

Saskatchewan Information and Privacy Commissioner



Advisory for Saskatchewan Health Trustees for Record Disposition

April 12, 2011

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We request that all health profession regulatory bodies and colleges immediately distribute this advisory notice to all of their members.

The Office of the Information and Privacy Commissioner (OIPC) is currently investigating the disposal of thousands of patient records and personal health information in a large recycling bin near the intersection of Parliament Avenue and Albert Street in Regina, Saskatchewan. There was extensive media attention to the discovery of these records on Wednesday, March 23, 2011 which resulted from a tip from a citizen via an MLA office. We anticipate that we will conclude this investigation within a matter of weeks.

Since we seized those records we have now been alerted to two subsequent discoveries of patient files in a dumpster in Saskatoon (April 6, 2011) and in a dumpster in northwest Regina (April 8, 2011). In each case, citizens have discovered the patient files and have notified our office of these materials. In addition we have also received tips about two other Regina physicians who have improperly disposed of personal health information contrary to *The Health Information Protection Act* (HIPA). Consequently, we have now commenced four new investigations involving other trustee organizations.

These four new incidents as well as our experience over the last seven years suggest that in this province we have systemic issues to address.

All trustees will appreciate that these kinds of incidents reflect badly on health professionals. Tossing patient files in a dumpster or recycling bin contravenes the trustee's obligations imposed by HIPA. We note that some commentators have tried to minimize the problem and have suggested that these problems will be remedied by the advent of electronic medical records and the electronic health record system. The short answer to such a claim is that the problem with the records found in dumpsters and recycling bins reflects a lack of respect for the patient and the patient's right to have their most sensitive personal health information adequately protected until it is safely shredded or the trustee extinguishes its responsibility by the process contemplated by section 22 of HIPA.

Electronic medical records may largely eliminate the prospect of patient files blowing in the wind around dumpsters but pose other significant privacy risks. These include snooping, viewing of personal health information without any appropriate need to know, gossip, and carelessness. Given the huge number of approved users contemplated by the Electronic Health Record and the increase in electronic medical records it is reasonable to expect that the nature of the risk to patient privacy will change but will not be eliminated by technology. A physician, pharmacist or other trustee that has failed to pay attention to HIPA and to align its business practices accordingly will be just as likely to breach HIPA with electronic records as it has with paper records. HIPA compliance will require diligence, appropriate training, and serious consequences for breaches to mitigate those new risks.

In any event, HIPA applies to paper records until we achieve a fully electronic system. Trustees must demonstrate that they take privacy seriously and are taking all reasonable measures to protect patient personal health information.

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Our experience is that far too many trustees have failed to take notice that the legal landscape and responsibility for patient files has changed significantly with the proclamation of HIPA on September 1, 2003. Longstanding confidentiality practices may be useful to continue but they are typically insufficient to comply with HIPA.

We therefore recommend that all trustees and trustee organizations IMMEDIATELY implement the following procedures:

1. Ensure that someone in the organization is formally designated as the Privacy Officer with specific responsibility for HIPA compliance, particularly the safe retention and disposition of personal health information.
2. Ensure that the trustee organization has written policies and procedures as prescribed by section 16 of HIPA including physical, administrative and technical measures reasonable for the protection of personal health information.
3. Ensure that every person in the trustee organization understands the difference between the historic culture of confidentiality and the new requirements of HIPA including the continuing responsibility for patient files pursuant to section 22 of HIPA.
4. Ensure that the trustee organization is in compliance with the transparency obligations in sections 9 and 10 of HIPA.
5. Ensure that there is a proper record retention and disposition schedule and that it is followed.
6. Ensure that all personal health information is properly and safely stored at all times.
7. Ensure that when disposing of personal health information all materials are shredded or otherwise completely destroyed.
8. Ensure that if the storage or destruction of patient files is outsourced or if an information management service provider is involved that there is a proper agreement that complies with sections 16, 17 and 18 of HIPA.

Individual trustees should consult with their colleges and regulatory bodies for assistance in implementing the foregoing measures.

We also encourage all trustee organizations to become familiar with the following resources available at the OIPC website, www.oipc.sk.ca:

- *Helpful Tips: Privacy Breach Guidelines*
- *Privacy Considerations: Faxing Personal Information and Personal Health Information*

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- *Best Practices - Mobile device security*
- Archived issues of our e-newsletter, the *Saskatchewan FOIP FOLIO* for February/March 2010, April 2008, March 2008, and December 2006
- *Advisory for Saskatchewan Physicians and Patients Regarding Out-Sourcing Storage of Patient Records* (March 10, 2010)
- Archived *OIPC Annual Reports*: 2009-2010 , pages 19-20; 2008-2009, pages 26-30; 2007-2008 p. 27; 2006-2007, p. 13; and, 2004-2005, p. 37

We also encourage you to review the *Fact Sheet – Secure Destruction of Personal Information* available at the website of the Ontario Information and Privacy Commissioner: www.ipc.on.ca. The statutory references in the *Fact Sheet* will not apply to Saskatchewan trustees but the steps and best practices are portable.

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