



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
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Order F18-27

## VANCOUVER COASTAL HEALTH AUTHORITY

Elizabeth Barker  
Senior Adjudicator

July 10, 2018

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**Summary:** A patient of a clinic run by the public body complained that a clinic manager used her personal information for a purpose inconsistent with, or other than, the purpose for which it was obtained or compiled, contrary to s. 32(a) of FIPPA. The adjudicator held that the public body failed to comply with s. 32(a) and ordered it to stop using the complainant's personal information in contravention of s. 32(a).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 32(a).

### INTRODUCTION

[1] This order arises from a complaint to Office of the Information and Privacy Commissioner (OIPC) under s. 42(2) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The complainant attended a medical clinic run by the Vancouver Coastal Health Authority (VCHA). She alleges that a clinic manager used her personal information for a purpose inconsistent with, or other than, the purpose for which it was obtained or compiled, contrary to s. 32(a) of FIPPA.<sup>1</sup>

[2] Specifically, the complainant alleges that a clinic manager reviewed her clinic files because he was curious after reading about her in the news.<sup>2</sup> The complainant says that her psychiatrist at the clinic informed her that this had

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<sup>1</sup> The complainant also alleged that VCHA failed to protect her personal information contrary to s. 30 but that matter was concluded at investigation and is not at issue in this inquiry.

<sup>2</sup> Complainant's May 11, 2016 complaint to the OIPC.

occurred. VCHA responds that the clinic manager used the complainant's personal information for a purpose authorized under s. 32(a).<sup>3</sup>

[3] The OIPC investigated the complaint and the investigator closed the complaint file. The complainant requested the OIPC reopen her file, and the Deputy Commissioner decided that the s. 32(a) issue should proceed to inquiry.<sup>4</sup>

### ***Preliminary matter***

[4] VCHA submits that the OIPC investigator's findings are an important consideration in this inquiry, that her understanding of the facts were not incorrect or incomplete and she did not fail to consider relevant factors in arriving at her conclusion, so I should uphold her findings.<sup>5</sup> VCHA's initial submission includes a copy of the investigator's letter setting out her findings.

[5] My authority to dispose of this matter is pursuant to ss. 56 and 58 of FIPPA. The investigator investigated the matter pursuant to s. 42(1)(a) of FIPPA and made a number of findings that do not bind me. This is an inquiry *de novo*. Both VCHA and the complainant provided full submissions to this inquiry. I will make my own independent determination based on those submissions.

## **ISSUE**

[6] The issue in this case is whether VCHA used the complainant's personal information for a purpose that was not authorized by s. 32(a) of FIPPA.

## **DISCUSSION**

### ***Background***

[7] VCHA manages the BC Operational Stress Injury Clinic. The clinic provides outpatient programs to veterans, members of the Canadian Forces and members of the RCMP who have mental health conditions related to an operational stress injury. The complainant was a patient at the clinic. The clinic had a medical file and a separate medical-legal file for her because she was involved in a lawsuit.<sup>6</sup>

### ***The Law***

[8] Section 32 of FIPPA requires a public body ensure that personal information in its custody or under its control is used only in accordance with the

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<sup>3</sup> VCHA initial submission at para. 13, and VCHA reply submissions at paras. 1 and 4.

<sup>4</sup> Deputy Commissioner's July 10, 2017 letter.

<sup>5</sup> VCHA's initial submissions at para. 13.

<sup>6</sup> Complainant's submission at para. 51.

limits imposed by that provision. VCHA submits that s. 32(a) applies in this case. Section 32(a) says:

32 A public body must ensure that personal information in its custody or under its control is used only

(a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose (see section 34),

[9] Section 34 defines the term “consistent purpose” used in s. 32(a) as follows:

34 For the purposes of section 32 (a)..., a use of personal information is consistent with the purpose for which the information was obtained or compiled if the use

(a) has a reasonable *and* direct connection to that purpose, *and*

(b) is necessary for performing the statutory duties of, or for operating a program or activity of, the public body that uses or discloses the information. [emphasis added]

[10] FIPPA defines “personal information” as “recorded information about an identifiable individual other than contact information.”<sup>7</sup> The parties make no submissions about the nature of the information in the complainant’s clinic files. It seems obvious, however, that a patient’s medical files contain information about the patient, and I conclude that the complainant’s files in this case contain her personal information.

