

Office of the Access  
to Information and  
Privacy Commissioner

New Brunswick



Commissariat à l'accès  
à l'information et à la  
protection de la vie privée

Nouveau-Brunswick

# REPORT OF THE COMMISSIONER'S FINDINGS

*Personal Health Information Privacy and Access Act*

Breach Notification Matter: 2011-344-H-118

Date: May 31, 2012

## ***Privacy Breach Incident***

In June, 2011, an employee of a Pharmacy collected garbage bags from the dispensary, took them to the stockroom and placed them outside of the receiving door at the loading dock. The garbage bags were to be placed in bins located in the Pharmacy's parking lot for disposal. These garbage bags contained waste including receipts of medical prescriptions, medication labels, information sheets containing various prescriptions, and various other pieces of personal health information about clients of the Pharmacy. These types of records containing client information were not supposed to be placed in garbage bags but rather in clear bags destined for secure destruction by a shredding company. The incident was caused in part by staff tearing these records into pieces and disposing of them with the regular garbage.

As the garbage bags, which included pieces of records containing personal health information, were being taken from the loading dock to the bins outside, a shipment arrived at the Pharmacy to be unloaded at the dock. This shipment needed to be unloaded from the delivery truck immediately; as a result, the employee who had been disposing of the trash stopped the initial task in order to help unload the truck.

As the delivery truck drove away, the employee noticed that a garbage bag had been caught by the truck's rear wheel. The employee notified an assistant manager at the Pharmacy. The assistant manager instructed the employee to retrieve the garbage bag but the employee was not able to get the bag from the truck. There was no follow up to that situation.

On the morning of Friday June 3, 2011, the Pharmacy was contacted by a media outlet with questions about garbage found on a rural road. The media outlet was notified by an individual that trash belonging to the Pharmacy had been found in a nearby field. Assuming this was the missing garbage bag, the store manager and the employee who witnessed the incident earlier went to the location in order to retrieve the garbage. In searching the area, they found empty stock bottles, trash paper, torn papers, partial and whole prescription receipts, prescription labels, prescription wallet cards, and prescription bottles. Garbage was collected across a 2 km section of the area. The store manager and employee searched the 2 km area three times to ensure that all garbage was retrieved.

Once the garbage was collected, it was brought back to the Pharmacy for examination. As it had rained the night before, the records were laid out to dry and then examined to review their contents. At this time it was discovered that some of the records had not been properly disposed of in that personal health information of clients on some records was clearly visible. While most of the records found in the garbage showed evidence of blacking out or removal of labels showing names, there remained 18 pieces of records identifying clients by name, address, telephone number, prescription labels, name of family doctor, and receipts.

The Pharmacy informed our Office of the details of this incident and the Commissioner opened an investigation.

## **FINDINGS OF THE INVESTIGATION**

### **Pharmacy records of clients' prescriptions and receipts**

The *Act* applies to this incident for the reason that it surrounds the protection of personal health information in the custody or control of the Pharmacy, and a Pharmacy is considered a “custodian” under the law (as defined in section 1 - *pharmacies are specifically listed as a custodian/health care facility*). Accordingly, the Pharmacy must adhere to all the obligations and responsibilities of a custodian outlined in the *Act* which include the safeguarding and secure destruction of its clients' personal health information.

Personal health information is defined broadly and includes much of the information released during this incident:

*... identifying information about an individual in oral or recorded form if the information*

- (a) relates to the individual's physical or mental health, family history or health care history, including genetic information about the individual,*
- (b) is the individual's registration information, including the Medicare number of the individual,*
- (c) relates to the provision of health care to the individual,*
- (d) relates to information about payments or eligibility for health care in respect of the individual, or eligibility for coverage for health care in respect of the individual,*
- (e) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any body part or bodily substance,*
- (f) identifies the individual's substitute decision-maker, or*
- (g) identifies an individual's health care provider.*

In this case, the records placed in the garbage bag and which were subsequently dispersed in a public area contained names of individuals attached to their medical information in the form of prescriptions, the names of their family doctors, and other forms of identifying information, all of which are considered “personal health information”. The *Act* therefore applies to all information released in this privacy breach incident.

### **Containment of the Privacy Breach**

Two aspects of this breach merit discussion. First, when the garbage bag containing records from the Pharmacy was noticed to be attached to a truck leaving the premises, there were no further attempts to retrieve the bag after the initial attempt. Second, the incident was never communicated with the delivery company or the delivery truck driver. The staff should have tried to reach the delivery truck by either following it, or by contacting the delivery company to find its next delivery destination. We can

only assume that the bag was dragged down the road and burst open thereby causing the dispersal of the Pharmacy's records over an extensive length of road.

Upon being notified by the media the next day that the records belonging to the Pharmacy were seen along a stretch of road in plain view, the Pharmacy acted instantly. The Pharmacy made certain that all records which could be retrieved were collected and brought back to the store. Two employees of the Pharmacy undertook an extensive search for records over a 2 km stretch of the concerned area. The area was searched three times. Collection of the lost records was complicated by rain during the previous night.

