

ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

**Report on the Investigation into a
Complaint Regarding the Lack of Confidentiality in Health Care**

June 15, 1998

Alberta Health

Case Number 1385

INVESTIGATION REPORT #98-IR-003

The Complaint

On January 8, 1998, I received a letter from the Complainant regarding the following concerns:

1. the disclosure of personal information by Alberta Health to the Alberta Program for the Early Detection of Breast Cancer;
2. the collection of personal information by Alberta Health and Alberta Blue Cross forms; and
3. the disclosure of a third party's personal information by an employee of Alberta Health to the Complainant.

The Complainant requested that I "examine the processes being followed by both Alberta Health and Alberta Blue Cross with the view towards tightening up their lack of confidentiality".

On February 10, 1998, I informed the Complainant that my office did not have the jurisdiction to investigate the activities of Alberta Blue Cross as that organization is not subject to the *Freedom of Information and Protection of Privacy Act* (the Act). However, Alberta Health is subject to the Act and accordingly, I conducted an investigation pursuant to section 51(2)(e) of the Act which states:

51(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that

(e) personal information has been collected, used or disclosed by a public body in violation of Part 2.

Background

In April 1997, the Complainant's spouse received two letters of invitation to participate in the Screen Test program from the Alberta Program for the Early Detection of Breast Cancer (the "Program"). The Complainant's spouse wrote to the Director of the Program expressing her concerns that the Program obtained access to her personal information (specifically, name, address and age) and requested the source of information be identified. The Director responded that the information at issue was released by Alberta Health and that, given the concerns expressed by the Complainant's spouse, no further letters from the Program would be sent to her. Although the Complainant and his spouse were not satisfied with the response received, they did not pursue this matter further at that time.

Some months later, the Complainant telephoned Alberta Health with respect to changing a dependant under his health benefit plans. The Complainant had questions with respect to the information requested by the forms - specifically, information relating to the dependant. The Complainant felt it was inappropriate that a dependant's personal information could be collected from a source other than the dependant.

During the telephone conversation, the Complainant did not identify himself or his relationship to the dependant. However, upon providing the dependant's Alberta Health Care number, the employee who received the Complainant's call disclosed information about the dependant including date of birth. In addition, the employee indicated the change of dependant could be effected over the telephone.

The Complainant found the disclosure of the dependant's personal information by the Alberta Health employee and the employee's willingness to process the change of dependant over the telephone disturbing given there was no verification of the Complainant's identity. As a result of this incident and the matter relating to the disclosure of personal information by Alberta Health to the Program, the Complainant lodged a complaint with my office.

Issue #1: Did Alberta Health violate Part 2 of the *Freedom of Information and Protection of Privacy Act* by disclosing personal information to the Alberta Cancer Board for the purpose of the Alberta Program for the Early Detection of Breast Cancer?

This Program is administered by the Alberta Cancer Board (the "Board"). Alberta Health provides funding to the Program. The objective of the Program is to encourage women who have a potential risk of breast cancer to participate in early screening with mammograms.

Initially, the Program adopted the approach of using newspaper advertising and brochures to inform the public of the Program. These efforts did not appear to be very successful in increasing the awareness of the Program. Subsequently, the Program decided direct contact with women who are fifty years or older would be more effective. The Minister of Alberta Health agreed and an agreement was signed for the sharing of information between Alberta Health and the Board for the purpose of the Program.

What information is disclosed by Alberta Health to the Board?

Under an agreement dated July 15, 1996, Alberta Health provides to the Board each July a listing of women aged 50 to 69 who have current coverage with the Alberta Health Care Insurance Plan.

The specific data elements disclosed by Alberta Health to the Board include: personal health number; name (first, middle and surname); current residential mailing address; age; and date of birth.

Is the information disclosed “personal information”?

“Personal information” is defined in section 1(1)(n) of the Act. The relevant portions of section 1(1)(n) read:

1(1)(n) “personal information” means recorded information about an identifiable individual, including

(i) the individual’s name, home or business address or home or business telephone number,

(iii) the individual’s age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

The information disclosed by Alberta Health to the Board is personal information in accordance with section 1(1)(n) of the Act.