[11] The parties’ inquiry submissions say nothing directly about VCHA’s purpose for obtaining or compiling the complainant’s personal information. However, given the circumstances, I conclude that VCHA obtained or compiled the information in order to provide medical treatment to the complainant.

### ***Parties’ Submissions***

[12] The complainant’s submissions in this inquiry are provided on her behalf by the psychiatrist. The psychiatrist says that on the date in question, he went to the chart room to retrieve the complainants’ files and discovered they were missing. The reception staff did not know where they were. Later, when he returned to the chart room the files were back. He says,

At that point I walked into [clinic manager] office because his door was now open... I simply asked [clinic manager] if he had both of [complainant’s] charts earlier in the morning. He responded in a calm, offhanded manner that yes he had the charts and that got them because

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<sup>7</sup> See schedule 1 of FIPPA for definitions. The term “contact information” covers business contact information. It is not in issue here.

he was “curious” about her after reading an internet article about her (he later provided a link to the article).<sup>8</sup>

[13] The complainant’s submission and complaint also includes several records made by the psychiatrist within minutes of the event that repeat this same recollection of what the clinic manager said.<sup>9</sup>

[14] The complainant’s submission includes the clinic manager’s email to the clinic operations director and the clinic medical director shortly after the confrontation with the psychiatrist (Email A). In it, the clinic manager writes about his concern regarding the news article, which was dated 11 months earlier:

Just an FYI that I just had a major discussion with [psychiatrist] who informed me in no uncertain terms that I was not allowed to access “his patients” files. That I was invading their privacy and that he would be taking it up with “the Office of the Privacy Complaints Commissioner” that he had only reluctantly allowed me to attend rounds. This came out because I was reviewing a chart of a [name of the agency the complainant worked for] officer after reading this...

[quote from a news article, in which the psychiatrist criticizes the agency].

I think that the above statement is absolutely inappropriate. According to [the psychiatrist] I am NOT allowed to access any charts. I will be doing so going forward but am fairly confident there will be repercussions. I informed him that I would continue to do chart audits and to attend rounds and that was my right as a manager.<sup>10</sup>

[15] The complainant also provides the clinic manager’s email response to the psychiatrist’s complaint about their confrontation. The clinic manager says, “Thanks for the below. Just as an FYI, I had already informed [names of five clinic staff] about my access and audit of her file as the program manager.”<sup>11</sup>

[16] The complainant’s submission includes an email from the clinic operations director to the psychiatrist after the clinic conducted an investigation of the psychiatrist’s complaint of a privacy breach (Email B). It says:

While [the clinic manager] may have used that term “curious” when speaking with you, he has subsequently elaborated on his reasons for looking at the chart. He was conducting an audit of the patient’s chart to

<sup>8</sup> At para 91. The internet link was not provided in this inquiry.

<sup>9</sup> Specifically, the psychiatrist’s note to patient file to record of his call to the complainant to tell her what happened (tab 27), his email to the clinic management (tab 28), and his email to the complainant’s lawyer (attached to complaint).

<sup>10</sup> Complainant’s submission (tab 30). The psychiatrist says he obtained a copy of this email through an FIPPA access request.

<sup>11</sup> Complainant’s submissions (tab 29).

prepare for your departure from the program and was investigating statements made by you in a magazine article which specifically identified you as being part of the BC OSI Clinic.<sup>12</sup>

[17] VCHA submits that this complaint is part of a long-standing disagreement about whether non-clinicians should have access to patient files. VCHA says:

It is respectfully submitted, that since 2009, [the psychiatrist] has fundamentally disagreed with VCH's position that the managers at the OSI Clinic have the right and duty to monitor service delivery to patients by clinical staff through the reviewing and auditing of patient charts and that this is authorized under s.32(a) of FIPPA. It is this fundamental disagreement that is the source of [the psychiatrist's] ongoing complaints about inappropriate access to patient records by OSI Clinic managers, including [the clinic manager].

