

Manitoba mbudsman

REPORT UNDER

THE PERSONAL HEALTH INFORMATION ACT

CASES 2015-0352, 2015-0353, 2015-0354

HEALTH SERVICES AGENCY

PRIVACY COMPLAINTS: COLLECTION, USE AND DISCLOSURE OF PERSONAL HEALTH INFORMATION

PROVISIONS CONSIDERED: 13(1), 13(2), 14(1), 14(2)(a)(c.1), 20(2)(3), 22(2)(n)

REPORT ISSUED ON APRIL 29, 2016

SUMMARY: The ombudsman's office received three complaints under the Personal Health Information Act (PHIA or the Act) alleging the unauthorized collection, use and disclosure of personal health information by the complainant's employer, a Winnipeg health services agency (the agency). Our office found that the collection of personal health information was authorized under clauses 13(1)(a) and (b) of PHIA. Our office also concluded that the indirect collection from someone other than the complainant was authorized in the circumstances of this complaint. However, the ombudsman found that routine indirect collection of personal health information is not suggested or recommended as this is fundamentally inconsistent with the requirements of clause 14(1) of PHIA. Our office found that the use of the complainant's personal health information by the agency was in compliance with PHIA. Our office also found that disclosure of the complainant's personal health information to his union without express consent was authorized under clause 22(2)(n) of PHIA in the particular circumstances of this complaint.

BACKGROUND

The complainant was employed by a Winnipeg health services agency (the agency) which provides community based health care pursuant to a funding agreement with the Winnipeg Regional Health Authority. The agency is also a designated health-care facility under PHIA. As such, the agency is a personal health information trustee as defined by the Personal Health Information Act (PHIA or the Act). Our office notes that the requirements of PHIA apply to all personal health information maintained by a trustee, not just the personal health information of agency clients.

Using information obtained from the complainant and the agency, our office compiled a narrative of events leading to the complainant contacting our office. In October of 2015 the complainant began experiencing health symptoms. The complainant's physician determined the symptoms were caused by irritants to which the complainant was exposed in his work environment and recommended transfer to another work environment where the complainant would not experience symptoms. The physician provided the complainant with a 'doctor's note' to that effect. The complainant took the doctor's note to his employer and requested accommodation for his health disability in the form of a work reassignment.

The agency's attempts to accommodate the complainant were complicated by the pervasive presence in the work place of irritants which had the potential to aggravate the complainant's symptoms. Officers of the agency contacted the complainant's physician for the purpose of obtaining more information about the complainant's symptoms and the specific irritants which would act as symptom triggers. In response, the physician provided the agency with a second 'doctor's note'. This information obtained from the physician was used to design a new work assignment for the complainant and details were shared with agency managerial staff and the complainant's co-worker.

In the course of the complainant's attempts to obtain a work reassignment which was satisfactory to him the relationship between the complainant and his employer deteriorated to the extent that he contacted his union staff representative (the union) and requested assistance in obtaining accommodation. The collective agreement (CA) between the union and the agency sets out a procedure to informally resolve an employee issue before a formal grievance is filed. As part of this procedure and at the union's request, the agency supplied the union with information relating to the agency's attempts to accommodate the complainant, including personal health information which the agency had obtained from the complainant's physician.

In conversation with his union representative during this process, the complainant became aware of the second 'doctor's note' and, thus, that the agency had contacted his physician for the purpose of obtaining more information about his symptoms without his knowledge or consent. The complainant has explained to our office that he was extremely upset that the agency had

obtained his personal health information without his knowledge. The complainant also became aware, during meetings associated with the dispute resolution process, that certain agency managers had knowledge of his personal health information. The complainant questioned the need for those managers to have this knowledge.

COMPLAINTS

Under subsection 39(2) of PHIA, an individual who believes that his or her personal health information has been collected, used or disclosed contrary to the requirements of PHIA has a right to make a complaint to the ombudsman. The complainant's completed privacy complaint questionnaires alleging the unauthorized collection, use and disclosure of his personal health information were received in our office on December 1, 2015.

In investigating complaints made under PHIA, our office will usually collect information from the complainant as well as the personal health information trustee named in the complaint. In this case, in order to have a better understanding of the events which took place and to obtain relevant representations on the disclosure of personal health information in the context of an informal grievance resolution, our office also notified the complainant's union about these complaints as allowed under clause 42(b) of PHIA. Consent from the complainant was not required in order for our office to request information from the complainant's union further to our investigation of his complaints; however, we nonetheless notified the complainant of our intention and obtained his agreement to speak to his union representative about these complaints.