Does Alberta Health have the authority to disclose personal information to the Board?

The disclosure of personal information by a public body is set out in section 38 of the Act, which states, in part:

38(1) A public body may disclose personal information only

(d) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada

Under section 13 of the *Alberta Health Care Insurance Act*, the Minister of Alberta Health is authorized to disclose information for various purposes, including for the purpose of administering any program that receives funds directly or indirectly from Alberta Health. Section 13 (4.2) of the *Alberta Health Care Insurance Act* states:

13(4.2) Notwithstanding subsection (4), the Minister or a person authorized by the Minister may disclose residents’ or practitioners’ registration information obtained under this Act or the Health Insurance Premiums Act

(a) for the purpose of the administration of this Act or the Health Insurance Premiums Act, the regulations under those Acts, the federal Act or any program that receives funds directly or indirectly from the Department of Health

The legislative authority to disclose information pursuant to section 13(4.2)(a) of the *Alberta Health Care Insurance Act* is specific i.e. the disclosure of information is required for the purpose of administering the Program. For section 13(4.2) of the *Alberta Health Care Insurance Act* to apply, the Board must use the information disclosed by Alberta Health for the purpose of administering the Program.

How is the personal information used by the Board?

Under the terms of the agreement, the Board may use the information provided by Alberta Health only for the purpose of administering the Program. The manner in which the information is to be used is set out in Schedule 1 of the Agreement as follows:

- to send a letter of invitation for a screening test for the early detection of breast cancer.
- to cross reference individuals who have previously advised they are already undergoing screening or do not wish to receive letters of invitation, to ensure that invitation letters are not sent again.
- to cross reference individuals who have been treated for breast cancer to ensure that invitation letters are not sent again.
- to ensure that letters are not sent to those who have reached the age of 70 since the information was received from Alberta Health.

I find the information disclosed by Alberta Health is used by the Board for the purpose of administering the Program. As the Program receives funding from Alberta Health, the agreement between Alberta Health and the Board is made pursuant to section 13(4.2) of the *Alberta Health Care Insurance Act*.

Section 38(1)(d) of the Act allows a public body to disclose personal information if the disclosure is authorized by an enactment of Alberta. As section 13(4.2) of the *Alberta Health Care Insurance Act* applies to the disclosure of personal information by Alberta Health to the Board for the purpose of the Program, the disclosure is not a violation of Part 2 of the Act.

What provisions are in place to ensure that personal information disclosed to the Board is protected?

This issue was not specifically raised by the Complainant in his letter to my office. However, as the Complainant's principal concern is the perceived lack of confidentiality in the health care area, I felt it was necessary to address this issue.

The agreement restricts the Board, its employees and agents to use the personal information only for the purpose of administering the Program as set out in Schedule 1 of the Agreement. Any other use must be expressly authorized by the Minister in writing, prior to the use.

In addition, the agreement includes nine specific confidentiality provisions for the Board to safeguard the information from unauthorized access, use, disclosure and retention. The Board must also destroy individual identifiers associated with the information at the earliest time possible or, at the latest, within six months after the information for the following year is released by the Minister.

Other provisions of the agreement include:

- the Board must ensure that no individual can be identified in any publications which describe the results of the Program;
- the Minister of Health is granted the right to view, prior to publication, all findings, interpretations and results concluded from the information obtained under the agreement; and
- the Minister may inspect the Board's records, systems, security measures and all materials relevant to the agreement.

Therefore, I believe reasonable efforts have been made to safeguard the privacy of individuals to whom the information concerns.

Issue #2: Is the personal information collected by the Alberta Health forms in accordance with the FOIP Act?

What personal information is collected for the Alberta Health Care Insurance Plan?