Additionally, the Pharmacy noticed that the media report showed a video clip of the records found along the road and viewers could see client identifying information on the video. The Pharmacy contacted the media outlet to request that such portion of the video be removed without delay.

The Pharmacy's actions upon being notified of the lost records had the effect of preventing further violation of clients' privacy; however, it is impossible to confirm that all records lost in this case were in fact retrieved.

Given the circumstances of this case, we are pleased that the Pharmacy recognized the seriousness of the situation and acted quickly to collect the records upon being informed of the incident; however, given the importance of the contents of the garbage bag, we remain dissatisfied that no steps were taken to try to retrieve the bag from the delivery truck.

### **Notification of individuals**

In New Brunswick, it is mandatory to notify those whose personal health information has been the subject of a breach in most cases. When a privacy breach such as the one discussed occurs, the custodian responsible for the breach must notify the Commissioner as well as those affected by the incident at the first reasonable opportunity:

*49(1) A custodian shall...*

*(c) notify the individual to whom the information relates and the Commissioner in the manner prescribed by the regulations at the first reasonable opportunity if personal health information is*

*(i) stolen,*

*(ii) lost,*

*(iii) disposed of, except as permitted by this Act, or*

*(iv) disclosed to or accessed by an unauthorized person...*

The mandatory notification under the *Act* is a mechanism by which custodians remain accountable when a breach of personal health information has taken place. The goal of the notification process is to enable custodians to reduce the risk of harm for those individuals whose personal health information

was compromised. Additionally, notifying the Commissioner has the benefit of allowing our Office to provide assistance in all aspects of the containment and proper management of the breach incident.

In this case, the Commissioner was advised on June 3, 2011. The Pharmacy informed us of the facts surrounding the breach, along with the number of individuals affected based on the records retrieved. The Pharmacy undertook efforts to contact all 18 individuals by telephone without delay. Of those, four had telephone numbers which had been disconnected and therefore, these individuals could not be contacted immediately. As a result, the Pharmacy adopted a procedure to notify by placing a “flag” on the file of these four individuals for the next time they visited the Pharmacy to obtain a prescription. When they did so, the owner of the Pharmacy would personally discuss the matter with them to ensure they understood the situation and to inform them of precautions that were being taken.

On June 10, 2011, the Pharmacy contacted the local RCMP detachment to report the incident in order to notify the authorities of possible related identity theft cases in the area. A file was opened by the RCMP; as of October 14, 2011, the Pharmacy had received no complaint from the RCMP in relation to this matter.

Although the Pharmacy acted quickly to notify individuals, we fully explained that these affected individuals should also have been informed of their right to file a complaint with our Office as a result of this breach. Nevertheless, this incident attracted media attention which had the resulting benefit of notifying the general public and also informing them that the Commissioner’s Office was involved. We did not receive a complaint in this matter.

We wish to point out that when the breach was discovered, the Pharmacy cooperated fully with our Office by providing a full explanation of the events, a thorough description of the procedures and policies already in existence to protect client records. The privacy breach notification made to clients affected by this incident was appropriate and showed the Pharmacy’s sincere intent to assume responsibility while attempting to reduce the risk of harm to these individuals.

### **Practices and policies at the Pharmacy**

We discovered during our investigation of this matter that at the time of the privacy breach, the employee in question who handled the garbage bag had only been in training for three days and was not yet aware of the proper manner in which to securely destroy records containing personal health information of clients.

The Pharmacy had practices and policies in place regarding the secure disposal of such records, but at the time of the breach they were not followed on a consistent basis. More importantly, there was no system in place to ensure that all new employees of the Pharmacy were made aware of the practices and policies regarding the secure handling and disposal of client records containing personal health information before they were assigned work duties.

We reviewed the Pharmacy's practices and policies and offer the following comments to provide further assistance.

According to the *Act*, all custodians must have proper safeguards in place for the protection of personal health information as per section 50:

- 50(1) In accordance with any requirements prescribed by the regulations, a custodian shall protect personal health information by adopting information practices that include reasonable administrative, technical and physical safeguards that ensure the confidentiality, security, accuracy and integrity of the information.*
- ...
- 50(3) Without limiting subsection (1), a custodian shall*
- (a) implement controls that limit the persons who may use personal health information maintained by the custodian to those specifically authorized by the custodian to do so,*
  - (b) implement controls to ensure that personal health information maintained by the custodian cannot be used unless*
    - (i) the identity of the person seeking to use the information is verified as a person the custodian has authorized to use it, and*
    - (ii) the proposed use is verified as being authorized under this Act,*
- ...
- (e) ensure agents of the custodian adhere to the safeguards.*
- 50(4) A custodian who maintains personal health information in electronic form shall implement any additional safeguards for the security and protection of the information required by the regulations.*

In this particular case, when the Pharmacy's records or documents required shredding, employees would discard them in clear plastic bags. Once full, these clear bags would be placed into a locked bin until the secure destruction took place at a later time. This practice was adopted to follow a procedure for proper shredding by a company which picks up these clear plastic bags directly from the Pharmacy.

