



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## INVESTIGATION REPORT 243-2023

### Prince Albert Co-operative Health Centre

February 6, 2024

#### Summary:

Prince Albert Co-operative Health Centre (PACHC) proactively reported a privacy breach involving a misdirected fax that included the personal health information of 16 individuals. The Commissioner initiated an investigation under *The Health Information Protection Act* into the incident. The Commissioner found that a privacy breach had occurred, the breaches were contained, and the affected parties were notified. The Commissioner also found that PACHC's investigation was not adequate. The Commissioner recommended that PACHC implement its plan to improve training on privacy, confidentiality, and the transmission of personal health information by fax. He also recommended that, within 30 days of issuance of this Investigation Report, PACHC interview the nurse involved in this breach and determine the circumstances surrounding their involvement. He further recommended that if PACHC identified further actions that needed to be taken to address the breach following the interview, it should take those actions within 30 days of issuance of this Investigation Report.

## I BACKGROUND

- [1] This Investigation Report involves a misdirected fax that was sent on October 6, 2023, to the Victoria Hospital Blood Bank instead of the Saskatchewan Public Health Office. The fax included information relating to 16 different individuals.
- [2] The fax was sent by a medical office assistant (MOA) working in the reception area of the Prince Albert Co-operative Health Centre (PACHC). While the MOA was provided with clear instructions about where to send the fax, the instructions were not correct.

- [3] The fax system used was built into the PACHC's electronic medical record system – a digital fax machine. The breach was proactively reported to my office under *The Health Information Protection Act* (HIPA) by the PACHC on October 12, 2023.
- [4] Since 2018, my office has opened approximately 70 files and issued 18 investigation reports involving misdirected faxes. Many of the reports involved multiple misdirected faxes. For example, [Investigation Report 045-2021, et al](#), involved 23 misdirected health records originating from four different trustees and [Investigation Report 164-2023, et al](#), involved 86 misdirected faxes.
- [5] In previous investigation reports, I have expressed serious concerns about the privacy risks that arise from the ongoing use of faxes to send personal information and personal health information.
- [6] I am particularly concerned about the risk that misdirected faxes may have on health care services and patients' health. In a recent report released by the Public Policy Forum of Canada titled, [“Unlocking Health Care, How to Free the Flow of Life-Saving Health Data in Canada”](#), the authors stated:
- Canada's continued reliance on phone calls with no return number, paper letters and fax machines impede critical referrals and prescriptions, potentially lifesaving acts of care. Our seeming inability to move beyond outmoded forms of communication delays vital treatments and extracts a psychological toll on patients and the people caring for them, who often must chase down a misdirected or overlooked fax. We cannot state it strongly enough: lives depend on this information.
- [7] As noted above, the circumstances of this investigation do not involve the use of a traditional fax machine. In this case, the PACHC's MOA used a digital fax machine. However, the misdirection arose from a failure to provide accurate instructions regarding the recipient – a circumstance that could arise when using a traditional or digital fax machine.
- [8] As I have said in previous reports, other privacy oversight authorities share my concerns about the use of fax machines to communicate personal health information and personal

information. Canada's federal, provincial and territorial privacy commissioners and ombudspersons passed a resolution in September 2022 titled, "[Securing Public Trust in Digital Healthcare](#)." The resolution calls for a concerted effort across the healthcare sector to modernize and strengthen privacy protections for sharing personal health information. It urges stakeholders to phase out the use of traditional fax machines. It also urges health sector institutions and providers using digital alternatives to traditional fax machines to design and adopt governance frameworks that provide reasonable safeguards to protect personal health information. As previously stated, my hope is that Saskatchewan's trustees will heed this call to action.

- [9] Ontario's former Information and Privacy Commissioner reported in his [2021 Annual Report](#), that his office had received 4,848 breach reports related to misdirected faxes in that fiscal year. As there is no requirement to report breaches of this nature to my office, I can only comment on those breaches that have been proactively reported or otherwise brought to our attention.
  
- [10] As stated in my office's [Investigation Report 164-2023 et al](#), the move away from the traditional fax machine is an important measure to reduce the risks of privacy breaches. My office is a proponent of electronic information management systems. However, the use of digital faxing options does not completely eliminate the risk of error by the user.
  
- [11] Until Saskatchewan has in place a pre-approved, interoperable, digital network of health providers as recommended by the Public Policy Forum in its above noted recent report, additional measures are necessary to address the risk of faxing. Clear policies and procedures setting out rules and defining roles, and repeated privacy training and privacy awareness raising activities are essential safeguards. Comprehensive and mandatory annual privacy training is also essential to reinforce defined processes and procedures, and the development and maintenance of a culture of privacy.
  
