from the region's Privacy Officer and only if dissatisfied with the region's response should they contact the Office of the Information and Privacy Commissioner. The Kelsey Trail poster has incorrect contact information for our office and needs to be updated.

### **FIVE HILLS HEALTH REGION**

The brochure entitled *Privacy – Our Commitment to You* is generally appropriate although it makes no mention of HIPA, and omits any reference to the right to request amendment of a personal health record. Like a number of other regions' brochures, there is no reference to two of perhaps the most important general duties of trustees (data minimization rule and need to know rule). The data minimization rule is that a trustee should collect, use and disclose the least amount of personal health information necessary for the purpose. The 'need to know' rule is that an organization must take steps to ensure that only those employees with a legitimate need to know can use any patient's personal health information.

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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### SUNRISE HEALTH REGION

The Sunrise Health Region brochure is appropriate although instead of inviting patients to submit the access request to persons at “*the facility that holds the information that you wish to review*” it would be preferable to ask the patient to identify the facilities where they have received services. Sunrise Health Region’s Request to Access Personal Health Information appears to be reasonably straightforward although there are confusing elements such as “*Question 1.: “What records do you want to access?”*” That may suggest to a patient/client that access cannot be provided to all records of the individual.

Our office has repeatedly indicated that the default is to provide copies of all records of the individual in the custody or control of the trustee unless the individual volunteers to limit the request to only certain records. The same comment applies to the question “*2. What is the time period of the records? Please give specific dates*”.

I question the notice on the bottom of the request form “*Please submit your request to the facility /program where the information is retained*”. As noted above, although the individual could be asked to indicate where services were received, it is up to the region not the patient to determine where the responsive records may be located.

The reference on the informational brochure to “*Please direct your request to the Health Records Department, Program or Facility Manager, at the facility that holds the information you wish to review*” should be revised to substitute “*at the facility at which you received health services*” in place of “*at the facility that holds the information you wish to review*”.

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

---

### MAMAWETAN CHURCHILL RIVER HEALTH REGION

The Mamawetan Churchill River Health Region brochure entitled *Your Right to Privacy and Confidentiality and Our Commitment to You* is quite skeletal. It makes no mention of HIPA, does not address the individual's right to seek amendment of their personal health information and fails to advise the reader that they have the right, if dissatisfied with the response they get from the Region, to appeal to the Office of the Information and Privacy Commissioner.

It is inaccurate to say that “*your health record is the physical property of the individual health care facility or clinic.*” The physical record of someone's personal health information is in the custody or control of the trustee organization and in health regions each facility or clinic is not likely to qualify as a trustee on its own.

### HEARTLAND HEALTH REGION

The Heartland Health Region brochure makes no mention of HIPA and fails to describe the right to amend their personal health information. In the Heartland Health Region policy document the provision for severing on page 5 should be revised so the severed information is ‘blacked out’. To ‘white out’ portions of a record does not clearly reveal to the patient that there has been severing.

To require an individual who has requested correction of their personal health information to then further request that a notation be placed in his or her record if the region refuses the correction seems confusing and cumbersome. If a correction is requested and denied, then the notation should be made without the requirement of further direction from the individual. Further, section 5.5 of the Heartland Health Region policy requires that “*the form shall be signed and submitted to the facility health records department or the program's manager/director*”. It is not a requirement of HIPA that the request must be facility specific and it is acceptable if the request is submitted to any facility within a region and captures all records under the control of the region.

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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On page 8 of the Heartland policy, the question on the bottom of the page should be revised so it is clearer that reference is being made to section 38(1)(c) of HIPA.

### PRINCE ALBERT PARKLAND HEALTH REGION

The brochure entitled *Your Privacy Rights in the Prince Albert Parkland Health Region* is an excellent publication that appropriately identifies HIPA, discusses different activities involving personal health information and details how patients/clients can easily get more information or register a concern.

### KEEWATIN YATTHE REGIONAL HEALTH AUTHORITY

I have reviewed the brochure, *PRIVACY Our Commitment to You*. The brochure does not clearly indicate that the aggrieved patient/client should first contact the region's healthcare facility or physician, then the region's Privacy Officer and if still dissatisfied, then to contact the OIPC. The address for the OIPC is wrong and should be #503, 1801 Hamilton Street, Regina, SK S4P 4B4. There is no reference to HIPA. There is no reference to the right to seek amendment of anyone's health information. I checked the region's website to determine if more accurate information appears in that place. I found however, that the website for Keewatin Yatthe Regional Health Authority is not at all helpful in determining how that region complies with HIPA. There is no mention of HIPA, access rights or process, amendment of personal health information or the role of the Privacy Officer. There is a need to address the transparency obligations, particularly those in section 9 of HIPA. I have seen no evidence that the requirements of section 9 have been fully met by this region.

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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### PRAIRIE NORTH HEALTH REGION

The brochure entitled *Privacy: Keeping Your Personal Health Information Confidential* contains much useful information for the public. The title, however, is problematic since ‘confidentiality’ is but a smaller and included feature in ‘privacy’. Privacy also, however, includes the right of access, the right to seek amendment of errors, accountability and independent oversight which are not captured by the term ‘confidentiality’.

