

Manitoba Ombudsman

REPORT UNDER

THE PERSONAL HEALTH INFORMATION ACT

CASE 2018-0299

MANITOBA PUBLIC INSURANCE

PRIVACY COMPLAINT: DISCLOSURE OF PERSONAL HEALTH INFORMATION

PROVISIONS CONSIDERED: 19.1(1), 20(1), 20(2), 22(2)(k), 22(2)(o), 22(3)

REPORT ISSUED ON SEPTEMBER 27, 2018

SUMMARY: The complainant made an injury claim with Manitoba Public Insurance (MPI) and subsequently appealed MPI's decision to the Automobile Injury Compensation Appeal Commission (AICAC). As part of the appeal process, MPI provided copies of four reports containing the complainant's personal health information to AICAC. In a complaint to our office, the complainant alleged that MPI disclosed his personal health information to AICAC without his consent, contrary to the Personal Health Information Act. The ombudsman found that the disclosure of the complainant's personal information in this manner was authorized. Therefore, the complaint is not supported.

COMPLAINT

On July 5, 2018, our office received a privacy complaint under the Personal Health Information Act (PHIA or the act). The complainant asked us to investigate an alleged unauthorized disclosure of his personal health information by Manitoba Public Insurance (MPI or the trustee). MPI is a trustee, as defined under PHIA, and is therefore subject to the application of PHIA in its collection, use and disclosure of personal health information.

The complainant explained that he had made an injury claim with MPI and that several medical reports were prepared as part of this process. The complainant subsequently appealed MPI's decision in relation to his injury claim with the Automobile Injury Compensation Appeal Commission (AICAC). The complainant also acknowledged that he had signed a consent form which authorized MPI to disclose his personal health information. However, he indicated that he did not specifically consent to MPI providing his personal health information to AICAC.

The complainant indicated that MPI provided AICAC with his personal health information, consisting of four reports in 2016. It is the position of the complainant that this personal health information should not have been disclosed without his consent. Under section 39(2) of PHIA an individual who believes that his or her personal health information has been collected, used or disclosed by a trustee in violation of PHIA may make a complaint to the ombudsman.

POSITION OF THE TRUSTEE

MPI advised that it provided AICAC with four reports on August 8, 2014, not in 2016 as indicated by the complainant. The trustee indicated that the reports were provided as required by the Manitoba Public Insurance Corporation Act (the MPIC Act) as part of the appeal process.

Given that the complainant disputed that he had given consent, MPI's representations focused on provisions of PHIA that authorized disclosure without consent. In its response to our office, MPI indicated that clauses 22(2)(k) and 22(2)(o) of PHIA authorized it to disclose the reports to AICAC. MPI stated that under section 175 of the MPIC Act, AICAC is a specialist tribunal that has the power to hear injury claim appeals. Therefore, a hearing before AICAC is a quasi-judicial or civil proceeding as referenced under clause 22(2)(k) of PHIA. Clause 22(2)(o) allows a trustee to disclose information as authorized or required by another act. MPI indicated that section 181 of the MPIC Act required MPI to disclose the information to AICAC.

ANALYSIS OF THE ISSUES AND FINDINGS

Was MPI authorized under PHIA to disclose personal health information about the complainant?

The main issues to be determined in the investigation of a complaint about the disclosure of personal health information by a trustee are:

- whether the disclosure was authorized under PHIA;
- and, if the disclosure was authorized, whether the disclosure was limited to only the personal health information necessary for the purpose for which it was disclosed.

Section 20 of PHIA places restrictions on the disclosure of personal health information by trustees.

General duty of trustees re use and disclosure

20(1) *A trustee shall not use or disclose personal health information except as authorized under this Division.*

The complainant acknowledged to our office that he signed a consent form provided by MPI. The complainant provided our office with a blank copy of the consent form, which we reviewed. Our office notes that subsection 22(1) of PHIA authorizes a trustee to disclose personal health information about an individual if the individual consents to the disclosure.