ISSUES AND ANALYSIS

In the context of these complaints, the personal health information at issue consists of 'doctor's notes' provided to the agency by the complainant's physician and the subsequent use and disclosure of the personal health information contained in the doctor's notes. The doctor's notes document the complainant's visits to his physician and describe the complainant's symptoms. The notes also contain the complainant's full name, date of birth, address, Manitoba Health Registration Number and Personal Health Identification Number (PHIN). Under PHIA, personal health information is defined as recorded information about an identifiable individual that relates to an individual's health or health-care history. The doctor's notes in question clearly identify the complainant and describe his health and are, therefore, considered personal health information as defined by PHIA.

**CASE 2015-0352
COMPLAINT OF UNAUTHORIZED COLLECTION OF PERSONAL HEALTH
INFORMATION**

Authority for Collection

Under PHIA, the collection of personal health information must be authorized and limited as set out in section 13:

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.*

Limit on amount of information collected

- 13(2)** *A trustee shall collect only as much personal health information about an individual as is reasonably necessary to accomplish the purpose for which it is collected.*

Section 14 of PHIA requires (through the use of the word ‘shall’ in the statute) that, whenever possible, personal health information be collected directly from the individual the information is about unless that person has authorized another method of collection or indirect collection is otherwise authorized by subsection 14(2):

Source of information

- 14(1)** *Whenever possible, a trustee shall collect personal health information directly from the individual the information is about.*

Exceptions

- 14(2)** *Subsection (1) does not apply if*
- (a) the individual has authorized another method of collection;*
 - (b) collection of the information directly from the individual could reasonably be expected to endanger the health or safety of the individual or another person;*
 - (c) collection of the information is in the interest of the individual and time or circumstances do not permit collection directly from the individual;*
 - (c.1) the information may be disclosed to the trustee under subsection 22(2);*
 - (d) collection of the information directly from the individual could reasonably be expected to result in inaccurate information being collected;*
 - (d.1) the information is collected for the purpose of*
 - (i) compiling an accurate family or genetic health history of the individual, or*

(ii) determining or verifying the individual's eligibility to participate in a program of or receive a benefit or service from the trustee or from the government, and is collected in the course of processing an application made by or on behalf of the individual; or
(e) another method of collection is authorized or required by a court order or an enactment of Manitoba or Canada.

In information accompanying his complaints, the complainant explained that he provided a doctor's note (briefly describing his symptoms and recommending a work reassignment) to the agency on October 23, 2015. Our office asked the agency about the circumstances of any subsequent collection of the complainant's personal health information. The agency explained that, following the receipt of the complainant's request for accommodation, it required more information than the October 23 doctor's note provided in order to design appropriate accommodation. The agency represented that, to that end, on October 23 it provided the complainant with a 'Fitness to Return to Work Form' to take to his physician for completion. The agency advised our office that, when the completed form was not returned, the agency contacted the complainant's physician on November 2, first by telephone and then by letter faxed to the physician's office (including a copy of the October 23 'Fitness to Return to Work Form' and the complainant's job description), requesting clarification as to the complainant's symptom triggers. The physician responded with a second 'doctor's note' delivered to the agency by fax on November 4, 2015.

According to information provided to our office by the complainant's union a third collection of the complainant's personal health information by the agency took place on November 16, 2015 by means of a follow-up letter provided to the complainant by his physician and then subsequently provided to the agency. This letter clarified the physician's note of November 4. This third collection is not at issue in this complaint.

The agency has represented that the collection of the complainant's personal health information on November 4 was made in order to identify appropriate accommodation prior to the complainant's return to work.¹ This is a lawful purpose connected with a function or activity of the trustee and our office accepts that the complainant's personal health information was collected for this purpose. Our office also agrees that the collection of the complainant's personal health information was necessary for this purpose. Therefore, our office found that the collection of the complainant's personal health information was authorized as set out in clauses 13(1) (a) and (b) of PHIA. Subsection 13(2) of PHIA states that a trustee shall collect only as much personal health information about an individual as is reasonably necessary to accomplish the purpose for which it is collected. In view of this requirement, our office also considered the amount of the complainant's personal health information collected by the agency. We observed that the contents of the doctor's notes provided to the agency by the complainant's physician

¹ The complainant had not returned to work following his delivery of the first doctor's note to his employer on October 23, 2015.

directly related to the purpose of designing appropriate workplace accommodation and, therefore, our office found that the collection of personal health information was compliant with subsection 13(2).