To apply for coverage under the Alberta Health Care Insurance Plan (the "Plan"), an individual must complete an "Application for Alberta Health Coverage" form. The form requests the following information from an applicant:

- applicant's personal information (title, name, birth date, gender, marital status, social insurance number, mailing address, residence address, reason for applying, place of origin, home phone number, work phone number, and signature).
- dependant's personal information (title, name, birth date, gender, social insurance number, previous personal health number if applicable, date of residence in Alberta, date of arrival in Canada, place of origin, previous medical plan number if applicable, mailing address, residence address, work telephone number and home telephone number).

Upon receipt of coverage, the applicant is referred to as the "account holder". Individuals registered under the account holder's plan are "dependants". Dependants may include: spouse; children under 21 years of age who are single and wholly dependent on parents; single children over 21 years of age who are

wholly dependant because of physical or mental disabilities; and single children under 25 years of age who are full-time students at an accredited educational institution.

To delete a dependant, the account holder may telephone Alberta Health or complete a "Notice of Change" form which requests the following information:

- account holder's personal information (title, name, personal health number, social insurance number, spouse's social insurance number, mail address); and
- dependant's personal information (name, birthdate, date no longer dependant, reason for deletion, new Alberta Health Care Insurance Plan account number (if available), mailing address, home phone number and work phone number).

Is the collection of personal information by Alberta Health authorized?

Section 32 of the Act outlines the provisions regarding the collection of personal information by a public body. The relevant portions of section 32 of the Act states:

32 No personal information may be collected by a public body unless

(a) the collection of that information is expressly authorized by or under an Act of Alberta or Canada,

(c) that information relates directly to and is necessary for an operating program or activity of the public body.

Pursuant to section 19 of the *Health Insurance Premiums Act*, the Minister has authority to collect personal information that is considered necessary. Section 19 of the *Health Insurance Premiums Act* state:

19 The Minister may prescribe any forms to be used under this Act or the regulations that he considers necessary.

With the exception of the social insurance number, the data elements collected by the Application for Alberta Health Coverage form and the Notice of Change form appears to be necessary for the purpose of administering the Plan e.g.

- names of applicant and dependants are required to identify who has coverage under the Plan;
- mailing address is required to mail health care cards;
- location of residence, place of origin and date of birth are required to determine eligibility for coverage. Entitlement to health care benefits is based on residency.

With respect to the collection of the social insurance number, the FOIP Coordinator for Alberta Health provided the following comments:

Alberta Health asks for the Social Insurance Number on a number of its forms. Providing the SIN is mandatory only when applying for premium subsidy which requires confirmation of income, via the SIN number, from Revenue Canada. Providing the SIN on any other form is voluntary. The SIN assists in operational efficiency, avoiding duplication and file management. Alberta Health has no plans to discontinue collecting this information at this time.

The collection of the social insurance number by Alberta Health is not expressly authorized by legislation and the information is not necessary for the administration of the Plan (other than for the Premium Subsidy Program). Therefore, the collection of the social insurance number by Alberta Health is not in accordance with section 32 of the Act. Alberta Health should discontinue the collection of social insurance numbers immediately.

Alberta Health advised it is currently reviewing its forms and the kinds of personal information requested by these forms. Until the review is completed, I would recommend that interim measures be taken in instructing staff to not collect social insurance numbers and to black out the space allotted on the forms for the recording of social insurance numbers (unless the social insurance number is necessary such as for the Premium Subsidy Program).

Is the manner of collection in accordance with the FOIP Act?

Under section 33 of the Act, a public body must collect personal information directly from the individual the information is about. However, section 33 of the Act also provides for situations when information may be collected from other sources. Section 33 of the Act state, in part:

33(1) A public body must collect personal information directly from the individual the information is about unless

(a) another method of collection is authorized by

(ii) another Act or a regulation under another Act, or

(g) the information is necessary

(i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Alberta or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or

(ii) to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Alberta or a public body and is collected for that purpose.

