

Adjudication Summary

Return to work program not a health information custodian

HC-050014-1

The Office of the Information and Privacy Commissioner/Ontario (the IPC) received a complaint from an individual who was an employee of a municipality. The complainant stated that his personal health information had been disclosed to management staff at the municipality by a nurse working in the municipality's employee assistance unit, and that this disclosure contravened the *Personal Health Information Protection Act* (the *Act*).

The complainant indicated that the personal health information consisted of the contents of an email the nurse received from his insurance company regarding his return to work and notes made by the nurse of conversations she had with the complainant regarding his return to work.

The IPC assigned the matter to a mediator who sought to find a resolution. Mediation was not successful, and the IPC subsequently commenced an investigation into the complaint, including the issue of whether the nurse and/or the municipality are health information custodians.

The employee assistance unit performs a variety of functions, including disability management for disabled and/or injured employees. Disability management involves assisting in the development and implementation of plans relating to the return to work by employees of the municipality. All records relating to the disability management function of the employee assistance unit are stored separately from other files that the unit generates. It was as a result of the disability management function that the complainant's interactions with the nurse and the employee assistance unit arose in order to facilitate his return to work from a disability leave.

Prior to the complainant's return to work, the nurse received an email from his insurance company, advising that the complainant's physician indicated that he was medically stable and could return to work with no restrictions. The nurse then contacted the complainant and advised him that she would notify his department that he was ready to return to work.

The nurse contacted the municipality's Disability Management Consultant and Labour Relations Consultant and advised them that the complainant was cleared to return to work, with no medical restrictions in respect of his work activities.

The complainant returned to work, had concerns regarding accommodation to attend medical appointments and filed an unfair labour practice application with the Ontario Labour Relations Board.

As a result of the unfair labour practice application, the municipality's Labour Relations Consultant obtained a copy of the email correspondence that was sent to the nurse from the insurance company and received it for the sole purpose of responding to the unfair labour practice application.

After the IPC's investigation was complete, the IPC determined that the complaint would not proceed to review pursuant to section 57(4) of the *Act*. Based on the particular facts of this case, The IPC determined that the nurse and the municipality, as the person who operates the disability management program provided by the employee assistance unit, are not health information custodians as defined in section 3 of the *Act*.

In making the above determination, the IPC reviewed section 3(1) of the *Act*, which defines a health information custodian, including a person who operates a centre, program or service for community health or mental health whose primary purpose is the provision of health care. In addition, the definitions of "health care practitioner" and "health care" set out in section 2 of the *Act* were considered.

The IPC was of the view that the definition of "health care practitioner" and a "centre, program or service for community health or mental health" is premised on the fact that the health care practitioner must be providing health care and the purpose of the centre, program or service must be for the provision of health care.

In addition, "health care," as defined in the *Act* must be for a health related purpose. The IPC was of the view that the disability management function of the unit is not provided for a health related purpose, but for the purpose of assisting employees to return to work and, therefore, cannot be said to be providing health care in this capacity.

Therefore, in this particular case, the IPC was of the view that the obligations imposed by the *Act* on health information custodians with respect to the collection, use and disclosure of personal health information are not applicable to the nurse or to the municipality.