There is appropriate contact information for the OIPC however, this is not presented as the last stage in a sequenced approach for the patient seeking information. It is more accurate to say – “*If you are dissatisfied with the Region’s response, you can contact the [OIPC]*”. That would make it more likely that patients will first seek information at the regional level which is appropriate. When the aggrieved patient is presented simply with a list of offices and phone numbers, that patient is more likely to call our office first and then have to be redirected back to the region. That redirection can be largely avoided if our recommendation is followed.

There is no reference to the right to seek correction of errors in someone’s personal health information. The FAQs are a good idea but the initial question is unhelpful. The question of ‘who owns my health record’ seems more provocative than necessary and the answer is not an accurate reflection of the law. If a region operates six different facilities, it clearly is the corporate region that has either custody or control for purposes of HIPA and not the six different facilities.

To say that “*you may get the information you require*” sounds like the language appropriate to a consented disclosure to a third party. The right of access extends to all information of the patient/client regardless of motive and the region as a trustee is not entitled to assess “*what is required*” since that is uniquely the choice of the individual not the region. Why not start with the question: Am I entitled to a copy of my health record?

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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The answer might then be: Although the region owns the physical record that contains your personal health information, you are entitled to a copy of your information. You are also entitled to request correction of errors in the record of your personal health information. The second question suggests that it is the region that decides when the patient/client gets a copy and when they will review the original. This is inconsistent with HIPA.

It is good to include the ‘need to know’ rule in the final FAQ.

### SASKATOON HEALTH REGION

The brochure, *Respecting Your Privacy and Confidentiality*, includes much useful information that is clearly presented. It makes no mention however of the patient’s right to seek amendment of errors in their record. Again like Prairie North Health Region, the question *Who owns my health record ?* can be confusing.

That element states:

*Question: Who owns my health record?*

*Answer: Your health record is the physical property of the health care facility or region, although you may get the information you require.*

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If someone seeks access to their personal health information from a health region, the particular health care facility is not a trustee. Access requests must go to the health region as the appropriate ‘trustee’.

In addition, it would be more accurate to say that while the physical record is the property of the health region, the personal health information in that record belongs to the patient. Furthermore, the suggestion that someone “may” get their information seems very weak.

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*

## **REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES**

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In fact, the patient has a right to access their own personal health information subject only to limited and specific exceptions.

In addition, it should be stated that “If you are dissatisfied with our response, you have the right to appeal to the Office of the Information and Privacy Commissioner of Saskatchewan.” As noted in some other regions, simply listing a series of phone numbers doesn’t assist the patient to understand the best process to obtain information.

### **CONCLUSION**

Despite our efforts to communicate best practices and legislative requirements to regional health authorities since 2003, the fact that one of the most straightforward elements of HIPA is still being dealt with unsatisfactorily suggests there is much more work to be done.

In a number of our health regions, the exercise of the patient/client’s right of access has been made more complicated and more difficult than is necessary. This reality certainly seems to reinforce a key message from the Patient First Review - that we have in our province a provider-focused health care system not a patient focused system. To ensure a high level of public confidence in the move to electronic health records for every resident of Saskatchewan more attention must be focused on providing clear, simple and efficient access to patients/clients of our existing paper records.

## REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO SASKATCHEWAN REGIONAL HEALTH AUTHORITIES

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### RECOMMENDATIONS

1. That all regional health authorities immediately ensure that they are utilizing a separate, dedicated form for patients who wish to access their own personal health information.
2. That this access form should be suitably entitled for its purpose. For example: *Request for Access to Personal Health Information*.
3. That this access form should include provision for the requester who is a surrogate for the patient/client when exercising the right of access and not seeking a consented disclosure of personal health information.
4. That all regional health authorities immediately cease to use a 'consented disclosure' form for purposes of the exercise of access by a patient/client.
5. That all regional health authorities should immediately purge from their access forms wording that is only suitable for processing a consented disclosure of personal health information under section 27 of HIPA.
6. That the access form should be as simple as possible and should not include any requirement to waive liability claims against the corporate regional health authority or any of its staff, should not require that the applicant provide a reason for the access request, and should not require that any particular service, location or date of service be provided.
7. That HIPA information made available to the public by brochure, policy or via a website should clearly reference HIPA, should address access to and amendment of personal health information and should encourage any aggrieved patient/client to seek resolution of their complaint at the regional level before escalating the complaint to the OIPC.



**REPORT ON MANAGEMENT OF ACCESS REQUESTS FROM PATIENTS TO  
SASKATCHEWAN REGIONAL HEALTH AUTHORITIES**

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8. That regional health authorities should adopt a separate form for consented disclosure of personal health information that reflects the data minimization rule and need to know rule.
9. That regional health authorities ensure their staff, particularly their health records staff, are exposed to detailed training on access by patients/clients to their own health information and this should include differentiating the exercise of a right of access from the exercise of a consented disclosure of that personal health information to a third party.
10. That regional health authorities should, wherever possible, avoid making the Quality Support Coordinator also the HIPA Coordinator or Privacy Officer so that the primacy of HIPA responsibilities is not lost or diminished.
11. That if it is deemed necessary by any region that the Quality Support Coordinator also serves as the HIPA Coordinator or Privacy Officer, that there be separate brochures or communication pieces for the public and further that there is detailed training so that the individual has a comfortable understanding of the differences in those two roles.

R. Gary Dickson, Q.C.

Saskatchewan Information and Privacy Commissioner

*Saskatchewan Information and Privacy Commissioner, December 14, 2009*