



## **INVESTIGATION REPORT 101-2016**

### **Prince Albert Parkland Regional Health Authority**

**June 8, 2016**

**Summary:** The Commissioner received a complaint from an individual who was not satisfied with the outcome of the investigation conducted by Prince Albert Parkland Regional Health Authority (PAPRHA) into her concern that PAPRHA inappropriately disclosed her child's personal health information and changed his next of kin without her consent. Upon investigation, the Commissioner was satisfied with the efforts taken by PAPRHA to prevent similar breaches from happening in the future.

#### **I BACKGROUND**

- [1] On January 28, 2016, Prince Albert Parkland Regional Health Authority (PAPRHA) received a complaint from an individual alleging that PAPRHA released the dates her son visited the doctor to the child's grandmother without her consent. Further, that her son's next of kin was changed to the grandmother without her approval. The information disclosed was then used by the grandmother in a court proceeding.
- [2] On April 6, 2016, PAPRHA provided a response to the Complainant indicating that its investigation found that her son's next of kin was changed incorrectly, was changed without the Complainant's consent and without proper legal documentation to do so. Further, the investigation found that her son's privacy was breached when the dates of his appointments were inappropriately disclosed to the child's grandmother. The disclosure was in violation of section 27 of *The Health Information Protection Act* (HIPA).

[3] On April 28, 2016, the Complainant requested my office look into the matter. On the same date, my office provided notification to PPRHA advising that my office would be undertaking an investigation. My office requested that PPRHA provide details regarding the matter, relevant written policies and/or procedures and a copy of PPRHA's internal privacy breach investigation report.

## II DISCUSSION OF THE ISSUES

### 1. Is there personal health information involved in this matter?

[4] Subsection 2(m) of HIPA defines "personal health information" as follows:

2 In this Act:

...

(m) "**personal health information**" means, with respect to an individual, whether living or deceased:

(i) information with respect to the physical or mental health of the individual;

(ii) information with respect to any health service provided to the individual;

(iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;

(iv) information that is collected:

- (A) in the course of providing health services to the individual; or
  - (B) incidentally to the provision of health services to the individual;
- or

(v) registration information;

[5] According to PPRHA, the information involved was personal health information of the Complainant's eight year old son. Specifically, the child's medical appointments and whether or not they were attended which would constitute personal health information pursuant to subsection 2(m)(ii) of HIPA. In addition, PPRHA considers the child's next of kin to be registration information pursuant to subsection 2(m)(v) of HIPA.

**2. Did PAPERHA follow best practices in its response to the privacy breach?**

[6] There is no dispute between the parties that the disclosure constituted a privacy breach pursuant to section 27 of HIPA. Therefore, the focus of this investigation is on whether PAPERHA appropriately handled the privacy breach.

[7] In order to be satisfied, my office would need to be confident that PAPERHA took the privacy breach seriously and appropriately addressed it. My office's resource, *Privacy Breach Guidelines* recommends four best practice steps when responding to a privacy breach. These are:

1. Contain the breach;
2. Notify affected individuals and/or appropriate organizations;
3. Investigate the breach; and
4. Plan for prevention.

[8] I will weigh the appropriateness of PAPERHA's handling of the privacy breach against these four best practice steps.

***Best Practice Step 1: Contain the breach***

[9] Upon learning that a privacy breach has occurred, trustees should immediately take steps to contain the breach. Depending on the nature of the breach, this can include:

- Stopping the unauthorized practice;
- Recovering the records;
- Shutting down the system that has been breached;
- Revoking access privileges; or
- Correcting weaknesses in physical security.

[10] According to PAPERHA, at the time of the investigation a notation was placed on the child's chart that no information was to be released without consulting the manager. This

remained in place until after the investigation was concluded and the grandmother was removed as next of kin on the child's file.

[11] I am satisfied that PAPRHA appropriately contained the breach.

***Best Practice Step 2: Notify affected individuals and/or appropriate organizations***

[12] Notifying an individual that their personal information or personal health information has been inappropriately accessed is important for a number of reasons. Not only do individuals have a right to know, they need to know in order to protect themselves from any potential harm that may result from the inappropriate access. Unless there is a compelling reason not to, trustees should always notify affected individuals.

[13] In addition to notifying individuals, trustees may want to notify other organizations, for example, my office, law enforcement or other regulatory bodies that oversee particular professions.

[14] In this case, PAPRHA provided written notification to the Complainant. Although the Complainant was already aware of the disclosure, PAPRHA confirmed that the disclosure was unauthorized and constituted a privacy breach under HIPA.

[15] I am satisfied with the steps taken by PAPRHA.

***Best Practice Step 3: Investigate the breach***

[16] Once a breach has been contained and appropriate notification has occurred, the trustee should conduct an internal investigation. The investigation is generally conducted by the trustee's Privacy Officer because they have the appropriate privacy expertise to do so and understand what the relevant privacy legislation requires of their organization. The investigation should address the incident on a systemic basis and should include a root cause analysis. The investigation should be documented in an internal privacy breach

investigation report. At the conclusion of its investigation, the trustee should have a solid grasp on what occurred.