As set out in subsection 14(1), even when PHIA authorizes collection, it requires that collection of personal health information should be made directly from the individual the information is about unless the individual has authorized another method of collection (indirect collection) or another provision of subsection 14(2) of PHIA applies. In information accompanying his complaints, the complainant maintained that he did not authorize the agency to contact his physician and collect his personal health information as it did on November 4. The complainant expressed the belief, based on information he obtained during PHIA training at his workplace, that his ‘signed consent’ was required for the collection of his personal health information by the agency. While ‘signed consent’ is not required for collection, an individual must authorize another method of collection in those circumstances where no other provisions of subsection 14(2) of PHIA permit collection from someone other than the individual. This authorization need not necessarily be in writing but, as was the case here, a verbal authorization cannot always be substantiated if questioned later.

Authority for Indirect Collection

While the complainant strongly maintained that that he did not authorize the agency to collect personal health information directly from his physician, the agency represented that the complainant verbally authorized the agency to contact his physician for the purpose of confirming the contents of the October 23 doctor’s note he had already provided. If this is, in fact what occurred, then the verbal instructions of the complainant would be sufficient authority for the agency to collect the complainant’s personal health information indirectly.

When questioned by our office about its belief that the complainant had provided authorization for indirect collection of his personal health information, the agency provided our office with notes made by the agency’s executive director following her meeting with the complainant on October 23, 2015. These meeting notes provided our office with some insight into how this differing recollection of the events of October 23 may have arisen. The agency notes indicated that the complainant had stated that the agency could contact his physician for the purpose of confirming that the complainant required an alternate work assignment as his current assignment was making him sick. The agency has represented that, for the purposes of designing appropriate accommodation, it required more information about the complainant’s symptom triggers. This would necessarily include more information than had been provided in the first ‘doctor’s note’ which the complainant provided on October 23. The agency believed that the complainant’s statements were sufficient authorization for the indirect collection of personal health information related to the complainant’s request for accommodation (from the complainant’s physician rather than from the complainant); however, this is not the complainant’s understanding.

It is the view of our office that the essence of the disagreement here is one of scope. Our office accepts the agency's representations which indicate that it believed it had authority for a broader scope of collection than the complainant may have intended. While the parties appear to have had different expectations about the process and although the full scope of the complainant's authorization was not apparent to him, our office accepted the evidence provided by the agency and concluded that the complainant had authorized the agency to collect his personal health information as it related to his request for accommodation by another method other than to collect it directly from him. Our office found, therefore, that there was authority for the indirect collection of the complainant's personal health information as allowed under clause 14(2)(a) of PHIA.

The agency has represented that, even in the absence of the complainant's authority for indirect collection under 14(2)(a) of PHIA (individual authorizes another method of collection), authority exists under other provisions of subsection 14(2) for indirect collection in the circumstances of this complaint. The agency has represented that authority for the indirect collection of the complainant's personal health information may also be found in clause 14(2)(e) of PHIA which allows indirect collection if authorized or required by a court order or an enactment (other legislation) of Manitoba or Canada. The agency pointed to its duty to accommodate under subsection 9(1) of the Human Rights Code of Manitoba (the Code) as authority for the collection of personal health information related to the accommodation required by the Code. While requiring accommodation, subsection 9(1) does not authorize the indirect collection of specified personal health information further to compliance with the Code.² An example where authorization for the indirect collection of personal health information is found in another enactment would be subsection 2(1) of the Gunshot and Stab Wounds Mandatory Reporting Act of Manitoba. That Act authorizes the disclosure of specified personal health information to a local police service (and, therefore, collection by the police services) in limited circumstances. In light of the foregoing, our office concluded that authority as set out under clause 14(2)(e) of PHIA did not exist for the indirect collection of the complainant's personal health information in the circumstances of this complaint.

