



## **INVESTIGATION REPORT 308-2019**

### **Saskatchewan Health Authority**

**April 16, 2020**

**Summary:**

Dr. Suzanne Meiers reported a privacy breach to the Commissioner when they received a lab report from the Saskatchewan Health Authority's (SHA) Department of Pathology and Laboratory Medicine that was meant for another physician, Dr. Pamela Meiers. The Commissioner made a number of findings, including that the root causes of the privacy breach is a result of incomplete information on the requisition form and that a decision was made based on the incomplete information about to whom the lab report should be copied. The Commissioner recommended that the affected individual be notified, that regular reminders are given to laboratory staff to request complete information before processing requisition forms, and that the SHA send regular reminders to physicians that they should be filling requisition forms with complete information (e.g. first and last name of physicians) to assist staff in processing requisition forms accurately.

### **I BACKGROUND**

[1] On July 18, 2018, my office issued an investigation report (Investigation Report 014-2018, 016-2018) about lab reports being sent to the incorrect physician by the former Saskatoon Regional Health Authority's Department of Pathology and Laboratory Medicine. In that case, Dr. Suzanne Meiers (Dr. S. Meiers) had received lab reports that were meant for another physician with the same last name, Dr. Pamela Meiers (Dr. P. Meiers). Employees within the pathology department had searched for the last name "Meiers" in the Laboratory Information System (LIS). Dr. S. Meier's name appears first in the search results while Dr. P. Meiers' name appears second. Unless the employee manually selects Dr. P. Meiers' name, then Dr. S. Meiers is the default selection.

- [2] In the current case, on October 3, 2019, Dr. S. Meiers reported to my office that they had received a lab report in error. Based on the lab report, the lab report was sent from Saskatchewan Health Authority's (SHA) Department of Pathology and Laboratory Medicine. Dr. S. Meiers indicated that the report was meant for Dr. P. Meiers. Dr. S. Meiers indicated that reporting this privacy breach to my office was important because it was a breach of confidentiality as well as that it is a cancer pathology report that would have never otherwise been received by Dr. P. Meiers. I agree. If such reports are sent to the incorrect physician, it is patients who are affected. Not only is their privacy breached but their health care is interrupted or delayed. If the misdirection of the report goes undetected, it is hard to determine if there is a mechanism in place to ensure that the patient receives the health care they require.
- [3] On October 3, 2019, my office notified the SHA that it would be undertaking an investigation into the matter reported to my office by Dr. S. Meiers.
- [4] I should mention that in my Investigation Report 137-2018, I indicated that misdirected reports due to physicians having the same or similar names is not isolated to Dr. S. Meiers and Dr. P. Meiers. In that investigation report, I found that approximately 10% of transcribed reports between the time period of June 2017 and July 2019 were sent to the incorrect physician because physicians have the same or similar name. While the misdirected lab report in this case isn't a result of a transcription error, the consequence is the same – the patient is most affected by the misdirected report.
- [5] While I acknowledge that the SHA and other organizations are working hard to error-proof processes to avoid the misdirection of reports, this is an issue worth highlighting to further minimize the number of misdirected reports.

## **II DISCUSSION OF THE ISSUES**

- 1. *Is The Health Information Protection Act (HIPA) engaged and do I have jurisdiction to investigate this matter?***

[6] HIPA is engaged when three elements are present: 1) personal health information, 2) a trustee, and 3) the personal health information is in the custody or control of the trustee.

[7] First, personal health information is defined by subsection 2(m) of HIPA, which provides:

**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;

[8] Based on a review of the lab report, I find that there is personal health information.

[9] Second, “trustee” is defined by subsection 2(t)(ii) of HIPA, which provides:

**2** In this Act:

...

(t) “trustee” means any of the following that have custody or control of personal health information:

...

- (ii) the provincial health authority or a health care organization;

[10] I find that the SHA qualifies as a trustee as defined by subsection 2(t)(ii) of HIPA.

