



# SAFEGUARD

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Commissioner

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## LifeLabs Privacy Breach

Ontario and British Columbia-based laboratory testing company LifeLabs experienced a significant cyber-attack in December, 2019 which resulted in the disclosure of personal health information of about 15 million customers – including as many as 18,000 residents of Newfoundland and Labrador.

The Office of the Information and Privacy Commissioner oversees compliance of the *Personal Health Information Act (PHIA)* and the collection, use, disclosure and protection of personal health information by custodians in this Province. LifeLabs operates primarily in Ontario and British Columbia and is not a custodian of personal health information subject to *PHIA*. As a result, it is not within our jurisdiction to directly investigate LifeLabs. However, custodians of personal health information in this Province, such as health professionals and others, may have an arrangement with LifeLabs to provide testing services and those custodians are within our jurisdiction and subject to our oversight. We have been in contact with LifeLabs and will continue to follow the situation. Any custodian in this Province who has utilized LifeLabs should contact the company for more information and should also notify this Office and their affected patients in the event that they are subject to this breach.

As LifeLabs is under the jurisdiction of the Ontario and British Columbia Information and Privacy Commissioners, those offices have issued a [joint statement](#) announcing that they are conducting an investigation of this breach and we expect that they will, in due course, publish a report of their findings.

In addition to the Ontario and British Columbia investigations, a class action lawsuit has been filed in the Ontario Superior Court.

## Reminders and Updates

### Training

Did you or your staff have *PHIA* training in 2019?

If not, now is a great time to start 2020 off on a good foot and consider contacting our Office for training. We offer training on all aspects of *PHIA* and would be happy to work with you on any specific access or privacy topic you would like to focus on. Requests for training can be sent to [commissioner@oipc.nl.ca](mailto:commissioner@oipc.nl.ca).

Our training and education contact is Andrew Collins and he can be reached directly at 709-729-6247.

### Alberta Prosecution for Breach of the *Health Information Act*

A former secretary at an Edmonton hospital pled guilty in January to charges under the *Health Information Act*, Alberta's equivalent of Newfoundland and Labrador's *PHIA*.

The employee was employed as a secretary at an Edmonton hospital and their unauthorized access was reported by the employer to the Alberta OIPC in November, 2017. The Alberta OIPC's investigation identified 465 acts of inappropriate access to the personal health information of 16 individuals. Upon conclusion of its investigation, the Alberta OIPC referred the matter to Alberta Justice for prosecution, which laid charges in June, 2019. Since 2011, Alberta has successfully prosecuted 14 individuals under the *Health Information Act* for unauthorized access to personal health information. Following the employee's guilty plea, the court imposed a sentence of a \$3,000 fine, one year of probation and a one year prohibition on accessing records of personal health information.

Alberta's *Health information Act* provides for fines of up to \$50,000 for a person who knowingly collects, uses, accesses or discloses personal health information in contravention of the Act.

Newfoundland and Labrador's *PHIA* provides for fines of up to \$10,000 and a prison term of up to six months for these offences.

### Contact Information for Privacy Breach Notifications

Pursuant to section 15(4) of *PHIA*, all custodians are required to report material (as defined by section 5 of the *Personal Health Information Regulations*) breaches of personal health information to the Office of the Information and Privacy Commissioner. Further, sections 15(3) and 20(3) also require, in many cases, custodians to report breaches to the affected individuals, unless the custodian can demonstrate that the breach will not have an adverse impact upon the provision of health care to, or the well-being of, the affected individual. When notifying affected individuals of a breach of their personal health information, custodians should also provide contact information for this Office in the event that an affected individual wishes to file a complaint.

However, custodians should be mindful of ensuring that privacy breach notices effectively communicate necessary information about the breach and clearly distinguish between the custodian and this Office. Occasionally, affected individuals are left with the impression that this Office may be able to provide additional information about the breach, when typically the custodian itself is best positioned to provide information to affected individuals in the immediate aftermath of a breach.

In order to ensure effective communication of a breach, our Office recommends:

- breach notifications should contain all relevant facts of the breach, as known to the custodian at the time the notice is sent;
- clearly identify a contact person and/or contact number within the custodian for affected individuals seeking more information about the breach itself. Such contact information should precede and be at least as visible as contact information for this Office;
- be prepared to provide updated information to affected individuals as the custodian learns more about the breach; and
- provide contact information for this Office and note our role in receiving complaints and investigating breaches of personal health information.

The Office of the Information and Privacy Commissioner is always available to assist a custodian when dealing with a privacy breach, including any assistance required with completing the breach report to this Office or in notifying affected individuals.

## Saskatchewan OIPC Guidance on Privacy Breach Management and Investigations

A recent decision from the Saskatchewan Office of the Information and Privacy Commissioner provides helpful guidance to public bodies on best practices for managing and investigating a privacy breach.

Following the receipt of several breach reports from the Saskatchewan Health Authority concerning cases where home care schedules containing the personal health information of patients had been lost or stolen, the Commissioner conducted an investigation to determine whether an unaddressed systemic issue was present. The [resulting report](#), which covers the results of four investigations, provides guidance for containing a privacy breach, notifying affected individuals, investigating the breach, preparing a plan for preventing future privacy breaches and finally for preparing an investigation report.

A privacy breach report should include the following:

- a summary of the incident and immediate steps taken to contain the breach;
- background of the incident, timelines and a chronology of events;
- a description of the personal information involved and affected individuals;
- a description of the investigative process;
- the root and contributing causes of the incident;
- a review of applicable legislation, safeguards, policies and procedures; and
- a summary of possible solutions and recommendations for preventing future breaches. This should include specific timelines and responsibility for implementation of each action.

This Office encourages all custodians to review and familiarize themselves with [Saskatchewan OIPC Investigation Report 126-2019, 137-2019, 182-2019, 191-2019](#) and take whatever steps may be necessary to update their privacy breach response and investigation procedures.

## OIPC Presenting at Genetics Conference



The Memorial University Faculty of Medicine and the Office of Public Engagement are hosting a free public conference on genetics:

Saturday, February 29, 2020  
8:45 am – 6 pm  
1M102, Frank and Eileen Gronich Lecture Theatre  
Faculty of Medicine Building

This event will be of interest to anyone curious to know more about genetic research in Newfoundland and Labrador, or would like to learn more about medical genetics options for families in this Province affected by genetic disorders.

In addition to presentations from researchers, genetic counsellors, medical geneticists and patients, the Office of the Information and Privacy Commissioner will also be speaking on the privacy aspects of genetic research.

Genetic research presents new frontiers for improvements in health care. Further, Newfoundland and Labrador's unique demographics present our Province as a prime location for conducting genetic research on a variety of both monogenetic and complex conditions. With these great opportunities comes the responsibility of ensuring that genetic testing and research is conducted appropriately with due consideration of such privacy interests as:

- the right to not have one's genetic information collected without proper authority to do so;
- the right to opt out of having one's genetic information collected;
- the right to not have one's genetic information used for unauthorized purposes;
- the right to not have one's genetic information disclosed to a third party without consent;
- the right to know one's genetic information; and
- the right to not know one's genetic information.

Anyone interested in attending can register at:

<http://bit.ly/publicgenetics202029>

Parking for attendees will be provided at area 30 and area 27 parking garage on levels two and three.