The agency also represented that authority for the indirect collection of the complainant's personal health information may be found in clause 14(2)(d) of PHIA which states that collection of the information directly from the individual could reasonably be expected to result in inaccurate information being collected. The agency explained that accommodation information must be provided by a health-care provider in order to obtain an unbiased assessment of the objective prognosis and accommodation needs. Further, the agency explained it would expect

² For more information see the Manitoba Human Rights Commission's Fact Sheet on Requesting Medical Information From Employees (found online at http://www.manitobahumanrights.ca/factsheet_medical_information.html).

that a physician would confirm the disclosure of personal health information with the employee/patient. Our office agrees that the agency (or any other employer) would require accurate personal health information concerning the complainant's symptom triggers to design appropriate accommodation and the best source for that information would be the complainant's physician. However, the agency has provided no evidence to support the assertion that relying on the complainant to obtain the required information from his physician in the form of a completed 'Fitness to Return to Work Form' would result in the collection of inaccurate information. Our office does not agree that clause 14(2)(d) of PHIA supports the indirect collection of personal health information in this case.

The agency has represented to our office that it was conscientious in its attempts to accommodate the complainant. Following the complainant's call to his union on October 29th, the agency felt that it was urgent that the required accommodation information be obtained from the complainant's physician in order to resolve the matter as expeditiously as possible. Therefore, the agency contacted the complainant's physician rather than obtaining the information from the complainant directly.

While authorization may be found in PHIA for the indirect collection of the complainant's personal health information in this case, our office notes that the complainant was not in fundamental disagreement with supplying personal health information in the form of a doctor's note from his physician for the purpose of furthering his accommodation. What distressed him more was the collection of personal health information about which he was not aware. In light of this, our office asked the agency and the union for more information about accepted procedures for the collection of personal health information related to return to work and accommodation.

Procedures for Collection of Personal Health Information

The agency has explained to our office that its previous routine procedure was to ask employees requesting accommodation to take a 'Fitness to Return to Work Form' (the form) to their health-care provider(s) for completion. The form asked for detailed information about an employee's fitness for work and specific functional restrictions and limitations in light of the employee's job description (which would normally be attached to the form). The form in use at the time of this complaint included a signature line by which an employee could provide express consent for the employee's medical practitioner to release the information requested on the form to the agency, thus allowing for indirect collection if the employee wished as, by signing the form the employee's authorization for indirect collection could be assumed and the form could be forwarded directly to the agency by the practitioner. Either way, the employee would be aware of the collection before it took place.

For reasons which are not clear from the representations provided by the parties, the procedure for asking the complainant to obtain a completed 'Fitness to Return to Work Form' from his

physician appears to have broken down in this case. The agency represented to our office that the complainant was provided with a copy of the form on October 23. Further, the agency represented that it also provided a copy of the form to the complainant's physician by fax on November 2 when requesting clarification as to the complainant's symptom triggers. However, the complainant's physician did not complete the form but rather, as previously noted, provided information to the agency in a second 'doctor's note'.

Subsequent to the collection of personal health information which is the subject of this complaint, the agency explained to our office that it implemented a new 'Fitness to Work Form' (the new form) and a formal information collection process. An agency employee who is asked to provide further medical information from his or her physician will routinely be asked to sign an express consent to indirect collection that will permit the agency to contact his or her health-care provider. Our office notes that, by signing the new form, an employee is consenting to the indirect collection of personal health information of which they may not be aware ("other relevant inquiries" in addition to the information on the Fitness to Return to Work document). The form states:

I authorize the release of this information to the [agency]...By signing below I give consent to fax a Fitness to Return to Work document and other relevant inquiries regarding an appropriate accommodation or return to work at [agency]. My practitioner and [agency] can have verbal and/or written communication to clarify anything on the form to better accommodate me.

The union has explained to our office that its preference is always for direct collection by having the employee convey any health information forms to their health-care provider for completion. Our office notes that one of the purposes of PHIA is to establish rules governing the collection, use, disclosure, retention and destruction of personal health information in a manner that recognizes the right of individuals to privacy of their personal health information. Further, subsection 12(1) of PHIA also provides that an individual, for purposes of accuracy or completeness, may request a trustee to correct any personal health information that the individual has a right to examine and copy under the Act. These rights cannot be exercised if an individual does not know what personal health information the trustee has collected and maintains.

Our office would agree that direct collection is preferred. Subsection 14(1) of PHIA states that collection directly from the individual is always preferable whenever possible. While there may be instances where indirect collection is unavoidable (for example, a physician completes a return to work form after the patient leaves and later faxes it directly to the employer), our office is unclear on the need for routine indirect collection by the agency.