[11] Third, since the lab report originated from the SHA’s Department of Pathology and Laboratory Medicine, I find that the SHA has custody or control over the personal health information contained within the lab report.

[12] Based on the above, I find that HIPA is engaged. Therefore, I have jurisdiction to investigate this matter.

**2. Was there an unauthorized disclosure of personal health information?**

[13] The term “disclosure” means the sharing of personal health information with a separate entity that is not a division nor a branch of the trustee organization. Before disclosing personal health information, a trustee should ensure it has authority to do so under HIPA.

[14] In this case, SHA’s Department of Pathology and Laboratory Medicine sent the lab report to the incorrect physician. I find that this would be an unauthorized disclosure of personal health information. I find that a privacy breach has occurred.

**3. Did the SHA respond to this privacy breach appropriately?**

[15] My office suggests that trustees undertake the following five steps when responding to a privacy breach:

- Contain the breach,
- Notify the affected individual(s),
- Investigate the privacy breach,
- Prevent future privacy breaches,
- Write an investigation report.

[16] Below is an analysis of each step.

**Contain the breach**

[17] To contain the privacy breach is to ensure that the personal health information is no longer at risk. This may include recovering the record(s), revoking access to the personal health information, and/or stopping the unauthorized practice.

[18] In this case, the personal health information was contained when Dr. S. Meiers’ office sent the re-directed the lab report to Dr. P. Meiers. In an email dated April 1, 2020 to my office, Dr. S. Meier’s office confirmed that the lab report has been deleted and destroyed.

[19] I find that the breach has been contained.

**Notify the affected individual(s)**

[20] Notifying the affected individual(s) of the privacy breach is important so that they can determine how they have been impacted and take steps to protect themselves. In this case, even though the lab report was re-directed to the correct physician, it would be beneficial to notify the affected individual because the notification would allow them to know what occurred with their personal health information. Further, the affected individual would also know to follow-up with the physician regarding lab results in the future because they know that reports can be directed to the incorrect physician. In other words, sending notification to the affected individual allow the affected individual to advocate for themselves. An effective notification should include the following:

- A description of what happened,
- A detailed description of the personal information or personal health information that was involved,
- If known, a description of possible types of harm that may come to them as a result of the privacy breach,
- Steps that the individuals can take to mitigate harm,
- Steps the organization is taking to prevent similar privacy breaches in the future,
- The contact information of an individual within the organization who can answer questions and provide further information,
- A notice that individuals have a right to complain to the Office of the Information and Privacy Commissioner,
- The contact information of the Office of the Information and Privacy Commissioner, and
- Where appropriate, recognition of the impacts of the breach on affected individuals and an apology.

[21] In this case, the SHA did not notify the affected individual of the privacy breach. Its explanation was two-fold. First, it did not send a notification of the privacy breach because notification could bring emotional hardship to the patient. Second, it noted that the error was identified very quickly and was sent to the correct physician.

- [22] Further, the SHA said that if a notification was required, it indicated that Dr. P. Meiers should be the one sending the notification letter to the affected individual since it identified Dr. P. Meiers as the root cause of this privacy breach. At this point in this Report, I am discussing whether or not the affected individual should be notified. I will discuss SHA's root cause finding later in this Report.
- [23] My office's position has always been for trustees to provide notification to affected individual(s) unless there is a compelling reason not to do so. In this case, the SHA did not substantiate its assertion of why notification would bring "emotional hardship" to the patient. Further, even though the breach was quickly detected and corrected, a breach still occurred. Therefore, this is not a compelling reason to not provide notification to the patient.
- [24] I recommend that the SHA notify the affected individual of the privacy breach. The notification should include the elements listed above at paragraph [20]. Since I have found that it is the SHA who is the trustee in this case, I suggest that a SHA Privacy Officer provide the notification. However, if the SHA believes that sending a notification to the patient jointly with Dr. P. Meiers is the most effective way of informing the patient of this privacy breach, then it should make arrangements with Dr. P. Meiers to notify the patient jointly.