Individual's consent to disclosure

22(1) *Except as permitted by subsection (2), a trustee may disclose personal health information only if*

(b) the individual the information is about has consented to the disclosure.

Subsection 19.1(1) sets out the elements of consent as required by PHIA.

Elements of consent

19.1(1) *When this Act requires an individual's consent for the use or disclosure of personal health information, the consent must*

(a) relate to the purpose for which the information is used or disclosed;

(b) be knowledgeable;

(c) be voluntary; and

(d) not be obtained through misrepresentation.

Based on our review, our office is of the view that the consent form that the complainant indicated he signed would meet the elements of consent as set out in subsection 19.1(1) of PHIA. While a consent form of this nature would generally be sufficient authority for a trustee to disclose personal health information without the need for further authorization under other sections of PHIA, our office notes that the complainant has asserted that his consent did not apply to the disclosure of the four reports to AICAC. Therefore, our office also examined whether the disclosure of the four reports by MPI to AICAC was authorized under subsection 22(2) of PHIA.

Subsection 22(2) of PHIA sets out when personal health information can be disclosed by a trustee without the consent of the individual the information is about. MPI took the position that clauses 22(2)(k) and 22(2)(o) of PHIA authorized it to disclose information about the complainant to AICAC.

Disclosure without individual's consent

22(2) *A trustee may disclose personal health information without the consent of the individual the information is about if the disclosure is*

(k) required in anticipation of or for use in a civil or quasi-judicial proceeding to which the trustee is a party, or to which the government is a party if the trustee is a department;

(o) authorized or required by an enactment of Manitoba or Canada.

MPI also cited sections 175 and 181 of the MPIC Act:

Automobile Injury Compensation Appeal Commission established

175 The Automobile Injury Compensation Appeal Commission is established as a specialist tribunal to hear appeals under this Part.

Corporation to provide information

181 The corporation shall without delay forward to the commission any record or other information that the commission requests in respect of an appeal filed under this Part.

MPI identified the MPIC Act as being the enactment that authorizes disclosure of the complainant's personal health information to AICAC. Under section 175 of the MPIC Act, AICAC is recognized as the tribunal responsible for hearing appeals under the act. Under section 181 of the MPIC Act, MPI is required to provide AICAC with any information that AICAC requests in relation to an appeal. MPI provide our office with a copy of a fax dated August 7, 2014 from AICAC notifying MPI of the complainant's appeal and requesting a copy of the complainant's claim file.

The records that were disclosed to AICAC were the basis for the MPI decision that the complainant was appealing. Given the requirements of the MPIC Act and the nature of the reports provided to AICAC, our office found that disclosure of the complainant's personal health information to AICAC was authorized under PHIA, because it was required for a quasi-judicial proceeding and disclosure was required by another enactment of Manitoba, the Manitoba Insurance Corporation Act.

Was the disclosure of personal health information limited to the minimum amount of information necessary to accomplish the purpose for which it was disclosed?

Subsections 20(2) and 22(3) of PHIA provide as follows:

Limit on amount of information used or disclosed

20(2) Every use and disclosure by a trustee of personal health information must be limited to the minimum amount of information necessary to accomplish the purpose for which it is used or disclosed.

Limit on disclosure

22(3) A trustee may disclose information under subsection (2), (2.1) or (2.2) only to the extent the recipient needs to know the information.

The purpose for disclosure, in this case, was to enable AICAC to review MPI's decision in relation to the complainant's insurance claim. For the complainant's appeal to be properly assessed AICAC needed to review all of the information that MPI considered when making its decision.

Our office found that the disclosure of the complainant's personal health information was limited to the extent that AICAC needed to know the information in order to properly review MPI's decision and make its own decision in relation to the complainant's appeal.

CONCLUSION

Based on our office's findings, the complaint is not supported.

September 27, 2018
Manitoba Ombudsman