

**SASKATCHEWAN
INFORMATION AND PRIVACY COMMISSIONER**

INVESTIGATION REPORT 077/2014

Cypress Regional Health Authority

Summary: Employees of the Cypress Regional Health Authority (Cypress) contacted this office to express concern over a project where patient files containing personal health information were being “stripped”. The Commissioner found that there were not adequate safeguards in place and those without a need-to-know were involved in the project. He also found that the personal health information was not destroyed in a manner which protects privacy. As such, he found that Cypress violated sections 16, 17 and 23 of *The Health Information Protection Act*. The Commissioner recommended Cypress enhance policies and procedures, ensure all employees have received privacy training, provide breach notification to affected individuals and create a project charter for each new project involving personal health information.

I BACKGROUND

[1] My office was made aware of a practice occurring at the Cypress Regional Health Authority (Cypress), by two staff members. They alleged that nurses and paramedics were asked to “strip charts” that contained personal health information of patients of the region. The purpose of this stripping was to eliminate duplicate and outdated copies of personal health information for preparation for a new integrated facility and for possible scanning into the Electronic Medical Record (EMR). They also allege that the boxes to be stripped were transported without safeguards and stored in an unsecure location.

[2] On July 30, 2014, my office notified Cypress of our intention of undertaking an investigation. It has provided two submissions.

II DISCUSSION OF THE ISSUES

1. Does HIPA apply?

[3] *The Health Information Protection Act (HIPA)* applies when three elements are present. The first element is personal health information, the second element is a trustee, and the third element is if the personal health information is in the custody or control of the trustee.

[4] Cypress qualifies as a trustee pursuant to subsection 2(t)(ii) of HIPA. The charts in question contained personal health information that qualified as such pursuant to subsection 2(m) of HIPA. This personal health information was under the custody and control of Cypress.

2. Did Cypress meet the duty to protect the personal health information during this project pursuant to section 16 of HIPA?

[5] Section 16 of HIPA states:

16 Subject to the regulations, a trustee that has custody or control of personal health information must establish policies and procedures to maintain administrative, technical and physical safeguards that will:

(a) protect the integrity, accuracy and confidentiality of the information;

(b) protect against any reasonably anticipated:

(i) threat or hazard to the security or integrity of the information;

(ii) loss of the information; or

(iii) unauthorized access to or use, disclosure or modification of the information; and

(c) otherwise ensure compliance with this Act by its employees.

- [6] In its submissions, Cypress confirmed that nurses, and later paramedics, within its region had been asked to strip clinical care charts. This project of stripping the charts included removing duplicate copies of personal health information such as laboratory reports, x-rays and echocardiograms. It would also include culling old personal health information pursuant to Cypress' retention policy. This was necessary for the purposes of preparing for a new integrated facility and possible scanning to the EMR. The first submission stated that it "was a slow process and there was no way that this would be possible to be done by just using Health Information, Clinic and Admin staff." Therefore, the decision was made to instruct nurses and paramedics in the Emergency Health Building to assist in the project during slow times such as night shifts.
- [7] A memo was sent to nursing, lab and EMS staff on May 27, 2014 advising of this directive. Cypress has also provided a copy of instructions entitled *Stripping of Clinic Charts – May 20/14*.
- [8] I must determine if this project adhered to the duties imposed by section 16 of HIPA. I note that the directive for this project was given by Cypress' Director of Rural Health Services and Director of EMS and Home Care, the first submission was written by a Health Information Management Practitioner and the second submission was written by the Privacy Officer.
- a. Who participated in the stripping of charts?***
- [9] Cypress' first submission indicated that stripping of charts was originally the responsibility of staff of the Primary Health Care Manager.
- [10] The memo of May 27, 2014 directed nurses and paramedics to assist in the project. The complaints received by my office also alleged that nurses and paramedics were participating. However, Cypress' first submission indicated that only Licenced Practical Nurses (LPN's) and Registered Nurses (RN's) were instructed to participate. My office inquired if paramedics participated as well. However, the Privacy Officer indicated in the second submission that she was "told by the manager that none of them had worked

on them as they had declared that they had an issue with doing this.” A week later, she informed my office that in fact four paramedics had worked on stripping the charts.

[11] It does not instill confidence that Cypress does not appear to know who exactly had access to the personal health information and at what time. There is no indication that there was one person in charge monitoring the project. Subsection 16(b)(iii) of HIPA indicates that Cypress must have safeguards in place to protect against unauthorized access to or use of personal health information. Also, subsection 16(c) of HIPA indicates that trustees must have safeguards in place to ensure its employees comply with HIPA. In my view, these duties would be difficult to manage without monitoring which employees have access to what personal health information, at what time and for what purpose. Without the proper safeguards in place, Cypress cannot guarantee that personal health information had been protected.

[12] Cypress’ first submission also indicated the following:

When the files returned to the Clinic they were placed back on the shelves in the file room. It was found at this time that we had a lot of misfiles and some patients had 2-3 chart folders, the Nursing staff did not get rid of these extra charts so it was becoming confusing, and disorganized. At this time [two Cypress’ employees] decided that they would bring one of the Environmental Services workers over to help clean this up, they had extra staff in this department due to the fact that the building were separated and not as much cleaning time was required so they redirected the staff to do this.

