

# Manitoba Ombudsman

## REPORT UNDER

## THE PERSONAL HEALTH INFORMATION ACT

CASE 2017-0297

## HEALTH-CARE FACILITY

## PRIVACY COMPLAINT: COLLECTION OF PERSONAL HEALTH INFORMATION

PROVISIONS CONSIDERED: 13(1)

REPORT ISSUED ON DECEMBER 7, 2017

**SUMMARY:** An individual attended a follow up appointment as an outpatient at an adult day surgery clinic at a Winnipeg hospital. As part of the check-in procedure, the individual was asked to indicate her religion for the admissions record. The individual believed that the collection of this information was unnecessary to the provision of health care and she objected to the collection. She subsequently made a complaint to our office that the collection of this information did not comply with PHIA. Our office found that the collection of information about the complainant's religion was not necessary for the purpose of the health care being provided to her and this complaint was supported. The hospital agreed to implement procedures to limit the collection of this information to circumstances which may reasonably involve the provision of spiritual care to patients.

## THE COMPLAINT

The complainant attended an adult day surgery clinic at a Winnipeg hospital, a trustee under the Personal Health Information Act (PHIA or the act). On presenting herself at reception, in addition to confirming her address, phone number and emergency contact information, the individual was asked to provide her 'religion' for the admissions record. The complainant did not object to the collection of her contact information as she viewed this collection as appropriate to receive treatment. The complainant objected to providing her 'religion' as she believed the

collection of this information by the hospital was unnecessary for the purpose of providing health care to her. The complainant declined to give this information.

The complainant believed that the collection of information related to ‘religion’ was not authorized under PHIA and she made a complaint to our office on July 28, 2017.

## INVESTIGATION AND ANALYSIS

When investigating a complaint concerning the collection of personal health information under PHIA, our office will consider whether or not the trustee has fulfilled its obligations under the act.

PHIA places restrictions on the collection of personal health information by trustees to ensure that the information being collected is:

- for a lawful purpose connected with a function or activity of the trustee
- necessary for that purpose, and
- limited to the amount of information that is necessary for that purpose

These restrictions protect the privacy of individuals’ personal health information by preventing the “over collection” of information not reasonably needed by trustees. The restrictions apply whether or not an individual complies with a trustee’s request to provide personal health information that is not needed by the trustee. This means that a trustee bears responsibility for ensuring its collection is authorized under PHIA. If a trustee’s collection of information is not authorized, the cooperation or agreement of the individual to provide the trustee with unnecessary information will not make the collection authorized under PHIA.

### **Is the information at issue personal health information as defined under PHIA?**

The information at issue in this complaint is information about the complainant’s ‘religion’. PHIA defines personal health information as follows:

*"personal health information" means recorded information about an identifiable individual that relates to*

*(a) the individual's health, or health care history, including genetic information about the individual,*

*(b) the provision of health care to the individual, or*

*(c) payment for health care provided to the individual,*

*and includes*

*(d) the PHIN and any other identifying number, symbol or particular assigned to an individual, and*

*(e) any identifying information about the individual that is collected in the course of, and is incidental to, the provision of health care or payment for health care;*

Our office considered clause (e) to be relevant in the circumstances of this complaint. We note that incidental means in connection with, related to, or associated with something else. As explained by the hospital, information concerning the ‘religion’ of patients is collected from all individuals by Admissions on their first visit to the hospital for treatment, regardless of the type of treatment provided (inpatient admissions, outpatient or day surgery and clinical visits). In our view, as the individuals presenting at the hospital do so to be provided with health care, information concerning religion is collected in the course of, and is incidental to, providing health care. Our office concluded that the information concerning ‘religion’ which is collected as part of the admissions process at the hospital attended by the complainant is personal health information within the definition found in PHIA.