CASE 2015-0353**COMPLAINT OF UNAUTHORIZED USE OF PERSONAL HEALTH INFORMATION**

The general duties of trustees for the use and disclosure of personal health information are set out under section 20 of PHIA:

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.*

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 the trustee's employees

20(3) *A trustee shall limit the use of personal health information it maintains to those of its employees and agents who need to know the information to carry out the purpose for which the information was collected or received or to carry out a purpose authorized under section 21.*

Our office acknowledges that the use of personal health information for the purpose of coordinating a requested accommodation is an authorized use directly related to the purpose for which the information was collected. Based on our investigation we have also concluded that the use of the complainant's personal health information was limited to that which was required to design appropriate accommodation. However, the complainant alleges that the agency did not limit the use of his personal health information to those employees who needed to know the information in order to carry out their duties. He was specifically concerned that a manager of the agency facility and a manager of operations had knowledge about his symptoms.

Our office asked the agency to identify those human resource and managerial employees with whom the complainant's personal health information was shared and the purpose for this use in each case. The agency identified the individuals involved in the accommodation effort as follows:

Executive Director – The agency's point of contact concerning the complainant's request for accommodation and the lead agency employee in discussion with the complainant and the union.

Director of Finance and Operations – The complainant identified this employee as the manager of operations. The agency explained this employee works very closely and shares responsibilities with the executive director with respect to employee operations and requests for accommodation. They also work together to respond to and manage union communications and

the practical implementation of employee accommodation. This employee was involved in designing and managing the complainant's proposed accommodation and, as such, was aware of the complainant's personal health information as it related to that function.

Complainant's Program Manager – This employee was identified by the complainant as the manager of the agency facility where the complainant worked. This employee is aware of shift duties and could advise on workload expectations with respect to proposed accommodations. He assisted in the development of a proposed accommodation plan which would respond to the complainant's need not to be exposed to symptom triggers. This employee also gave direction on which co-workers would need to be told about the complainant's accommodation related duty restrictions as this would also affect the co-workers' responsibilities. The agency explained that, as part of the process of accommodation, the complainant's co-worker was advised as to duties which the complainant would perform and which duties the co-worker would perform when working alongside each other.

Manager On-Call – The agency explained that there are five on-call managers among whom on-call duties are rotated. Also, this is the employee to whom the complainant first reported that he would be unable to attend work due to work place symptom triggers. After reporting the complainant's issues to the executive director and the director of finance and operations, this employee remained involved in arranging accommodation as a member of the Agency Labour Management Committee. The agency explained that this employee is experienced in dealing with issues arising from accommodation requests. The agency also explained that the agency's practice is to include two managers in all employee meetings and in responding to employee issues. In the case of the complainant, the two managers involved were the manager on-call and the executive director. Of the five on-call managers, the other three were not made aware of the details in this matter.

The agency represented to our office that the scope of managerial and human resource employees involved in the use of the complainant's personal health information was reasonable and necessary in order to appropriately manage the complainant's request for accommodation and purposefully inclusive of only those employees who needed to know the information. Our office agrees and finds that the use of the complainant's personal health information was limited to those who needed to know the information in order to carry out the purpose for which the information was collected.

CASE 2015-0354
COMPLAINT OF UNAUTHORIZED DISCLOSURE OF PERSONAL HEALTH
INFORMATION

The complainant described to our office two circumstances where he alleged the unauthorized disclosure of his personal health information took place. One was to his physician by the agency's manager on-call. Based on information provided to our office, we have concluded that the agency contacted the complainant's physician on November 2, 2015 to request clarifying information about the complainant's symptom triggers in order to design appropriate accommodation. This disclosure is directly connected to an authorized collection of personal health information under PHIA and was made to the complainant's physician, who was then currently providing health care to the complainant. Although not raised by the agency in its representations, our office considers clause 22(2)(a) to be relevant in this circumstance:

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

(a) to a person who is or will be providing or has provided health care to the individual, to the extent necessary to provide health care to the individual, unless the individual has instructed the trustee not to make the disclosure;

None of the evidence considered by our office would lead us to the conclusion that the complainant instructed the agency not to contact his physician; therefore, our office finds that the agency's disclosure of personal health information in the context of obtaining further information related to accommodating the complainant was authorized under clause 22(2)(a) of PHIA.

