



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

August 16, 2022

Gyorgy Kiss
[Via Email]

Dear Gyorgy Kiss,

Re: Notice of privacy breach under the *Health Information Act*
Our file reference: BRH-21-031
Health PEI file: 2021-36

Enclosed please find Breach Report No. HI-22-001, issued on today's date, August 16, 2022, containing the decision of Adjudicator Maria MacDonald, on her review of the above-captioned privacy breach in relation to an unauthorized access and disclosure of personal health information.

This Order will likely be posted to our website at oipc.pe.ca on or after August 23, 2022.

Sincerely,

Kimberley Johnston
Administrative Assistant

Enclosure : HI-22-001 (8 pages)



**OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
Prince Edward Island**

Breach Report HI-22-001

Custodian: Health PEI

**Maria MacDonald,
Adjudicator**

August 16, 2022

Summary: Health PEI was advised that a blogger had posted personal health information about one of their patients. Health PEI investigated and found an employee had accessed personal health information without authorization, but it does not appear that this individual disclosed personal health information. Health PEI was not able to ascertain how the blogger got the personal health information. The adjudicator found that Health PEI had responded appropriately to the incident and did not make any recommendations or orders.

Statutes Considered: *Health Information Act*, RSPEI 1988, c H-1.41, clause 36(1)(c)

I. BACKGROUND

[1] In April of 2021, Health PEI learned that a blogger had posted personal health information of the first adult who was admitted to a PEI hospital to treat COVID-19. I will refer to the patient as the “Affected Individual”.

- [2] The blog post included the Affected Individual's gender, age range, that they had been hospitalized for COVID-19, the Affected Individual's underlying medical condition, and the patient's current status. As a matter of public interest, the Chief Public Health Office had disclosed to the public the gender and age bracket of the first adult hospitalized with COVID-19. The information at issue is the underlying medical condition.
- [3] Although neither the Chief Public Health Office nor the blogger disclosed the Affected Individual's name, there is a high chance that the Affected Individual was identifiable. The Affected Individuals' spouse confirms that people who saw the blogger's post contacted them. Because the people knew the Affected Individual had been hospitalized on PEI with COVID-19, they then learned the other personal health information about the underlying medical condition.
- [4] Initially, the blogger attributed the information to a nurse who was treating the Affected Individual. The blogger posted:

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]

- [5] The blogger edited their post and removed their reference to a nurse caring for the Affected Individual.

II. ISSUES

- [6] The issue in this review is whether Health PEI took appropriate steps to respond to the suspected breach of privacy. The *Health Information Act* does not give the Office of the Information and Privacy Commissioner the power to review the actions of individuals like this blogger.

III. DISCUSSION

[7] I will address each of the following components of a custodian's response to a suspected privacy breach:

- a. Notification (to an affected individual and to the Commissioner);
- b. Containment;
- c. Investigation; and
- d. Remediation.

Notification

[8] Clause 36(1)(c) of the *Health Information Act* requires custodians to notify an individual if their personal health information is stolen, lost, improperly disposed of, or disclosed to or accessed by an unauthorized person. Custodians do not need to notify if they reasonably believe that there will be no adverse impact, but this exception is not applicable in these circumstances.

[9] Health PEI notified the Affected Individual two days after they discovered the blog, while they were still a patient. Health PEI continued to update the Affected Individual through their investigation. Health PEI also notified our office on the same day.

[10] I have no concerns about the timeliness or adequacy of Health PEI's notices to the Affected Individual or to our office.

Containment

[11] Containment of the breach involves ensuring, if possible, that the personal health information at issue is not subject to further unauthorized disclosure.

[12] Health PEI asked the blogger to remove their post, but the blogger did not acknowledge or respond to this request.

[13] Health PEI reported the post to the social media platform as inappropriate. The social media platform advised Health PEI that they had reviewed the post and they did not find it violated the social media platform's policies.

[14] Although these efforts were not successful, I find that Health PEI took reasonable steps to prevent further unauthorized access, use or disclosure of personal health information.

Investigation

[15] A privacy breach cannot be undone, but Custodians must still review an incident to identify any shortfalls in policies or procedures that may have contributed to the breach. Health PEI investigated, but was unable to determine the blogger's source.

[16] If the blogger's first reference to a nurse is accurate, the information passed between three individuals;

- a. by a nurse caring for the Affected Individual to an unknown person,
- b. by the unknown person to the blogger (I will refer to this unknown person as the middle person), and
- c. by the blogger on social media.

[17] One can work backwards or forward to try to trace a suspected disclosure. Working backwards, Health PEI was not able to ascertain the identity of the middle person who gave the personal health information to the blogger. Health PEI did not ask the blogger. The blogger was not cooperative in the request to remove the post and is critical of government. Health PEI was also concerned that if they asked the blogger, the blogger would make further posts about the Affected Individual. The blogger describes themselves as an

investigative journalist and, if they know the identity of the middle person or the person described as a nurse, we expect they will claim they are entitled to protect their source(s). A few weeks earlier, the blogger made a post in which a person the blogger refers to as a whistleblower, alleged that COVID-19 vaccines had killed someone and injured others. The blogger edited and altered an audio recording to protect the person's identity.