Under Part 3 of the *Health Insurance Premiums Regulation*:

- every resident of Alberta shall register himself and his dependants (section 21(1), section 30(1), section 30(5));
- a registrant must notify the Minister as soon as a person registered as his dependant no longer qualifies as his dependant (section 30(6));
- a registrant is required to notify the Minister of an address change or any other change shown on his certificate of registration (section 31(1)(a)(b))

Part 3 of the *Health Insurance Premiums Regulation* places the source of information about the dependants with the registrant i.e. the individual registered under the Plan. This is consistent with section 33(1)(a)(ii) of the Act.

As personal information is also collected by Alberta Health for the purpose of determining eligibility for health care coverage, section 33(1)(g) of the Act may also apply to the collection of the dependant's personal information from the registrant/account holder.

Issue #3: Did an employee of Alberta Health disclose personal information to the Complainant in violation of Part 2 of the FOIP Act?

In his letter to my office, the Complainant described his telephone conversation with Alberta Health as follows:

The person working for Alberta Health was only too helpful. She provided me with numbers and dates on files which were none of my business and was willing to make the required changes over the phone. This person did not know who I was. I had not identified myself at any point in the conversation. When I objected to the offer to change the plans over the phone she threaten to do it anyway until I explained that would leave her open to a serious breach of confidentiality complaint. The call then ended.

The Complainant had provided the dependant's Alberta Health Care number to the Alberta Health employee during their telephone conversation. This allowed the employee to access the appropriate account. However, the Complainant's issue of concern is that the employee made the assumption that the Complainant was the dependant's parent without verifying his identity. As the Complainant advised my office "I could be anyone calling in with the Alberta Health Care number".

Is the disclosure of personal information by the Alberta Health employee authorized under the Act?

The circumstances under which a public body may disclose personal information are outlined in Section 38(1) of the Act. The relevant portions of section 38(1) of the Act state:

38(1) A public body may disclose personal information only

(b) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,

(j) for the purpose of determining a individual's suitability or eligibility for a program or benefits

The account holder is the individual registered under the Plan, and is the person responsible for notifying Alberta Health of any changes e.g. adding/deleting dependants, address change, etc.

Communications between Alberta Health and an account holder may involve the disclosure of personal information of individuals other than the account holder (i.e. dependants). Although this sharing of information may be viewed as invasive in nature, it is necessary to carry on the business of the public body and to determine an individual's eligibility for a benefit needed by the individual.

I find that the disclosure by the Alberta Health employee to the Complainant is for the purpose of administering the Plan and is consistent with section 38(1) of the Act. I base this finding on the following:

- the Complainant initiated the contact with Alberta Health concerning the deletion of a dependant;
- there is no evidence to suggest that the employee's disclosure to the Complainant was for a purpose other than ensuring that individuals are properly registered under the account.

Are Alberta Health's security arrangements to safeguard personal information adequate?

The Complainant expressed concerns that the Alberta Health employee did not verify his identity prior to disclosing information about the dependant and offering to process the change over the telephone. The investigator I assigned to this case met with representatives of Alberta Health regarding its policies and practices with respect to telephone inquiries.

The Registration Branch (the "Branch") of Alberta Health is responsible for receiving and responding to telephone calls which may range from queries for general information to requests for changes to benefit plans (e.g. address changes, addition/deletion of dependants, etc.). The Branch receives an average of 3,900 calls per day. The volume of calls have reached as high as 5,000 calls in one day and is rarely below 3,000 calls in a day.

There are 39 telephone agent positions within the Branch. Telephone agents are divided into four teams. Each team is supervised and monitored by a lead specialist. Lead specialists are based near their teams so they can overhear their agents' conversations. In addition, the telephone system allows a lead specialist to listen in on telephone calls without the knowledge of the agent or the caller. This enables the lead specialist to provide assistance to the agent as required as well as monitor the agent's handling of calls.

The Branch indicated 80% of callers identify themselves when calling in. In addition, agents use call display to assist in identifying callers. Agents usually

ask for the Alberta Health Care number or account number. Callers may be asked to identify themselves by the agent; however, this is not a standard practice. Agents “do not as a rule” ask for confirmation of identity unless there is some reason for doubting the identity of the caller (for example, if caller cannot provide required information).