The complainant also alleges that his personal health information was disclosed to his union representative without his consent. Our office understands from representations provided to our office by the agency and by the union that the complainant requested union assistance in obtaining suitable accommodation on October 29, 2015 which was five days after his October 23 meeting with the agency's executive director. This was prior to the agency contacting the complainant's physician on November 2. Our investigation has determined that a copy of the 'doctor's note' received from the complainant's doctor on November 4 (following on and as a result of the November 2 contact) was faxed to the complainant's union representative by the agency on the same day it was received. The complainant has acknowledged contacting his union representative for assistance but it is unclear that he completely understood that this contact would lead to the disclosure of his personal health information to the union by the agency.

Under PHIA, consent to disclose personal health information may be express or implied and our office acknowledges that the complainant's consent to disclose personal health information to the

union may have been implied as he had requested union involvement in his work situation. However, we also note that under subsection 19.1(4) of PHIA, express consent is required when a disclosure is made to a person (like the union representative) who is not a trustee under PHIA:

Exception

19.1(4) *Consent must be express, and not implied, if*
(a) a trustee makes a disclosure to a person that is not a trustee;

Absent the complainant's express consent, disclosure to the union would not be permitted unless a provision under subsection 22(2) of PHIA authorized the disclosure.

Further to our investigation our office reviewed the collective agreement in place between the agency and the complainant's union. Our office notes that a collective agreement is an agreement entered into under the Labour Relations Act, an enactment of Manitoba.

Paragraphs 7:03 and 7:04 of the collective agreement (CA) set out a procedure whereby an attempt is made to informally resolve a grievance before it is formally submitted. The union has explained to our office that this process was ongoing from the time the complainant requested union involvement on October 29, 2015. Our office has concluded, therefore, that the disclosure of the complainant's personal health information to the union representative was pursuant to the attempts by the agency and the union to informally resolve the complainant's grievance concerning the agency's response to his request for accommodation. Our office found, therefore, that disclosure without express consent is authorized in these circumstances as allowed under clause 22(2)(n) of PHIA:

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*
(n) for the purpose of complying with an arrangement or agreement entered into under an enactment of Manitoba or Canada;

OTHER MATTERS

The complainant also expressed concern that the privacy of his personal health information may have been breached by the process of faxing his information to his physician and the union. Our office requested and received representations from the agency concerning the processes which it has in place to ensure confidentiality of faxed materials. These include:

- Confirming the fax number of the recipient;

- The agency fax machine is located in a locked, secure area with access limited to management or director level staff;
- Every fax sent includes a cover letter referencing the confidential materials attached and instructions to follow if someone receives the transmission in error; and
- Received faxes relating to employees are stored in the appropriate employee file in a secure area in locked cabinets.

With respect to the fax sent by the agency to the complainant's union on November 4, 2015 a follow up email was sent to the union to confirm receipt of the fax.

Our office has concluded that measures taken by the agency to safeguard the security of faxed information are reasonable and appropriate in these circumstances.

CONCLUSIONS AND FINDINGS

Our office found that the collection of the complainant's personal health information was compliant with subsections 13(1) and 13(2) of PHIA. Our office concluded that the indirect collection of the complainant's personal health information was authorized under clause 14(2)(a) of PHIA. However, our office is of the view that a routine procedure for indirect collection of personal health information is fundamentally inconsistent with the requirements of clause 14(1) of PHIA. We encourage trustees to employ direct collection whenever possible as this engages the mandatory requirement of the trustee to give notice of collection. This provides an opportunity for the trustee and the individual to meaningfully discuss the purpose and scope of information to be collected. Where indirect collection is requested by the individual or is otherwise the most appropriate method of collection in the circumstances, obtaining the individual's informed authorization is still beneficial as it limits opportunities for later surprises and misunderstandings.

Our office found that the use of the complainant's personal health information was limited to those agency employees who needed to know the information in order to carry out the purpose for which the information was collected.

Our office found that the agency's disclosure of personal health information to the complainant's physician in the context of obtaining further information related to accommodating the complainant was authorized under clause 22(2)(a) of PHIA.

Our office concluded that the disclosure of the complainant's personal health information to the complainant's union representative was pursuant to the attempts by the agency and the union to

informally resolve the complainant's grievance concerning the agency's response to his request for accommodation. Our office found, therefore, that disclosure without express consent was authorized as allowed under clause 22(2)(n) of PHIA.

In light of our findings, the complaints of unauthorized collection, use and disclosure of personal health information made by the complainant against the agency are not supported.

Manitoba Ombudsman
April 29, 2016