VCH reiterates that the OSI Clinic's managers are just as important to its care teams as clinicians and physicians and that accessing personal information as part of their duty in overseeing the services delivered by the OSI Clinic is consistent with the purpose for which the personal information was collected. Managers are responsible for ensuring the quality of patient care, due diligence, and adherence to standards and policy. Accessing the personal information within treatment files is a part of carrying out this responsibility and is consistent with the purpose for which the information is collected.<sup>13</sup>

[18] VCHA acknowledges that the clinic manager viewed the complainant's clinic files on the date in question and that this was triggered by what he read in the news article. VCHA confirms that the clinic manager is a social worker by training and not a physician. VCHA says that it investigated the dispute between the clinic manager and the psychiatrist and found no evidence of inappropriate access by the clinic manager. VCHA says:

The OSI Clinic manager's accountabilities including the monitoring and reviewing of clinical performance, ensuring that a clinician's patient charting meets the minimal standards expected for their discipline, and ensuring that the treatment reports for the Clinic's partners (VAC and the RCMP) are being completed within the expected timeframes by the clinicians.

[The clinic manager] was conducting an audit of the Complainant's patient chart in anticipation of [the psychiatrist's] imminent departure from the OSI Clinic. This audit was triggered by the comments made by [psychiatrist] in a [news] article. Given the nature of [the psychiatrist's] role at the OSI Clinic and his comments about the [agency] (a key partner and funder), [the clinic manager] was concerned about potential issues

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<sup>12</sup> Complainant's submissions (tab 35).

<sup>13</sup> VCHA's reply submission at para. 4.

for the OSI Clinic and the treatment of care for the Complainant, particularly since she was directly named in the [news] article.<sup>14</sup>

[19] VCHA does not dispute that the clinic manager told the psychiatrist that he was looking at the complainant's files because he was "curious." VCHA provides the following explanation of what motivated the clinic manager to say what he did:

VCH recognizes that [the clinic manager's] comment about being "curious" was inappropriate and flippant. [He] was frustrated by [the psychiatrist's] continuous questioning of his ability to attend the Clinic Interdisciplinary team meetings as well as reviewing the patient charts."<sup>15</sup>

[20] VCHA also says:

When taken out of context, the manager's words may suggest that he was looking at patient records without proper justification. However, the relationship between the physician and the OSI manager had unfortunately deteriorated to the point where the manager was angrily and sarcastically reacting to the physician's continuous questioning of the manager's ability to review the patient charts for quality control.<sup>16</sup>

[21] The psychiatrist says, "I never said that he couldn't access any of my patients' charts only that he couldn't access them because he was 'curious'."<sup>17</sup> The psychiatrist doubts the clinic manager's claim that he was conducting an audit of the complainant's file because of the psychiatrist's imminent departure from the clinic. The psychiatrist says that the event took place only a month into the six month notice period VCHA gave him.<sup>18</sup>

### ***Analysis and findings***

[22] The parties agree that the clinic manager told the psychiatrist that he looked at the complainant's files on the date in question because he was curious after reading the news article. The dispute lies in whether the clinic manager was being flippant when he said that and he was actually looking at the files for the purpose of conducting an audit. Although VCHA acknowledges that the clinic manager said he was looking at the files because he was curious, it explains that was not really the case because he was conducting an audit in anticipation of the psychiatrist's imminent departure from the clinic. I accept that conducting an audit of a patient's medical file to see if a clinician's charting and treatment

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<sup>14</sup> VCHA reply submission at paras. 7-8.

<sup>15</sup> VCHA's reply submissions at para. 9. The clinic manager provides no submission or evidence in the inquiry.

<sup>16</sup> VCHA's initial submissions at para. 7.

<sup>17</sup> Complainant's submission at para. 98.

<sup>18</sup> Complainant's submission at para 1 and 104. The psychiatrist left approximately half way through the six month notice period.

reports meet standards would be a “consistent purpose” under s. 34 because it has a reasonable and direct connection to, and is necessary for, the provision of quality medical treatment. However, for the reasons that follow, I am not satisfied that the clinic manager was actually reviewing the complainant’s clinic files for that purpose.

[23] VCHA’s explanation for what the clinic manager was doing with the complainant’s files that day, namely conducting an “audit,” is an assertion unsupported by persuasive evidence. For instance, VCHA provides no documentary evidence to show that an audit was actually conducted by the clinic manager.<sup>19</sup> VCHA also does not explain or provide evidence even in general terms about its usual audit policies and practices, what exactly it means by the term “audit,” and how it was that an audit of a patient’s medical file would be conducted by someone who was not a medical clinician. VCHA also does not explain what aspect of the complainant’s medical files or treatment needed auditing, and what exactly the clinic manager was looking to find in the complainant’s files. There is also no direct evidence from the clinic manager or anyone else about whether an audit was being conducted on the complainant’s files that day.

