

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Disclosure of Health Information
&
Collection of Personal Information**

May 2003

Investigation Number 2500 & H0101

I. Introduction

[para 1] On July 29, 2002, the Information and Privacy Commissioner (Commissioner) received a complaint that the Alberta Mental Health Board (AMHB) disclosed health information in contravention of the *Health Information Act* (HIA). This also involved a complaint that the Northern Lights School Division # 69 (NLSD) collected personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (FOIP Act).

[para 2] The Commissioner ordered an investigation into these matters under section 85(e) of the HIA, and section 53(2)(e) of the FOIP Act. This report outlines the findings and recommendations of this Office.

[para 3] Effective April 1, 2003, the nine regional health authorities assumed responsibility for most mental health programs and facilities. As such, this report and relevant recommendations have been provided to Aspen Regional Health Authority.

II. Background

[para 4] The Complainant attends a school in the NLSD. The Complainant is a minor with ability to exercise rights described in section 104(1)(b) of the HIA.

[para 5] The Complainant was admitted into a hospital for treatment related to a suicide attempt.

[para 6] An employee of the AMHB completed a suicide risk assessment of the Complainant. Some of that information was subsequently disclosed to a liaison worker at the Complainant's school. The liaison worker is an employee of the school.

[para 7] The school collected the information disclosed and entered it into the school's computer system, the Student Information Record System (SIRS).

III. Complainant's Concerns

[para 8] The Complainant states that the AMHB's disclosure of health information to the school was 'premature and unauthorized'. Consent to disclose was not obtained, nor was the disclosure discussed with the Complainant's parents.

[para 9] The Complainant also noted concern with the school's collection of this information and the possible level of access that staff in the school would have once the information was entered into SIRS. The Complainant questioned what safeguards were in place to protect 'personal information'.

[para 10] The Complainant contends that the above noted disclosure and collection breached privacy.

IV. Investigation Findings

[para 11] This report concerns the disclosure and subsequent collection of information related to a suicide attempt. This matter involves two separate organizations. The AMHB is subject to the HIA, as a 'custodian' within the meaning of section 1(1)(f) of the HIA. The NLSD is subject to the FOIP Act, as a 'public body' within the meaning of section 1(p) of the FOIP Act. As such, this report will refer to the information related to the suicide attempt as 'health information' when dealing with matters related to the AMHB under the HIA, and 'personal information' when dealing with matters related to the NLSD under the FOIP Act. The information referred to in both instances is information related to the suicide attempt.

[para 12] There is no dispute regarding the 'health information' that was disclosed and the 'personal information' that was collected.

[para 13] The following issues are examined in this report:

1. Did the AMHB disclose the Complainant's 'health information' in contravention of Part 5 of the HIA?
2. Did the NLSD collect the Complainant's 'personal information' in contravention of Part 2 of the FOIP Act?
3. Did the NLSD ensure that reasonable security arrangements were in place to protect 'personal information'?

Issue 1: Did the AMHB disclose the Complainant's 'health information' in contravention of Part 5 of the HIA?

A. Discussion and Conclusion

[para 14] The AMHB completed an internal investigation report and provided a copy to me. This report indicates that a phone call was made to the school to advise that the Complainant had been admitted to the hospital due to a suicide attempt. No consent for this disclosure was obtained. The report says the disclosure was made to make sure the Complainant 'was functioning at a safe level' after the Complainant was discharged from the hospital. The report also refers to review of a school document that demonstrates the school's entry into SIRS of

information received during the AMHB's phone call. This entry was made the day after the Complainant was admitted to the hospital. The entry contained the following information:

- Complainant was hospitalized for a suicide attempt,
- Method of the Complainant's suicide attempt, and
- Physical damage to the Complainant as a result of the suicide attempt.

[para 15] The AMHB said that section 35(1)(b) of the HIA provides authority for this disclosure. They argued that once the Complainant returned to school, the school was in a position to provide continuing treatment and care to the Complainant. That is, the school would monitor the Complainant to ensure safety. The AMHB said that in monitoring the Complainant, the school would be providing continuing treatment and care. They said that continuing treatment and care was seen to be necessary, as the 'potential for risk tends to increase following a depressive and suicidal episode'. The AMHB said that there was concern for such an increased risk following the Complainant's discharge from the hospital.

[para 16] Section 35(1) of the HIA provides a limited number of situations where 'health information' may be disclosed without consent. The relevant portion of section 35(1) reads:

35(1) A custodian may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information

(b) to a person who is providing continuing treatment and care to the individual,

[para 17] A disclosure of 'health information' without consent requires use of discretion. In this case, discretion was applied to disclose health information to the school in order to monitor the Complainant and ensure safety. In doing so, the school would provide continuing treatment and care. In my view, a health professional should have sufficient latitude to exercise professional judgment in deciding when health information should be disclosed to provide continuing treatment and care that will assist in protecting a student.

[para 18] I find that section 35(1)(b) of the HIA provides the AMHB with authority to disclose 'health information' to the school in this situation.

B. Recommendation

[para 19] I have found that the AMHB had authority to disclose 'health information'. However, it is possible that this was a rather informal disclosure, which as a result, lacked necessary context. The AMHB disclosed details necessary to provide continuing treatment and care and ensure the Complainant's safety. Yet, the AMHB's expectation of the treatment and care that the school was to provide did not appear to have been communicated to the school who consequently did not seem to fully understand the continuing treatment and care they were expected to provide. The school was not prepared to provide the level of continuing treatment and care required to meet the stated purpose of the disclosure.