[13] My office asked Cypress to provide more detail about the role of the environmental service workers that participated in this project. Cypress indicated in its second submission that the environmental service workers were assigned to clean up the file room and alphabetize the files once the nurses and paramedics had stripped the files. It also indicated that the environmental service workers would amalgamate personal health information into one file if multiple files existed for one individual.

[14] Finally, Cypress reported that maintenance workers would transfer the files between locations so that they could be stripped.

b. What privacy training had Cypress provided to these employees?

- [15] Cypress has indicated that its privacy training regime is two-fold. Employees have to review an online PowerPoint about privacy and then pass an exam addressing the subject matter. This must be done every five years. Cypress also reported that it also requires employees to sign a confidentiality agreement. However, it notes that not all of the nurses have signed the confidentiality agreement “as the SRNA believe and are stressing that they are professionals and that this is covered within their code of conduct”.
- [16] Cypress reported that all of the staff had reviewed the privacy power point and passed the exam. However, it had been over five years since one of the RNs and one of the maintenance workers had passed the privacy exam. Cypress also reported that two out of the eight LPNs, four out of eight RNs, one of the two environmental workers and all three of the maintenance worker had signed confidentiality agreements.
- [17] Later, Cypress indicated that all four of the paramedics that worked on stripping the charts had signed confidentiality agreements, but only three had passed the privacy exam.
- [18] I am unclear as to why there is a discrepancy among staff in terms of the privacy regime. Some staff have passed the exam, but not signed the confidentiality agreement. Others are the opposite. Cypress’ Confidentiality policy indicates that employees must both be “informed of their responsibility to protect the confidentiality of individuals” and sign a confidentiality agreement. It appears this policy is not being applied consistently.
- [19] As such, I must conclude that, again, Cypress did not fulfill its duties as outlined in subsection 16(c) of HIPA with respect to the stripping project as all of the staff who worked on this project had not followed Cypress’ confidentiality policy. Training safeguards were in place, however, not adhered to.

c. What instructions were given with respect to stripping files?

- [20] In its first submission, Cypress provided my office with a one page document entitled *Stripping of Clinic Charts – May 20/14*. The top half of the page lists some retention rules for following when stripping charts. The directions provided do not seem to reflect the retention policy provided to my office by Cypress with its second submission.
- [21] The second half of the document has the heading “Cleaning Chart” and indicates the following records could be removed: “Yellow Emerg/OP Record, All Requisitions – Lab, x-ray ECG, CT’s, Ultrasounds, Fax cover sheets, Referrals”. It then states: “If in doubt of something just leave it in the chart.” There are no instructions related to the age of the documents that can be removed. The document does not mention the removal of duplicate copies of personal health information as Cypress had described in its submission.
- [22] Upon review of the *Stripping of Clinic Charts – May 20/14* document, I find that the instructions for the stripping of charts are vague and does not offer the most basic of explanations. Further, it does not emphasize the need for the protection against unauthorized access, use and disclosure during this project or refer to safeguards that would help.
- [23] This problem is compounded further by other facts discovered through the course of this investigation. The employees who brought this complaint to our office indicated the verbal instructions were not provided, only written instructions. These employees were told to ask a co-worker to demonstrate the process if they had questions. The employees provided us with a different version of the written instructions discussed above. The title of this document is *Stripping and Clinic Charts – May 20/14*. There are only subtle, insignificant differences in the rest of the text. However, the document provided to us by the employees contained handwritten notes of extra instructions not provided in the text of either of the documents. It is unclear how these extra instructions were communicated to the employees and if they were consistently communicated to all employees involved in this project.

[24] Subsection 16(a) of HIPA requires Cypress to have safeguards that will protect the integrity and accuracy of personal health information. Also, subsection 16(b)(i) of HIPA states trustees must protect against any reasonably anticipated threat or hazard to the security or integrity of the personal health information. By giving vague and inconsistent instructions to its employees for this project, the integrity of the personal information was put at risk. Therefore, Cypress did not comply with these subsections.

d. What physical safeguards did Cypress have in place during this project?

[25] Part of the complaints received by my office was that boxes of charts were left unattended in the lobby of the emergency health building and in unlocked rooms such as the paramedic garage and employee break room. The complaints also indicated the charts were being stripped by employees in the public waiting rooms.

[26] Cypress' first submission did not address the safeguards in place regarding the storage of the charts while they were waiting to be stripped. The second submission stated that the boxes were placed in a locked room behind the nursing station where the majority of stripping occurred. However, its first submission stated that employees were stripping files while working reception in the waiting room. It also indicated that employees were reminded of the clean desk policy and the confidentiality agreement. My office asked Cypress to explain further how this was communicated to its employees and to provide any written communication to support this assertion. Cypress' second submission stated the following:

In speaking with the Health Information Management Professional in Maple Creek, she was unable to find a copy of the written instructions that states about following the clean desk policy and the Confidentiality Agreement. She knows that this was something that was stressed verbally when they were showing the staff how to do the charts. These policies are found in our Admin policy manual that is online. The location of the privacy policies are stressed in our on line privacy training.