The Pharmacy employs a company to provide this service. The company comes to the Pharmacy, shreds the records found in the clear bags directly on-site, and then provides a receipt of confirmation that the records have been securely destroyed. Proof of this destruction of records is confirmed through closed-circuit cameras in the Pharmacy.

We have no issue with this form of secure destruction. In this case, however, we point out that the clients records were not placed in the clear bags intended for shredding but were instead manually torn into pieces and thrown out with the regular garbage. As a consequence, the Pharmacy did not follow its own policy.

Furthermore, we raised the question of whether these records should be placed in clear plastic bags as they remain in plain view of employees and staff who are not authorized to view these records. The

practice of leaving records in clear bags and in plain view poses a risk of unauthorized disclosure of clients' personal health information.

During our investigation, we also found that discarded client receipts were placed in the regular garbage. We were advised that when a client obtains a prescription, the computer prints out all of the medications prescribed by the doctor on a single receipt and whenever a client declines to keep a copy of the receipt, it is placed in the garbage can by the cash register. These records should instead be placed in a special bin for secure destruction.

The Pharmacy also has a practice of placing discarded prescription drug education sheets in the same garbage bin by the cash register whenever clients declined to take these sheets. These sheets contained client's name and information about the drug being taken at the time. As these documents contained personal health information but were nevertheless placed in the regular garbage, they were not being destroyed in a secure manner when thrown out with the regular trash.

Another type of records found along the road in this privacy breach were prescription note pads used by employees to record discussions with clients over the phone. Those particular notes did not contain personal health information in this case but we understand that it is possible that these notes could contain identifying health information of clients. In such a case, those notes should not be disposed of with the regular garbage.

As for prescription bottles which were also found with the garbage lost along the road, the Pharmacy provided us with an explanation of how these are disposed of. The practice requires staff to blacken the personal health information of the client with a permanent marker and place the container in the general trash can, preventing the identification by others. This practice did raise concerns with our Office for the reason that simply blackening out the information in some cases did not prevent the identification of clients. Personal health information remained visible on some prescription bottles because the marker did not completely cover the imprint of the text and some text remained viewable from the inside.

All of these findings were discussed with the Pharmacy and we understand that the Pharmacy has agreed to review its policies with a view to improve upon its current practices in order to prevent any future breaches of this kind.

### **Corrective measures**

After meeting with our Office, the Pharmacy began the review of its policies regarding the security of personal health information in its custody and control found on its records, including labels, prescription bottles, and so on, as well as how to handle a privacy breach.

All members of the staff working on the day of the incident were made aware of the seriousness of this privacy breach incident and how their actions contributed to the breach. More importantly, the staff

members were made aware of the correct procedures to be adopted on a daily basis for the handling of records containing clients' private information. As part of this policy review, the Pharmacy has also required that all its employees become familiar with the procedures required for the proper disposal of records containing personal health information.

Additionally, and to ensure the message is well understood, the Pharmacy has developed a new declaration which must be signed every year by employees who work for the Pharmacy. This declaration describes how records containing personal health information must be kept before destruction and methods for their secure destruction. It also outlines that any breach on the part of an employee may constitute grave misconduct and could lead to dismissal without notice. Declarations or oaths of this kind are important to remind staff of the serious and continued need to protect personal health information, as well as of the consequences when these proper practices are not followed.

The Pharmacy's procedures for the destruction of personal health information will not be changed but we have been given assurances that they will be followed closely by everyone. Additional research regarding the disposal of prescription bottles in other jurisdictions has found that many pharmacies are also simply blackening out the names on the bottles; however, we understand that labels will be removed whenever possible to ensure secure destruction.

## **RECOMMENDATIONS**

After a review of this privacy breach incident, our Office believes that the Pharmacy has responded properly to this unfortunate and serious error. We have not received any formal complaints from those whose personal health information was breached in this matter but we know that the general public was informed of this incident and that notification to those who could be identified from the lost records was made in accordance with the *Act*.

With regards to our comments and findings above, we recommend that the Pharmacy continue its efforts to:

- a) have a more complete policy on the practices for the secure destruction of records or items containing personal health information for all aspects of records produced by the Pharmacy;
- b) have all members of the staff made aware of the policy on a yearly basis;
- c) have members of the staff report any suspected problems in the handling of records which may lead to a privacy breach; and,
- d) ensure that new employees who have little or no experience working in the health care field receive training on the importance of protecting personal health information at all times before being assigned work duties.

The Commissioner's Office scheduled a follow-up on the recommendations a year after the privacy breach occurred to provide any additional assistance to the Pharmacy.

In conclusion, we wish to reiterate that when the breach was discovered, the Pharmacy recognized its error, accepted its responsibility and took action to correct the wrong, and cooperated well with this Office.

Dated at Fredericton, New Brunswick, this \_\_\_\_\_ day of May, 2012.

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Anne E. Bertrand, Q.C.  
Commissioner