- [12] My office sent a notice to PACHC that we would be undertaking a privacy breach investigation pursuant to subsection 52(d) of HIPA. The notice requested that PACHC

provide my office with a completed [\*Privacy Breach Investigation Questionnaire\*](#) (Questionnaire). My office received a completed Questionnaire from PACHC.

## II DISCUSSION OF THE ISSUES

### 1. Do I have jurisdiction?

[13] HIPA applies 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.

[14] The information contained in the misdirected fax included the patients' names, date of birth, health number and information regarding recent immunizations. This information qualifies as "personal health information" as defined by subsections 2(1)(m)(i), (ii) and (v) of HIPA.

[15] Subsections 2(1)(m)(i), (ii) and (v) of HIPA provide:

2(1) 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;

...

(v) registration information;

[16] Next, I will review whether a trustee is involved. The relevant provisions of HIPA are as follows:

2(1) In this Act:

...

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

...

(xiv) a person, other than an employee of a trustee, who or body that provides a health service pursuant to an agreement with another trustee;

[17] In my office's [Investigation Report 239-2017](#), I found that PACHC is a trustee pursuant to subsection 2(1)(t)(xiv) of HIPA. That finding was based on an agreement between Health and the PACHC for the provision of health services in which PACHC acknowledged it was a trustee and that HIPA applied. That agreement was extended to March 31, 2024, and therefore, it continues to apply today. Accordingly, I find that PACHC is a trustee.

[18] Finally, I must determine if PACHC had custody or control over the personal health information at issue. "Custody" is physical possession with a measure of control.

[19] Since the fax originated from PACHC, I find that PACHC had custody over the personal health information. Therefore, the third element is also present.

[20] As all three elements are present, I find that HIPA applies, and I have jurisdiction to investigate this matter.

## **2. Did a privacy breach occur?**

[21] A privacy breach occurs when a trustee collects, uses, or discloses personal health information in a way that is not authorized by HIPA.

[22] The term "disclose" means sharing personal health information with a separate entity that is not a division or a branch of the trustee organization.

[23] PACHC disclosed personal health information when it sent the personal health information to the wrong recipient. PACHC acknowledged that the disclosure was not authorized. I find that a breach of privacy occurred.

**3. Did PACHC respond appropriately to the privacy breach?**

[24] In privacy breach investigations, my office determines whether the trustee appropriately responded to the breach. In accordance with my office's [Rules of Procedure](#), my office will consider whether the trustee appropriately:

- Contained the breach (as soon as possible)
- Notified affected individuals (as soon as possible)
- Investigated the breach
- Took appropriate steps to prevent future breaches.

***Contained the breach***

[25] On learning that a privacy breach has occurred, a trustee should immediately take steps to contain it or reduce the risks. My office's [Privacy Breach Guidelines for Trustees](#) (August 2022), at page 3, states that containment may involve:

- Stopping the unauthorized practice
- Recovering the records
- Shutting down the breached system
- Revoking access to personal health information
- Correcting weaknesses in physical security.

[26] Effective and prompt containment reduces the magnitude of a breach and the risks involved with the inappropriate disclosure of personal health information.

[27] In assessing the steps taken to contain a breach, my office applies a reasonableness standard (see for example, my office's [Investigation Report 145-2023, 147-2023](#)).

[28] PACHC confirmed that the breach was discovered shortly after the fax was sent by the MOA. The Privacy Officer was notified on the same day. PACHC confirmed by telephone that the information received by the Victoria Hospital Blood Bank was destroyed on the same day.

[29] I find that PACHC contained the breach.

*Notified affected individuals*

[30] It is important to notify an individual that their personal health information was inappropriately disclosed for several reasons. Not only do individuals have a right to know, but they also need to know to protect themselves from any potential harm that may result from the inappropriate disclosure. Unless there is a compelling reason not to, trustees should always notify affected individuals.

[31] My office's *Privacy Breach Guidelines for Trustees*, at page 4, states that notification should happen as soon as possible after the key facts about the breach have been established. These guidelines also set out what a notification should include:

- A general description of what happened;
- A detailed description of the personal health information involved (e.g., name, medical record, etc.);
- A description of the types of harm that may result from the privacy breach;
- Steps taken and planned to mitigate the harm and to prevent future breaches;
- If necessary, advice on actions the individual can take to further mitigate the risk of harm and protect themselves (e.g., how to change a health services number);
- Contact information of an individual within the organization who can answer questions and provide information;
- A notice that individuals have a right to complain to the IPC; and
- Recognition of the impacts of the breach on affected individuals and an apology.

[32] PACHC notified the 16 affected parties by telephone on October 10, 2023, and by letter on October 24, 2023. PACHC provided my office with a copy of the letters sent to the affected parties. Based on a review of the letters, I am satisfied that they included all of the information set out in paragraph [31].

