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“Thus, at least in part, medical records contain information about the patient revealed by the patient, and information that is acquired and recorded on behalf of the patient. Of primary significance is the fact that the records consist of information that is highly private and personal to the individual. It is information that goes to the personal integrity and autonomy of the patient.”

- Justice La Forest  
*McInerney v.  
MacDonald*, [1992] 2  
SCR 138 (SCC)

# SAFEGUARD

A QUARTERLY NEWSLETTER PUBLISHED BY THE  
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## OIPC UPDATES

### OIPC PRIVACY MANAGEMENT PROGRAM

Following the launch of our Privacy Management Program (PMP) guidelines, the OIPC commenced work on our own PMP.

Details of the OIPC PMP can be found [here](#).

Highlights include:

- designation of our Chief Privacy Officer;
- delegation of PMP day-to-day responsibilities;
- continuous discussion with and updates to OIPC staff about legislative privacy compliance;
- ongoing work on a compliance reporting mechanism; and
- development and launch of a training tracker.

### *PHIA* COMPLIANCE CHECKLIST

In October the OIPC issued its *PHIA* Compliance Checklist. The document was sent to the professional, governing and regulatory organizations of custodians for distribution to their membership. If you have not received a copy of the Checklist, please contact your professional or regulatory body or our Office.

The Checklist is designed to help custodians and their staff evaluate their level of *PHIA* compliance with respect to the protection of personal health information. This initiative consists of a short 12 question check-up (with additional follow-up points) that will help custodians determine whether they have "reasonable security measures" in place to protect personal health information as required by *PHIA*. The questions also seek to remind custodians of their additional obligations under *PHIA* with respect to collection, use and disclosure of personal health information (including the right of patients to access their own personal health information).

## CUSTODIAN *PHIA* TRAINING

The OIPC is available to deliver educational training sessions on *PHIA* to all custodians. This training is free of charge and can be scheduled at your convenience. Sessions can provide a general overview of the legislation; a more in-depth review; or can be tailored to meet the needs or issues of the custodian. Our Office can work with custodians to identify areas of concern or areas where custodians and their employees would find further guidance useful. Examples of *PHIA* training which has been offered in the past can be viewed on our [website](#).

We appreciate that it may be difficult to have all employees dedicate time for training at a single session and are able to offer return visits or evening sessions in order to ensure all employees receive training. Custodians are also encouraged to ask their associated professional and regulatory bodies to include *PHIA* training during upcoming AGMs or other community of practice events.

Despite our continued advocacy for *PHIA* training, only four custodians availed of our training in 2017-2018.

Custodians are reminded that should our Office be called upon to investigate their actions under *PHIA* we will inquire whether *PHIA* training was offered or sought and whether the custodian met its obligation under section 14 to ensure that its employees are aware of the duties imposed by *PHIA*.

## *PHIA*: ACCESS RIGHTS AND OBLIGATIONS

When creating information practices, policies and procedures in accordance with [section 13](#) of *PHIA*, custodians are reminded that they must also address access rights and responsibilities. In addition to the duties and obligations contained in *PHIA* which relate to the protection of personal health information, access and correction rights are also provided for. Custodians must ensure that they have practices and procedures in place to properly and fully respond to any access or correction requests that they may receive pursuant to section 52.

This should include, but is not limited to: developing access and correction request procedures (a request form may be developed, however, custodians should be mindful that the Act does not require the use of a specific form); implementing procedures that ensure legislative response timelines are met; and, developing template response letters to ensure that all the necessary information is provided. Custodians should refer to the [PHIA Policy Development Manual](#) to assist in the drafting of these documents.

In relation to timelines, access requests must be responded to without delay and not more than 60 days after receiving the request. Correction requests must be responded to without delay and not more than 30 days after receiving the request. These timeframes may be extended for up to an additional 30 days, but only where responding within the initial timeframe would unreasonably interfere with the custodian's operations or the number of responsive records is such that the request cannot be completed within the initial time limit. No extensions may be applied outside of these circumstances.

### INTERESTING DECISIONS

Following a misdirected fax privacy breach in January, 2018, the Saskatchewan Information and Privacy Commissioner issued a [Report](#) recommending the elimination of faxing of personal health information within the health system within the next six to twelve months. The breach arose when the Saskatchewan Health Authority faxed personal health information to a local private business with a fax number which was one digit different from a local physician’s office. On March 12, 2018, the Commissioner was once again notified that a misdirected fax had been received by the same private business, an occurrence that had been happening regularly for at least two years. The Commissioner issued a second [Report](#) finding that the Authority had not appropriately handled the privacy breach in accordance with the five best practice steps as recommended in its initial Report. Further, the Commissioner recommended the Authority complete its fax elimination plan within six months and provide it to the Commissioner. Finally, the Commissioner recommended mandatory annual privacy training for all employees.



Recently, the Northwest Territories Information and Privacy Commissioner was called upon [to respond to an incident](#) of improper destruction of personal health records. [The records were found in a bankers box at a local area dump](#) and contained detailed information about patients' mental health and history of drug use, including applications to addictions treatment facilities, progress reports from those facilities, detailed notes from one-on-one counselling sessions, social insurance, treaty and health card numbers. The individual who found the records has not yet returned them but plans to provide them to the Commissioner.



We’re not recommending this, but [a yogurt thief](#) was recently identified using DNA testing. The thief’s roommate discovered the bottle from the consumed drink in the trash and local police called all roommates forward for forensic testing.

### DISCLOSURE OBLIGATIONS UNDER NEW LEGISLATION

On November 20, 2018, the Department of Health and Community Services [announced](#) that the Government of Newfoundland and Labrador will be introducing new public health legislation to support the population health and well-being of people living in communities throughout Newfoundland and Labrador.

Responding quickly to emerging challenges like the potential for fast moving infectious diseases is set to be part of the new legislation. This will likely include the disclosure of certain personal health information in these situations. The new Act will clearly identify the roles and responsibilities of the Minister and public health officials, including the Chief Medical Officer of Health, regional Medical Officers of Health and Environmental Health Officers. Custodians are encouraged to keep abreast of new developments in regards to this legislation and the impact it may have on disclosure obligations.