

Manitoba Ombudsman

REPORT UNDER

THE PERSONAL HEALTH INFORMATION ACT

CASE 2017-0479

THE VICTORIA GENERAL HOSPITAL

PRIVACY COMPLAINT: SECURITY OF PERSONAL HEALTH INFORMATION

PROVISIONS CONSIDERED: 18(1), 19

REPORT ISSUED ON NOVEMBER 8, 2018

SUMMARY: The complainant attended the Victoria General Hospital (the hospital) for a medical procedure. A nurse collected the complainant's medical history through a verbal discussion in a semi-public area of the hospital, where others could hear the discussion. A complaint was made to our office that the hospital failed to adequately safeguard the complainant's personal health information in the process of collecting the information, contrary to the Personal Health Information Act (PHIA or the act). Our office found that the hospital's safeguards did not adequately protect personal health information from the risk of inadvertent unauthorized disclosure, and the complaint is supported. During our investigation, the hospital made changes to the layout of the unit to provide greater physical and visual separation of patients during the intake procedure. Based on these changes, our office concluded that reasonable safeguards have been implemented to protect personal health information discussed with patients during the intake process.

COMPLAINT

The complainant attended the Victoria General Hospital (the hospital) for a medical procedure in the fall of 2017. A nurse met with the complainant in a semi-public area of the hospital and collected the complainant's medical history, which included details of various medical procedures the complainant had in the past. The complainant's concern was that other people could overhear her personal health information being discussed.

The complainant indicated that this discussion occurred in a waiting area with six chairs. Two individuals were seated next to her as "close as they would be in a movie theatre." The complainant also indicated that people were walking past and there were other hospital staff in the area who may have been able to hear the conversation. She indicated that her personal health information would therefore have been revealed to these people.

An individual who believes that his or her personal health information has been collected, used or disclosed in violation of the Personal Health Information Act (PHIA or the act) may make a complaint to the ombudsman under subsection 39(2) of PHIA. A complaint may also be made if an individual believes that a trustee has failed to protect his or her personal health information in a secure manner.

Our office received a privacy complaint under PHIA on December 12, 2017. We had discussions with the complainant to clarify the nature of her complaint. Based on clarification we received from the complainant, we proceeded to investigate her complaint about a perceived failure to protect the security of her personal health information during collection by the hospital.

INVESTIGATION

The hospital is a trustee under PHIA and has privacy obligations under the act, including with respect to the collection and security of personal health information. As the Winnipeg Regional Health Authority (the WRHA) operates the hospital and the WRHA is responsible for ensuring that the hospital meets the requirements of PHIA, our office communicated with the chief privacy officer of the WRHA for the purposes of our investigation.

PHIA requires trustees to ensure that reasonable security safeguards are in place to protect personal health information. Sections 18 and 19 of PHIA set out a trustee's duties with respect to the security of personal health information:

Duty to adopt security safeguards

18(1) In accordance with any requirements of the regulations, a trustee shall protect personal health information by adopting reasonable administrative, technical and physical safeguards that ensure the confidentiality, security, accuracy and integrity of the information.

Safeguards for sensitive information

19 In determining the reasonableness of security safeguards required under section 18, a trustee shall take into account the degree of sensitivity of the personal health information to be protected.

Further to the complaint, our office contacted the WRHA about the measures in place at the hospital to maintain the privacy and security of personal health information being collected. Specifically, we requested that the WRHA provide information related to the physical and administrative safeguards in place for the area of the hospital where the complainant's personal health information was collected during the intake process.

In its response, the WRHA included a diagram of the area in question, which showed a waiting area with five chairs with some of the chairs having a screen between them to provide some privacy. Across from the chairs are several stretcher bays that can be blocked off from the public area to provide increased privacy.

We also requested any information from the WRHA regarding the ability of the hospital to implement further measures to protect the privacy and security of personal health information in that area. The WRHA indicated that while the hospital would prefer to provide a stretcher bay to all patients, due to space limitations, day surgery patients are prioritized for the stretcher bays as their procedures are more likely to involve multiple care providers and are a higher risk of exposing personal health information. Other patients may be assigned a chair if all of the stretcher bays are occupied.

The WRHA stated while it recognized that a screen does not provide an adequate sound barrier, the collection of personal health information is necessary to ensure safe and effective care and that the hospital takes every reasonable measure available to ensure patient privacy is protected. This includes limiting the amount of information collected to the minimum necessary to provide the service and speaking quietly as is reasonable under the circumstances.

The WRHA indicated that the types of personal health information collected by care providers would include name, date of birth, Personal Health Identification Number (PHIN), medical/surgical history, medications, confirmation of requisite pre-operation preparation taken, allergies, previous surgical complications, mobility status, denture/hearing aids and other information that may impact patient care or safety.

Our office asked the WRHA about the possibility of patients providing the necessary personal health information in writing either in advance of their appointment or on arrival rather than verbally. We considered that, given the limitations of the physical space, allowing patients to provide their personal health information in writing first might reduce the verbal discussion of the patients' personal health information to only the information that needed to be clarified.

The WRHA indicated that patients may not be aware that of all the types of information that are highly relevant to the care provided and the patient's ongoing health. The WRHA advised that even if this information was provided in writing, the care provider would still be required to confirm details in person with the patient. Patient safety standards require verification of certain critical information by care providers at intake and this requires care providers to speak directly with the patient as obtaining this information in writing could eliminate the important nuances in the information which may impact care decisions.

Additionally, the WRHA indicated that the patient's physician provides personal health information about the patient in writing prior to the scheduling of the procedure. However, some of that information needs to be clarified or confirmed with the patient on arrival. The WRHA also provided our office with a blank copy of the three-page form that is supplied by the physician, which includes a wide range of personal health information about the patient.

The WRHA advised our office that, subsequent to the complaint, the hospital undertook a review of its intake practices in this area of the hospital. Based on this review, it determined that some changes could be made to improve patient privacy. The WRHA indicated that intake for **endoscopy patients**, like the complainant, was moved to a separate intake area and any necessary personal health information is collected at a desk with only a nurse present.

The WRHA further advised that this move reduced the volume of patients in the other intake area and, as a result, discussions with patients can occur in the stretcher bays instead of the chairs where patients may be seated right next to each other. While other patients are still in the vicinity of the intake desk and the stretcher bays, they are not within the immediate vicinity of a patient providing their personal health information.

Lastly, the WRHA indicated that while there remains the possibility that the exchange of personal health information could be overheard, staff limit any discussion to only the minimum amount of information necessary and try to be as careful as possible when discussing this information.

Our office reviewed the changes made by the hospital to improve patient privacy. We are satisfied that, while there is still some risk that personal health information could be inadvertently disclosed to third parties, the hospital has taken all reasonable steps to limit this risk to patient privacy.

CONCLUSION

Our office reviewed the hospital's physical and administrative security measures that were relevant to the collection of patients' personal health information in the context of this unit, to ensure that all reasonable steps are taken to protect patients' personal health information.

We understand that to ensure the safety of patients and provide adequate care, verbal communication may be necessary to clarify details of the patient's medical history. However, our office was of the view that further steps could be taken to implement additional security safeguards to protect personal health information collected during the intake process. Therefore, the complaint is supported.

The hospital reviewed its physical and administrative safeguards and made changes to the layout of the unit and to the intake procedure. Our office is satisfied that the implementation of these changes meets the requirements for reasonable safeguards for personal health information as required by PHIA.

November 8, 2018
Manitoba Ombudsman