[17] According to PAPERHA's internal privacy breach investigation report, the child's next of kin was changed from the child's mother to the child's grandmother in March 2015. PAPERHA was unable to ascertain what date the appointment information was released to the grandmother as there was no notation in the chart that this information was released. However, the Complainant provided PAPERHA with a portion of an affidavit filed by the grandmother to the court listing the dates of the child's appointments. The dates on the affidavit matched the appointment dates in the child's medical record. The Complainant advised that she became aware of the breach when legal proceedings were started in a custody dispute regarding the child.

[18] PAPERHA determined that a number of factors contributed to the breach. Both the grandmother and mother had previously presented to the health clinic for care so both were known to the clinic. The grandmother previously attended appointments with the child. When the grandmother requested that she be listed as the child's next of kin it did not seem to be an unreasonable request. Further, PAPERHA indicated that it did not seem unreasonable at the time to release the child's appointment information to the grandmother. However, the request for next of kin was not made in writing and no efforts were made to verify the request. Further, at the time, there was no policy/procedure in place regarding changing a patient's next of kin.

[19] PAPERHA indicated that its policy and procedure for release of personal health information was not followed by the employees involved in this breach. According to its policy and procedure, requests for information must be in writing. In this case, the grandmother did not make the request for the child's personal health information (appointment dates and attendance) in writing.

[20] On May 18, 2016, my office advised PAPERHA that section 33 of HIPA provides individuals the right to request their own personal health information verbally. In the case where a parent is asking for access to their child's personal health information

subsection 56(d) of HIPA provides that legal custodians of children under the age of 18 can exercise the right of access on behalf of their children provided it is not an unreasonable invasion of privacy of the child. The key here is ensuring the parent is the legal custodian. Section 33 and subsection 56(d) of HIPA provide as follows:

**33** Nothing in this Act precludes:

- (a) an individual from making an oral request for access to personal health information about himself or herself that is contained in a record in the custody or control of a trustee; or
- (b) a trustee from responding to an oral request.

...

**56** Any right or power conferred on an individual by this Act may be exercised:

...

- (d) where the individual is less than 18 years of age, by the individual's legal custodian in situations where, in the opinion of the trustee, the exercise of the right or power would not constitute an unreasonable invasion of the privacy of the individual;

[21] For assistance on who qualifies as a legal custodian, *The Children's Law Act*, sections 3 and 4 provide:

- The parents of a child are joint legal custodians with equal rights unless changed in a court order or an agreement;
- Where parents have not lived together after the birth of a child, the parent with whom the child resides is the sole legal custodian;
- If a parent dies, the surviving parent is the legal custodian of that child unless changed by a court order or an agreement.

[22] A girlfriend, boyfriend, new spouse or grandparent has no rights at all as legal custodian of the child unless it has been directed in a court order or dealt with in an agreement.

[23] PAPERHA confirmed for my office on May 18, 2016, that the intent was that only requests for another person's information must be in writing. Therefore, this would not include verbal requests from individuals for their own personal health information or verbal requests from legal custodians of a child less than 18 years of age.

***Best Practice Step 4: Plan for prevention***

- [24] The final step is to formulate a plan to avoid future breaches of a similar nature. Some changes that are needed may have revealed themselves to the trustee during the investigation phase such as weaknesses in a system, a lack of accountability measures or training or additional policies or procedures that are needed. This is an important step in addressing a privacy breach because a privacy breach cannot be undone but the trustee can learn from it and improve.
- [25] With regards to changing a patient's next of kin, PAPRHA did not previously have a policy or procedure to guide staff on doing this. PAPRHA provided my office with a copy of its newly developed Work Standard titled, *Changing Patient NOK & Emergency Contact in EMR*. The Work Standard gives clear direction to staff on how to handle requests for a change to next of kin. The Work Standard was implemented in May 2016. PAPRHA will be communicating the Work Standard to all areas of the region via email. In addition, PAPRHA will distribute my offices blog, *Who Signs for a Child?* This blog addresses accessing personal information and personal health information of children under the age of 18 years.
- [26] With regards to accessing personal health information, PAPRHA provided my office with a copy of its policy and procedure titled, *Privacy: Access to Personal Health Information*. PAPRHA advised that it will have a review of this policy completed by May 2016. PAPRHA will implement a new access to information form which will require those who are seeking access to their child's personal health information and are unknown to the clinic to provide supporting documentation (i.e. child's birth certificate). The documentation should support the claim that the individual is the child's parent or legal guardian. PAPRHA will also remind staff that requests, like the grandmother's, must be in writing when the request is for the personal health information of another individual and the person making the request is not the legal guardian.
- [27] I am satisfied with the preventative steps being taken by PAPRHA. In conclusion, I am satisfied overall with the steps taken by PAPRHA to address the privacy breach.

### **III FINDINGS**

[28] I find that there is personal health information involved.

[29] I find that PAPERHA took appropriate steps to address the privacy breach.

### **IV RECOMMENDATION**

[30] There are no recommendations to be made at this time as I am satisfied with the efforts made by PAPERHA in these circumstances.

Dated at Regina, in the Province of Saskatchewan, this 8<sup>th</sup> day of June, 2016.

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