**Is the hospital’s collection of information relating to the ‘religion’ of the complainant, as an outpatient, authorized under PHIA?**

PHIA restricts the collection of personal health information as set out in subsection 13(1) of the act, as follows:

***Restrictions on collection***

**13(1)** *A trustee shall not collect personal health information about an individual unless*

- (a) the information is collected for a lawful purpose connected with a function or activity of the trustee; and*
- (b) the collection of the information is necessary for that purpose.*

Clause 13(1)(a) requires that personal health information is collected for a lawful purpose connected with a function or activity of the trustee; in this instance, the provision of health care. The hospital explained to our office that the collection of information relating to religious affiliation as part of the admissions process is for the purpose of providing spiritual care. We note the following definitions found in PHIA:

***"health"*** *means the condition of being sound in mind, body and spirit;*

***"health care"*** *means any care, service or procedure*

- (a) provided to diagnose, treat or maintain an individual's health,*
  - (b) provided to prevent disease or injury or promote health, or*
  - (c) that affects the structure or a function of the body,*
- and includes the sale or dispensing of a drug, appliance, device, equipment or other item pursuant to a prescription;*

As indicated above, PHIA defines health as the condition of being sound in mind, body and spirit and health care is defined as any care, service or procedure provided to diagnose, treat or maintain an individual's health. Providing spiritual care may, therefore, be considered as part of health care and collection of 'religion' would be for a lawful purpose connected with a function or activity of the trustee (providing spiritual care in association with health care). Our office concluded, therefore, that there would be authority under clause 13(1)(a) to collect 'religion' in order to provide spiritual care in association with providing health care.

We note that clause 13(1)(b) of PHIA requires that the collection be *necessary* for the lawful purpose, in this case for the purpose of providing health care. The hospital explained to our office that the collection of a patient's religion is done on a voluntary basis for the purpose of facilitating the provision of spiritual care in association with health-care services, by the hospital itself or by a religious organization as is contemplated and permitted by subsection 23.1(1) of PHIA, as follows:

***Disclosure to religious organization***

***23.1(1)*** *In the case of an individual who is a patient in a hospital or is a resident of a personal care home, the hospital or personal care home may disclose*

*(a) the individual's name and general health status; and*

*(b) the individual's location, unless disclosing the location would reveal specific information about the individual's health;*

*to a representative of a religious organization.*

The hospital also explained that information concerning a patient's religion is also important when a patient becomes gravely ill or passes away in order that any required religious rites may be provided in a timely manner.

However, the hospital has also acknowledged that spiritual care is not offered or provided to outpatients, many of whom (like the complainant) attend the facility for minor procedures. The collection of an outpatient's 'religion' would only become necessary to the provision of health care in the unlikely eventuality that an outpatient becomes an inpatient.

Our office also reviewed the hospital policy "Disclosure of Personal Health Information to Religious Organizations" (effective June 11, 2010), a copy of which was provided to us. We note that, while the trustee's representations to our office indicate that, in practice, all patients are asked the question "Would you like to state your religion?" by reception, the policy references only hospital *inpatients* (and residents of personal care homes). This is consistent with the fact that spiritual care is only offered to inpatients. It is also consistent with the intent of subsection 23.1(1) of PHIA, which states that a hospital (or personal care home) may disclose an

individual's name and general health status to a representative of a religious organization in the case of an individual who is a patient in a hospital or is a resident of a personal care home.

As spiritual care is not provided to an outpatient, and as the complainant was not reasonably likely to become an inpatient as the result of having a minor outpatient procedure, our office concluded that the collection of information concerning the complainant's religion is not necessary as it was not required for the purpose of providing her with health care. Accordingly, our office found that the collection of information relating to 'religion' from the complainant contravened clause 13(1)(b) of PHIA.

## **CONCLUSION**

Our office discussed with the hospital our finding that the collection of information relating to the complainant's 'religion' was not authorized under PHIA and that this finding would also be applicable to the collection of this information from other outpatients. The hospital acknowledged that by collecting 'religion' from outpatients, the facility had collected personal health information that was in excess of that which was necessary. The hospital agreed to implement procedures to limit collection of information regarding 'religion' to only those patients who could reasonably be expected to receive spiritual care.

Our office reviewed the information the hospital provided to us about proposed changes to its procedures, which the hospital anticipates implementing in early 2018, and we concluded that the trustee is taking reasonable and appropriate steps to address the unauthorized collection of personal health information.

December 7, 2017  
Manitoba Ombudsman