### **Investigation**

- [25] Investigating the privacy breach to identify the root cause(s) is key to understanding what happened to prevent similar privacy breaches in the future.
- [26] In its investigation into the matter, the SHA retrieved the surgical pathology requisition form that was originally filled out by Dr. P. Meiers. The SHA noted that Dr. P. Meiers recorded only her last name on the form as a physician to be copied on the lab report. This resulted in the lab technician having incomplete information as to which Dr. Meiers should receive the lab report – Dr. S. Meiers or Dr. P. Meiers? The lab technician selected Dr. S. Meiers.

[27] The SHA's position is that the root cause is how the requisition form was filled out by Dr. P. Meiers. In previous investigations, including Investigation Report 152-2017, 219-2017 and Investigation Report 041-2018, 203-2018, privacy breaches occurred due to incomplete information in dictated reports or requisition forms by various physicians. The same has occurred in this case. I find the incomplete information on the requisition form is a root cause of this privacy breach.

[28] I find that another root cause of this privacy breach is the lab technician making a decision about which physician should be copied on the lab report based on incomplete information on the requisition form.

### **Prevention**

[29] Once the trustee has identified the root cause(s) of the privacy breach, it should develop and implement a plan to prevent a similar privacy breach from occurring.

[30] In Investigation Report 014-2018, 016-2018, I had recommended that SHA explore options to configure LIS in such a way that users who enter only the physician's last name to search, that LIS will prompt the user to enter either the physician's identification number or an additional piece of information (such as the first name). Similarly, in Investigation Report 041-2018, 203-2018, I recommended that the SHA program its electronic systems to reject the processing of requisition forms unless employees enter at least two more pieces of information to search for physicians. In response to both recommendations, the SHA indicated that it is committed to doing this when the time comes to replace or upgrade LIS or other electronic systems.

[31] In this case, the SHA reiterated its commitment to ensure that a future system would require that users enter more than one identifier. Furthermore, it has indicated that the manager of the lab has reminded staff that where there is more than one physician with the same last name, the staff should double-check with the physician who filled out the requisition to ensure that the correct physician has been selected. I find that the SHA is making efforts to prevent similar privacy breaches from occurring in the future. I recommend that regular

reminders are given to staff to request complete information before processing requisition forms.

- [32] In addition to its efforts to remind laboratory staff to double-check to which physician(s) they should be sending lab reports, I recommend that the SHA send regular reminders to physicians that they should be filling requisition forms with complete information (e.g. first and last name of physicians) to assist staff in processing these forms accurately.

### **Write an investigation report**

- [33] Documenting the trustee's investigation into breaches is a method to ensure that the trustee follows through with plans to prevent similar privacy breaches in the future.
- [34] The SHA provided my office with its internal investigation report into the breach, how it responded to the breach, and the steps it has taken (and steps that it will take) to prevent similar privacy breaches in the future.

## **III FINDINGS**

- [35] I find that HIPA is engaged and that I have jurisdiction to investigate this matter.
- [36] I find that a privacy breach has occurred.
- [37] I find that the breach has been contained.
- [38] I find that the affected individual has not been notified.
- [39] I find that the SHA has investigated this privacy breach.
- [40] I find the incomplete information on the requisition form is a root cause of this privacy breach.



[41] I find that another root cause of this privacy breach is the lab technician making a decision about which physician should be copied on the lab report based on incomplete information on the requisition form.

[42] I find that the SHA is making efforts to prevent similar privacy breaches from occurring in the future.

#### **IV RECOMMENDATIONS**

[43] I recommend that the SHA notify the affected individual of the privacy breach, as described in paragraph [24].

[44] I recommend that regular reminders are given to staff to request complete information before processing requisition forms.

[45] I recommend that the SHA send regular reminders to physicians that they should be filling requisition forms with complete information (e.g. first and last name of physicians) to assist staff in processing these forms accurately.

Dated at Regina, in the Province of Saskatchewan, this 16th day of April, 2020.

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