



Prince Edward Island Île-du-Prince-Édouard

Legislative Assembly

Assemblée législative

Information and
Privacy Commissioner
PO Box 2000, Charlottetown PE
Canada C1A 7N8

Commissaire à l'information et
à la protection de la vie privée
C.P. 2000, Charlottetown PE
Canada C1A 7N8

PRIVATE AND CONFIDENTIAL

January 27, 2022

Gyorgy Kiss
64 Route 13, Crapaud
PEI C0A 1J0

Dear Gyorgy Kiss,

Re: Notice of privacy breach under the *Health Information Act*

Our file reference: BRH-21-031

Health PEI file: 2021-36

Further to our earlier correspondence, please find attached our Investigation Summary. Please review this summary carefully. If you have any outstanding concerns about this privacy breach, please let us know by February 28, 2022. We welcome any comment, question, or concern you may have.

You may write to me or to the Commissioner at infoprivacy@assembly.pe.ca, or contact us by telephone at (902) 368-4099.

Sincerely,

Maria MacDonald
Adjudicator

C: Director, Privacy and Information Management, Health PEI

Enclosures: Investigation Summary (4 pages)

IN THE MATTER OF AN
INVESTIGATION BY THE
INFORMATION AND PRIVACY
COMMISSIONER OF PRINCE
EDWARD ISLAND UNDER PART III OF
THE *HEALTH INFORMATION ACT*,
1988, R.S.P.E.I. Cap H-1.41

INVESTIGATION SUMMARY
OIPC Case File Number BRH-21-031
Health PEI reference 2021-36
January 27, 2022

The incident

- [1] In April of 2021, Health PEI learned that a blogger had posted on their Facebook page personal health information of one of the first people hospitalized with COVID-19.
- [2] The blogger originally posted that they learned this information from someone who learned it from a nurse caring for the person, stating:

I was contacted late this afternoon by a person with information directly from a nurse caring for the person hospitalized with – allegedly – the virus causing COVID-19. [underlined emphasis added]

- [3] Health PEI advises that this post was edited approximately an hour and half later, removing the reference to a nurse caring for the affected individual. The blogger replaced the underlined portion as follows:

I was contacted late this afternoon by a person with information about the person hospitalized with – allegedly – the virus causing COVID-19. [underlined emphasis added]

- [4] We do not know why the blogger changed the text of their post. It may have been inaccurate, or the blogger may have been trying not to identify the original person who disclosed the personal health information.
- [5] If the blogger's original statement is accurate, there were disclosures by three individuals,
 - a. by a nurse caring for the affected individual to an unknown person,
 - b. by the unknown person to the blogger, and
 - c. by the blogger to the internet.

Is this personal health information?

- [6] The blogger did not include the individual's name in the post. To satisfy the statutory definition of "personal health information", it needs to be about an identifiable individual. I agree with Health PEI that the individual is identifiable.
- [7] The Affected Individual's spouse advises us that they have been contacted by individuals who saw the Facebook post. Because these individuals knew the affected individual was, at that time, the only adult who had been hospitalized on PEI with COVID-19, they then learned the other sensitive personal health information about the affected individual that the blogger had posted.

Health PEI's investigation

- [8] Health PEI notified the affected individual and our office. They conducted an investigation and reported their findings to us and to the affected individual.
- [9] Health PEI conducted an audit of electronic accesses to the affected individual's personal health chart. When they were a patient, the affected individual was in the Emergency Department and in two other wards. On review of the audit records, Health PEI identified 41 employees who accessed the personal health information with 'nurse' in their title.
- [10] Health PEI found one employee had accessed the affected individual's personal health information without authority. The employee had been advised that there was a possibility that they would be called upon to work with this patient, but this employee did not treat the affected individual. Health PEI determined that this employee's access was not authorized because the employee was not actively involved in providing care to the affected individual and did not require the personal health information for any job duties.
- [11] When Health PEI asked, this employee denied disclosing anything about the patient to the blogger or to anyone else. The blogger's initial statement was that the unknown person got the information "directly from a nurse caring for [the affected individual]", this employee did not treat the affected individual, so may not have been the original person who disclosed the personal health information.
- [12] Health PEI was not able to identify an employee who disclosed the personal health information either to the unnamed person, or to the blogger.
- [13] The blogger did not indicate that the person who told him the personal health information is an employee of Health PEI. The person who disclosed this information to the blogger could be any one of hundreds of people.

- [14] Health PEI asked the blogger to remove the personal health information which he refused to do.
- [15] Health PEI reported the post to Facebook, but Facebook did not remove the post or the personal health information.

Health PEI Remediation

- [16] Health PEI gave the affected individual a copy of the audit report of who had accessed the personal health information records. Health PEI highlighted the name of the employee who they determined was not authorized to access the affected individual's personal health information. Health PEI removed this employee's ability to access information from the unit as it is no longer their primary work area.
- [17] Health PEI added to their privacy policy provisions about the risks of disclosing personal health information, even without the patient's name, because it is possible that an individual can be reidentified by other information in the public sphere. Health PEI is also working on a communication plan for staff on this addition.
- [18] Health PEI is developing a protocol related to responding to privacy incidents involving social media.

The OIPC

- [19] The OIPC has no recommendations for Health PEI for further action.
- [20] The OIPC has not discussed this matter with the blogger. The powers of the Information and Privacy Commissioner's Office are limited to reviewing the actions of custodians. Although we do not have the power to review the actions of individuals like this blogger, we are permitted to disclose to the Crown Prosecutor information that we receive in a review if we consider it to be evidence of an offence:

54 (4) The Commissioner may disclose to the Minister of Environment, Labour and Justice and Attorney General information, including where necessary personal health information, relating to the commission of an offence against an enactment or an Act of the Parliament of Canada if the Commissioner considers there is evidence of an offence.

- [21] It is an offence under section 38 of the *Health Information Act* to disclose personal health information for any purpose other than the purpose for which it was disclosed. Section 38 of the *Health Information Act* states:

38. Disclosure to non-custodian

(1) Except as permitted or required by law, a person who is not a custodian and to whom a custodian discloses personal health information shall not use or disclose the personal health information for any purpose other than

(a) the purpose for which the custodian was authorized to disclose the information under this Act; or

(b) the purpose of carrying out a statutory or legal duty.

(2) A person who is not a custodian and to whom a custodian discloses personal health information shall not use or disclose more of the personal health information than is reasonably necessary to meet the purpose of the use or disclosure, as the case may be, unless more extensive use or disclosure is required by law.

[22] This provision has not yet been tested in the PEI Court system, and it is not clear if these circumstances are an offence under section 38 of the *Health Information Act*.

[23] The OIPC is aware that, in the past, the blogger has posted other individuals' personal information or personal health information on the internet that was not public information. One of our concerns is that if the blogger receives other personal information or personal health information, he may publish it again.

[24] I recommended to the Commissioner that she report this incident to the Director of Prosecution, Department of Justice and Public Safety, as a potential offence under section 38 of the *Health Information Act*. She has not yet decided whether to accept this recommendation.

Maria MacDonald