There is no procedures manual for agents relating to how calls should be handled. Newly employed agents receive 4-6 weeks training on departmental policies. This is followed by a 4 week training period where the new agent observes how an experienced agent responds to calls. The new agent will also receive training on how to complete the required paperwork following calls and being instructed on unit practices. Subsequently, a new agent will be placed on the phones with an experienced agent nearby to listen on how the calls are being handled by the new agent.

The Branch indicated all agents have received training on the Act. Alberta Health has no confidentiality policy other than section 13 of the *Alberta Health Care Insurance Act*.

Agents will only disclose information to individuals the information is about and the dependants registered under the individual’s account. Once a dependant is no longer under an account holder, the information of the dependant is no longer accessible by that account holder.

I believe Alberta Health should formalize its procedures on how telephone calls should be handled, particularly with respect to the need for an agent to verify the identity of the caller before discussing information on an account. Reliance on call display features and the agent’s “gut feeling” of a situation exposes Alberta Health to a risk of breaching an individual’s personal privacy.

Recommendations

Disclosure of Personal Information by Alberta Health to the Alberta Program for the Early Detection of Breast Cancer

I appreciate the Complainant’s concern with respect to the disclosure of personal information by Alberta Health to the Board for the purpose of the Program. My office has received a number of complaints from individuals expressing similar concerns on this matter

As a result of previous discussions with my staff, the Program had made some revisions to the contents of its letters of invitation. However, I believe more could be stated in these letters to provide information to individuals about how the Program obtained their personal information, how individuals can request to be removed from the data list, and the use of a less intrusive envelope for the mailings.

Accordingly, my office has communicated the following recommendations to the Program’s Director:

1. A statement in the letter of invitation that the personal information was obtained from Alberta Health pursuant to an agreement under the *Health Care Insurance Act* (section 13(4.2)). The letter could then go further and indicate that the agreement is consistent with section 38(1)(d) of the *Freedom of Information and Protection of Privacy Act* and has been reviewed by the Information and Privacy Commissioner.
2. A more definitive statement in the letter of invitation as to how an individual may have their name removed from the mailing list and an indication that this will actually occur.
3. Serious consideration be given to using a less intrusive envelope for all of the Program mailings. It is my view that the current envelope with the logo and address of the Program is one of the major concerns of those who receive the mailings. I would suggest that the envelope contain only the mailing address of the Program with no mention of the specific program. One of the comments my staff has received is that anyone seeing the envelope would be led to the conclusion that the recipient is a victim of breast cancer.

I am pleased to note the willingness of the Director of the Program to review and consider these recommendations. My office has been informed that the Program will organize a couple of focus groups, which would include women who may or may not have been screened in the past, and may or may not have received letters inviting them to participate in the screening program. During the focus group process, the Program would test different wordings of an invitation letter and discuss the issue of the logo and program name on the envelope.

We have requested that the Program allow members of my staff to attend these focus group discussions as observers. In addition, the Program will provide a report of these sessions to my office by the end of October 1998. I appreciate the efforts of the Program to consider and understand the privacy concerns of individuals.

Collection of Personal Information by Alberta Health

Alberta Health is authorized to collect personal information necessary for the purpose of administering the Plan and for determining an individual's eligibility for health care benefits. There is legislative authority to collect personal information about a dependant from the applicant/registrant.

However, the collection of the social insurance number on the Application for Alberta Health Coverage form and the Notice of Change form does not comply with section 32 of the Act, and should be discontinued.

Disclosure of Third Party Personal Information

Alberta Health is authorized to disclose personal information about a dependant to a registrant for the purpose of administering the Plan.

To reduce the risk of breaching an individual's personal privacy, Alberta Health should:

- formalize its procedures on responding to telephone inquiries; and
- verify a caller's identity as standard practice.

This file is closed upon receipt of Alberta Health's written acknowledgment of their acceptance of the recommendations relating to the collection of personal information and the disclosure of third party information.

Robert C. Clark
Commissioner

June 15, 1998