[24] Further, I am not convinced that the psychiatrist’s comments in the news article would necessitate an audit of the complainant’s medical files. In Email A the clinic manager quotes the part of the news article that he thinks is pertinent and he wants to bring to the attention of his supervisors, namely that the psychiatrist publicly criticized the agency, a key clinic partner and funder. It is evident from what he says in Email A that his concern is about managing the clinic’s relationships with the agency and how the psychiatrist’s comments would affect the clinic. In Email B the clinic acknowledges that the clinic manager was investigating because of the psychiatrist’s statements in the news article, which specifically identified him as being part of the clinic.

[25] VCHA provides no explanation about what the psychiatrist said in the news article that had to do with the complainant’s medical treatment and why his comments necessitated a review of her files. The quoted excerpt of the news article provided in this inquiry (Email A) is not about the complainant or her medical treatment.<sup>20</sup> The psychiatrist is quoted as saying that he works for the clinic but he says nothing else about the clinic, and he did not identify the complainant or any other patient. What the psychiatrist says in the news article about the agency may have warranted the clinic following up with him personally,

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<sup>19</sup> VCHA’s evidence consists of the psychiatrist’s list of reasons for parting ways with the clinic, a letter the clinic sent to its clients about the psychiatrist’s departure, and the OIPC investigator’s letter.

<sup>20</sup> I assume that Email A contains only a partial quote of the news article and that complainant was interviewed elsewhere in the article, and that was how the clinic manager was alerted to her. Neither party provided a copy of the news article in this inquiry.

but I cannot see, based on the information in this inquiry, what it had to do with the complainant's medical files.

[26] I find the complainant's evidence to be persuasive. The psychiatrist says what he personally heard when he spoke with the clinic manager and it is in harmony with what the evidence (or lack of evidence) as a whole indicates, namely that the clinic manager was looking because he was curious, not because he was conducting an audit. For instance, Email A supports what the complainant alleges. It was sent by the clinic manager mere minutes after his confrontation with the psychiatrist and it shows the clinic manager was motivated to look at the complainant's files after reading the psychiatrist's criticism of the agency in the news article. He does not say in Email A that he was conducting an audit or what he was looking to find in the complainant's files that might relate to her medical treatment. It is only in later communications that the clinic manager and clinic management assert that an audit was being conducted. For instance, in Email B, sent two weeks later, the clinic operations director tells the psychiatrist that the clinic manager's "subsequently elaborated" reason for looking at the complainant's files was to audit her chart to prepare for the psychiatrist's departure. I have also considered the records that the psychiatrist made in the minutes after the event (see paragraph 13 above) and they consistently repeat the same recollection of what he heard the clinic manager say, which did not include that he was conducting an audit. VCHA did not challenge the psychiatrist's evidence of what the clinic manager said during their confrontation.

[27] Having carefully considered the parties' submissions and evidence, I conclude that the clinic manager read the complainant's clinical medical files because he was curious to see what they might indicate about the clinic's relationship with the agency, a key partner and funder, and/or he was curious about what they would reveal about the complainant's experiences with the agency. I am not satisfied that either is the purpose for which VCHA obtained or compiled the complainant's personal information (i.e., to provide her medical treatment) or is reasonably and directly connected to that purpose. Auditing or reviewing a patient file to see if charting and reports meet standards would be a use consistent with providing medical treatment to a patient. However, VCHA does not provide the kind of detail, explanation and cogent evidence necessary to establish that this is what the clinic manager was actually doing.

[28] In conclusion, I am not persuaded that the clinic manager was conducting an audit of the complainant's medical files on the date in question. I find that he was using the complainant's personal information for a purpose that was not authorized by s. 32(a) of FIPPA.



## **CONCLUSION**

[29] For the above reasons, I make the following order under s.58(3) of FIPPA:

1. VCHA used the complainant's personal information for a purpose that was not authorized by s. 32(a) of FIPPA on the date in question.
2. VCHA is required to stop using the complainant's personal information in contravention of s. 32(a) of FIPPA.

July 10, 2018

## **ORIGINAL SIGNED BY**

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Elizabeth Barker, Senior Adjudicator

OIPC File No.: F16-66183