[27] Cypress' account is problematic as the employees who made the complaint indicated that they were not shown how to strip the charts. They were handed the vague instructions and told to ask their coworkers if they had questions. Further, not all of the employees

who worked on stripping charts had signed a confidentiality agreement or participated in the privacy training.

- [28] Further, Cypress' *Clean Desk* policy indicates that employees must secure personal health information when they leave their work station. The safeguards proposed in this policy are weak. More to the point, this policy is not applicable when employees are working on personal health information around those without a need-to-know, especially individuals who are not employees of the region.
- [29] Finally, the employees who complained to this office reported that boxes of the charts that required stripping was transported to the emergency health facility by an employee and her husband in their personal vehicle. We asked Cypress how the charts were transported. Cypress indicated that there was only a policy for transporting long term care charts, which would not apply in this situation. It also reported that maintenance workers transported taped boxes of charts in maintenance trucks. Cypress also indicated that boxes were taped before transport, however, that stopped because employees had complained it took too long to open the boxes before stripping.
- [30] After reviewing our draft report and further investigation, Cypress acknowledged that spouses of Cypress workers had transported boxes of patient files from one facility to another. However, it maintains the boxes were always in the presence of a Cypress worker and the lids stayed on the box. Nevertheless, personal health information within its custody were handled by individuals that were not employed by the region and had no privacy training.
- [31] There are some other discrepancies between the employees' account of what transpired and what Cypress has asserted. However, the material provided by Cypress demonstrates that employees were not given adequate instruction and that Cypress did not know who was participating in this project. As such, I conclude there were not adequate physical safeguards in this project to comply with section 16 of HIPA.

3. Did all of the individuals involved in this project have a need-to-know?

[32] Section 23 of HIPA states the following:

23(1) A trustee shall collect, use or disclose only the personal health information that is reasonably necessary for the purpose for which it is being collected, used or disclosed.

(2) A trustee must establish policies and procedures to restrict access by the trustee's employees to an individual's personal health information that is not required by the employee to carry out the purpose for which the information was collected or to carry out a purpose authorized pursuant to this Act.

...

[33] My office asked Cypress to explain how all of the employees involved in the chart stripping project had a need-to-know. It stated that it had a need-to-know policy pursuant to section 23(2) of HIPA and that access was given to the aforementioned employees for the purposes of fulfilling the retention and destruction policy section of HIPA which states:

17(2) A trustee must ensure that:

(a) personal health information stored in any format is retrievable, readable and useable for the purpose for which it was collected for the full retention period of the information established in the policy mentioned in subsection (1); and

(b) personal health information is destroyed in a manner that protects the privacy of the subject individual.

[34] Section 17 of HIPA does not yet state that a trustee must destroy personal health information. It does require, however, that destruction occur in a manner that protects the privacy of individuals. As noted earlier, Cypress did not meet the requirements set out in section 16 of HIPA. Therefore, it did not comply with section 17(2)(b) of HIPA. Cypress maintains that it did destroy the personal health information in a secure manner. It explained that what was meant to be destroyed was placed in locked bins and then cross shredded. However, as described the lead up to the destruction was also part of the process and was not compliant with HIPA. Cypress believes that the lead up was more about retention. I disagree.

[35] As such, I have determined that many of the individuals that had access to this personal health information during this project did not have a need to know pursuant to section 23(2) of HIPA.

III FINDINGS

[36] Cypress' chart stripping project did not comply with sections 16, 17 and 23 of HIPA.

IV RECOMMENDATIONS

[37] Cypress develop a system for monitoring when employees access personal health information.

[38] Cypress ensure that all of its employees have completed privacy training on an annual basis and sign confidentiality agreements.

[39] For future projects involving personal health information, I recommend that:

- Cypress include its Privacy Officer in the early stages of planning such a project;
- Cypress create a project charter;
- Cypress include in the charter, a list of individuals to participate in the project and ensure they have taken privacy training and signed confidentiality agreements;
- Cypress develop clear and complete instructions for those working on the project and establish training sessions at the beginning of the project;
- Cypress develop specific safeguards required for the project and include in the instructions and training sessions for employees;
- Cypress update the instructions regularly throughout the duration of the project;
- Cypress consider whether employees involved in the project should sign a special confidentiality agreement;
- Cypress apply these recommendations to the on-going project of uploading older personal health information into the EMR.

- [40] Cypress amend its confidentiality agreement to require employees to acknowledge that they have read and understand privacy related policies and procedures.
- [41] Cypress create clear policies and procedures addressing the transportation of personal health information between Cypress sites and policies as to when it is appropriate to remove personal health information from the sites.
- [42] Cypress provide privacy breach notification to all individuals whose charts were stripped during this project.

Dated at Regina, in the Province of Saskatchewan, this 10th day of February, 2015.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy
Commissioner