[para 20] In my view, a disclosure for purposes of providing continuing treatment and care presumes that the recipient of the information understands and is able to carry out the intended purpose.

[para 21] The Aspen Regional Health Authority was not involved in the beginning of this case. However, on April 1, 2003, they inherited this case when regional health authorities assumed responsibility for most mental health programs and facilities. Therefore, my recommendation is made to Aspen Regional Health Authority. I recommend that Aspen Regional Health Authority examine and consider implementation of procedures and or relevant policies that would reasonably ensure that a recipient of health information has the context necessary to be able to carry out the purpose for which health information is disclosed.

Issue 2: Did the NLSD collect the Complainant's 'personal information' in contravention of Part 2 of the FOIP Act?

[para 22] The information collected by the school is clear. As previously noted, it includes the fact that there was a suicide attempt, the method of the suicide attempt and physical damage that resulted.

[para 23] Section 33(c) of the FOIP Act authorizes collection of personal information when the collection of that information relates directly to and is necessary for an operating program or activity of the public body.

[para 24] Section 45(8) of the *School Act* requires that a student be provided with a safe and caring environment. It reads:

45(8) A board shall ensure that each student enrolled in a school operated by the board is provided with a safe and caring environment that fosters and maintains respectful and responsible behaviours.

[para 25] I interpret this section of the *School Act* to mandate an operating program or activity that ensures a safe and caring environment for a student. I have also accepted the AMHB's explanation that information was needed in this situation to provide continuing treatment and care. As such, I find that the collection of personal information was needed to ensure a safe and caring environment for the Complainant. Therefore, the collection of the personal information relates directly to and is necessary for an operating program or activity of the school.

[para 26] I find that the collection is authorized under section 33(c) of the FOIP Act. I have no recommendation to make in this regard.

Issue 3: Did the NLSD ensure that reasonable security arrangements were in place to protect ‘personal information’?

A. Discussion and Conclusion

[para 27] The Complainant noted concern that, upon collecting ‘personal information’, the school entered the information in SIRS. The Complainant questioned who would have authority to access this electronic documentation system.

[para 28] During my investigation, I learned the following about SIRS:

- SIRS is used by all schools in the NLSD to electronically document student information.
- SIRS has some capability to limit access to information through ‘role-based’ access. Support staff may be restricted from accessing information that the Principal would be able to access.
- There is no standardization of access levels in schools in the NLSD.
- The school the Complainant attends allows all staff full access to the system, with the exclusion of some administration and all janitorial staff. Any teacher could access the system and look at information about any student.
- SIRS does not have full auditing capability. There is no computer log to demonstrate who has accessed the system and what information was accessed. A limited audit function is that users who enter events, such as the suicide attempt notation in this case, have their name and the date of entry stored with the event record. However, the system does not log users who browse or review records.
- Staff were provided SIRS training when the system was first implemented a number of years ago with new staff receiving information about use of SIRS; however, no formal recent training has occurred with all staff.
- There are no privacy policies or procedures concerning access, use and disclosure of the information within SIRS or policies and procedures related to Information Technology security.

[para 29] Section 38 of the FOIP Act says that:

38 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, or destruction.

[para 30] In Order 98-002, the Commissioner commented on section 38. He said that unauthorized access to personal information includes, ‘access by a public body’s employees, if those employees do not need to see the personal information in the course of their duties’ and ‘situations in which information is stored in an unsecured manner such that someone can obtain unauthorized access’.

[para 31] SIRS does not have full auditing capability, and therefore I am unable to determine whether the Complainant's concern is justified that school staff may have accessed personal information without authority to do so. However, it is clear that most staff in this school had the capability to access all 'personal information' in SIRS, and reasonable measures were not in place to mitigate risk of unauthorized access occurring.

[para 32] The FOIP Act requirement is that reasonable security arrangements are taken. The FOIP Act does not specifically require audits, although in an electronic environment, it is difficult to think of a more appropriate and effective security tool. I am troubled that other security arrangements have not been taken to mitigate risk in a system that lacks full auditing capability. SIRS has some access control capabilities that were not employed. There are no policies or procedures for SIRS and no recent formal training has been provided to all staff.

[para 33] I find that the NLSO has not taken reasonable security arrangements to protect personal information.

[para 34] I should note that since this incident, the NLSO has discussed how to appropriately document information in SIRS. The NLSO has decided to enter 'sensitive issues' as a private message to which there is limited access. While this does not alleviate all of the concerns, it is a positive step that provides one form of an access control. The NLSO is actively assessing and implementing reasonable security arrangements for SIRS, which demonstrates the seriousness with which they are approaching this matter. While I am making a number of recommendations to the NLSO, I am pleased to say that a lot of the work required to address this matter has already been completed.

B. Recommendations

1. Assess and employ reasonable access controls to SIRS, based on the need to know principle.
2. Establish or adopt policies and procedures related to protection of the privacy and security of 'personal information' within SIRS.
3. Provide training to all staff who have access to information in SIRS. This training should specifically address confidentiality, privacy and security.
4. Assess and employ reasonable security arrangements to protect 'personal information' from unauthorized access.
5. Incorporate the first four recommendations into a completed Privacy Impact Assessment on SIRS and submit it to the Commissioner by August 29, 2003.

Submitted by,

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