[18] Health PEI did not have any information to identify the middle person who disclosed the information to the blogger. For example, the blogger did not indicate that the middle person is an employee of Health PEI. The blogger's friends list, on the social media platform, was locked so Health PEI could not cross reference it with their staff.

[19] To try to work forward, Health PEI conducted an audit of accesses to the Affected Individual's electronic chart. On review of the audit records, Health PEI identified 41 employees who accessed the personal health information with 'nurse' in their title. Health PEI reported that 41 employees is not an unexpected number of employees because the Affected Individual was in three units and there was a broad team involved in the Affected Individual's care.

[20] Health PEI reviewed the audit records and found one employee had accessed the Affected Individual's personal health information without authority. The employee's manager told the employee that there was a possibility that they would work with this patient. The manager did not give the employee the patient's name and did not direct the employee to review the Affected Individual's chart. This employee was never called upon to treat the Affected Individual but searched for the patient in the clinical information system and accessed their personal health information.

[21] Health PEI's policies are that staff may only access a patient's personal health information when they are actively involved in providing care to a patient or if they otherwise require the personal health information for the purposes of their job duties. 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. Health PEI also discovered that the employee had access to electronic records of the Affected Individual's unit, although it was no longer the employee's primary work area.

[22] This employee denied disclosing anything about the patient to the blogger or to anyone else. The blogger's initial statement was that the middle person got the information "directly from a nurse caring for [the Affected Individual]". This employee did not treat the Affected Individual, so does not appear to have been the original person who disclosed the personal health information to the middle person, or to the blogger.

[23] Health PEI was not able to identify who disclosed the personal health information either to the unnamed person, or to the blogger.

[24] The Affected Individual was disappointed with Health PEI's inability to identify who had disclosed the personal health information. The Affected Individual wanted all the 41 employees (with nurse in their title) who had accessed the Affected Individual's electronic records to be interviewed.

[25] We did not conduct these interviews, nor did we direct Health PEI to conduct such interviews. A thorough investigation includes exploring crucial evidence and key players. In this matter we do not know anything about the circumstances of how the blogger or the middle person came to learn the personal health information.

[26] As noted earlier, the blogger changed their post to remove their earlier reference to a nurse directly treating the Affected Individual. It may have been inaccurate information about who disclosed the information to the middle person, or the blogger may have been trying to protect this individual. Health PEI also did not have any information about the middle person who disclosed the personal health information to the blogger, or the circumstances

of that disclosure, to be able to frame interviews with the 41 employees. Health PEI was not aware of any obvious players that would have information related to this incident.

[27] Based on the foregoing, I find that Health PEI conducted an adequate investigation.

Remediation

[28] Remediation are any measures taken to reduce the risk of a similar breach occurring in future. Health PEI addressed a known unauthorized access by one of their employees, and although they were not able to confirm that a disclosure occurred from within Health PEI, they also addressed a potential unauthorized disclosure by an employee.

[29] Health PEI identified an employee who had accessed personal health information without authorization. On the Affected Individual's request, Health PEI gave the Affected Individual a copy of the audit report of all staff who had accessed the Affected Individual's electronic chart, and 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 and addressed the unauthorized access in accordance with Human Resources policies and procedures and the union's collective agreement.

[30] The information about a pre-existing condition is accurate but Health PEI was not able to confirm that anyone from their organization disclosed this personal health information, directly or indirectly, to the blogger. Regardless of whether they can determine how this breach happened, it is important for the custodian to examine the incident to see if they can do anything to avoid similar incidents in the future. Although it was a suspected breach, Health PEI still undertook some remedial measures to attempt to ensure that this would not occur again.

[31] Health PEI has privacy policies about protecting personal health information and accessing electronic health information, they train new employees, and all staff sign a pledge of confidentiality and acceptable use agreements. Health PEI added provisions to their privacy policy about the risks of disclosing personal health information, even without the patient's name, because it is possible that an individual can be re-identified by other information in the public sphere. Health PEI is also working on a communication plan for staff on this addition and is developing a protocol related to responding to privacy incidents involving social media.

[32] I find that these are reasonable measures to remediate the unauthorized access, and the potential unauthorized disclosure of the personal health information of the Affected Individual.

IV. CONCLUSION

[33] In summary, I find that Health PEI responded appropriately to the incident:

- a. I have no concerns about the timeliness or adequacy of Health PEI's notices to the Affected Individual or to our office;
- b. I find that Health PEI took reasonable steps to try to contain the breach;
- c. I find that Health PEI conducted a reasonable investigation; and
- d. I find that Health PEI has taken reasonable measures to remediate.

[34] I have no recommendations or Orders for Health PEI for further action.

[35] This incident occurred when the Affected Individual was in a difficult medical situation and has been distressing on the Affected Individual and their family. I thank the Affected Individual and Health PEI for their participation and cooperation.

SGD MARIA MACDONALD

Maria C. MacDonald
Adjudicator, PEI Office of the Information and Privacy
Commissioner