[33] I find that PACHC's notice to affected parties was adequate.

***Investigated the breach***

[34] Once the breach has been contained and appropriate notification has occurred, the trustee should continue its internal investigation. At the conclusion of its investigation, the trustee should understand the cause of the breach. This will inform how to prevent future breaches.

[35] As noted in the *Privacy Breach Guidelines for Trustees*, at page 5, investigating the privacy breach to identify the root cause(s) is key to understanding what happened and preventing similar privacy breaches in the future. Below are some key questions to ask during a privacy breach investigation:

- When and how did your organization learn of the privacy breach?
- What occurred?
- How did the privacy breach occur?
- What is the applicable legislation and what specific sections are engaged?
- What safeguards, policies, and procedures were in place at the time of the privacy breach?
- Was the duty to protect met?
- Who are the affected individuals?

[36] As noted above, PACHC's Privacy Office stated that it learned about the breach on October 6, 2023. To investigate the breach, it reviewed the details surrounding the misdirected fax with the MOA who works in the reception area of the PACHC clinic and obtained copies of the information at issue.



- [37] PACHC stated that the MOA received privacy training and training on the processes for sending faxes when first hired in March of 2023. However, PACHC also stated that the MOA had not reviewed other PACHC policies including: “Transmission of Personal Health Info by Fax”, “Disclosure of Personal Health Information”, “Use of Personal Health Information” and “Collection of Personal Health Information.”
- [38] PACHC stated that the root cause of the breach was the failure of the MOA “to verify the correct recipient” as required by its policies on sending faxes. It also stated that the MOA had not reviewed other applicable policies. PACHC added that the MOA was “covering area and was not very familiar with sending faxes.”
- [39] The PACHC’s policy entitled “Transmission of Personal Health Info by Fax”, does require that the sender verify the recipient. However, it appears that the PACHC overlooked the fact that in this case a nurse provided the MOA with the incorrect information about the recipient. The PACHC Privacy Office did not interview the nurse. Therefore, we do not know if the nurse failed to verify the recipient or whether other circumstances led to the identification of the incorrect recipient.
- [40] PACHC should have interviewed the nurse. It is important to know exactly what events led up to the breach to help identify the measures to be taken to ensure that it does not happen again.
- [41] I find that PACHC’s investigation was not adequate because it failed to identify the root cause of the breach. I recommend that, within 30 days of issuance of this Investigation Report, PACHC meet with the nurse involved and determine the circumstances surrounding the provision of the incorrect recipient to the MOA. I also recommend that if as a result of that interview, PACHC identifies further actions that need to be taken to address the breach, it should take those actions within 30 days of issuance of this Investigation Report.

*Took appropriate steps to prevent future breaches*

- [42] Prevention is one of the most important steps. A privacy breach cannot be undone but a trustee can learn from one and take steps to help ensure that it does not happen in the future. Some deficiencies in relation to practices, policies, procedures or training may have been identified during the investigation stage.
- [43] Regarding measures to be taken to prevent further breaches of this kind, PACHC stated that it reviewed the policy, “Transmission of Personal Health Info by Fax” with the MOA and added that it is scheduled to be reviewed and signed off by staff annually. It provided specific training on faxes to the two staff responsible for faxing. It will review the following policies with staff upon hiring and, thereafter, annually: “Transmission of Personal Health Info by Fax” “Disclosure of Personal Health Information”, “Use of Personal Health Information” and “Collection of Personal Health Info.”
- [44] I am also aware that in the context of my office’s earlier investigation involving misdirected faxes by the PACHC recent changes were made to the applicable policies.
- [45] In [Investigation Report 164-2023, et al](#), I recommended that PACHC implement its plan to improve training on privacy, confidentiality, and the transmission of personal health information by fax. I will repeat that recommendation here.

### **III FINDINGS**

- [46] I find that I have jurisdiction to conduct this investigation.
- [47] I find that a privacy breach occurred.
- [48] I find that PACHC contained the breach.
- [49] I find that PACHC’s notifications to the affected parties were adequate.

[50] I find that PACHC's investigation was not adequate.

[51] I find that PACHC did not take sufficient steps to prevent further breaches.

#### **IV RECOMMENDATIONS**

[52] I recommended that PACHC implement its plan to improve training on privacy, confidentiality, and the transmission of personal health information by fax.

[53] I recommend that, within 30 days of issuance of this Investigation Report, PACHC interview the nurse involved in this breach and determine the circumstances surrounding the provision of the incorrect recipient to the MOA.

[54] I recommend that if as a result of the interview referred to above, PACHC identifies further actions that need to be taken to address the breach, it should take those actions within 30 days of issuance of this Investigation Report.

Dated at Regina, in the Province of Saskatchewan, this 6<sup>th</sup> day of February, 2024.

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