

Manitoba OmbudsNews



Ombudsman

Access and Privacy Newsletter

Hot off the press!

Manitoba Ombudsman is excited to launch its revised brochure series to raise awareness of the different kinds of complaints that the Ombudsman receives and investigates. There isn't a one-size fits all Ombudsman complaint or investigation, and the four new brochures help to explain the differences between each type. The series includes:

- *The Freedom of Information and Protection of Privacy Act: Access to Information and Privacy: Interested in getting access to records or concerned about the privacy of your information?*
- *The Personal Health Information Act: Access to Personal Health Information and Privacy: Interested in getting access to your personal health information or concerned about the privacy of your personal health information?*



- *The Ombudsman Act: Fair Treatment by Government: Concerned that an action or decision of the provincial government or a municipal government has been unfair?*
- *The Public Interest Disclosure (Whistleblower Protection) Act: Disclosure of Wrongdoing: Do you believe that a serious wrongdoing has been committed in the provincial government?*

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Also newly published is an information sheet titled *What to Expect from an Investigation by the Manitoba Ombudsman Under The Freedom of Information and Protection of Privacy Act (FIPPA) and The Personal Health Information Act (PHIA)*. The information sheet includes the top ten most frequently asked questions about FIPPA and PHIA investigations, along with a flowchart highlighting the steps in the investigation process.

For print copies of any of these publications, please call 982.9130 or 1.800.665.0531 (toll free in Manitoba). The publications are available in both English and French. Online versions are also available at www.ombudsman.mb.ca.

Alberta privacy breach underscores the value of seeing who has viewed your records in the provincial electronic health record (EHR) system

A recent investigation by the Office of the Alberta Information and Privacy Commissioner underscores the value of individuals asking to see who has viewed their records in provincial electronic health record (EHR) systems. The audit logs that three individuals asked to see helped to uncover a physician's misuse of Alberta's EHR and has led to actions to improve privacy safeguards.

An individual became suspicious when, in divorce proceedings, his wife's lawyer asked a question about his medical history. His estranged wife was a nurse at an Alberta hospital. This prompted the individual to ask to see a copy of his EHR audit log, where he noted that physicians who were not his care providers had viewed his records. His mother and his new partner also asked to see their EHR audit logs and discovered similar irregularities. The audit logs showed who purportedly viewed their information, what information was viewed and the dates and times this took place.

The individuals complained to the Office of the Alberta Information and Privacy Commissioner which led to investigations of the nurse, the nurse's new partner who was a physician and 12 physicians whose names appeared on the audit logs. As well, there was an investigation of the board of the hospital where the nurse was employed and the physicians had privileges because, under Alberta's health information privacy legislation, this was the "custodian" (in Manitoba, called the "trustee") responsible for these healthcare providers' collection, use and disclosure of health information.

The physician who was the new partner of the nurse admitted to improperly viewing the information as shown in the entries in the EHR audit logs. He entered the EHR system when physician-colleagues, working in the same area and using the same computer terminals, did not properly log off the health information system they were using.

The Commissioner's office found that the physician improperly used the information and that the hospital failed to implement reasonable security controls to prevent the breach. Although the hospital had a policy instructing users to log off computer systems when leaving them unattended, the 12 physicians

were not found to have been in breach of privacy because they lacked security training related to the EHR. The nurse was not found to have been involved in the privacy breach.

The investigation report provides valuable insights into sanctions for improperly using EHR systems, administrative and technical controls and safeguards for shared terminals, the nature and frequency of security training, and actions to improve deficiencies that were uncovered in this situation.

We remind all Manitobans that their demographic information and key health details are on eChart, part of Manitoba's EHR system. Although healthcare providers using eChart must be authorized, the system does not have the technical ability to limit users to viewing only their patients' information.

On December 6, 2011, in a news release and updated "10 Points to Know about eChart Manitoba," Ombudsman Irene Hamilton advised Manitobans to assure themselves of the status of their personal health information. Every interaction in eChart is being recorded and Manitobans can request to see their audit logs (called a record of user activity) to inform themselves about who has viewed their information.

BREAKING NEWS

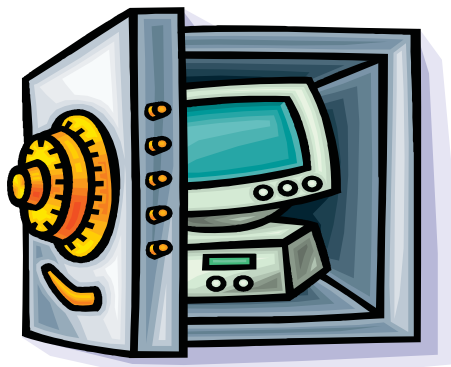
Since writing the above item, an Edmonton pharmacist has pleaded guilty and was fined \$15,000 for improperly viewing several individuals' demographic and health information by misusing Alberta's EHR, and further disclosing some of this information by posting it on Facebook. There had been a personal conflict between the pharmacist and these individuals. The individuals had not received pharmaceutical services where the pharmacist worked. Again, an authorized user of the provincial EHR misused the EHR system and the EHR audit logs were central to establishing the misuse.

Less is more. Some things are better left unshared: Data Privacy Day, 1/ 28/2012

In this digitized, networked world where our identities, locations, actions, purchases, associations, movements, and histories are stored as bits and bytes, have you ever wondered – who is collecting all of this – what are they doing with it – with whom are they sharing it? Most of all, you might be asking ‘How can I protect my information from being misused?’

Recognized by privacy professionals, corporations, government officials, academics and students around the world, Data Privacy Day, January 28, 2012, highlights the impact that technology is having on our privacy rights and underlines the importance of valuing and protecting personal information.

Watch for more Data Privacy Day details on our website in the new year.



Volunteers wanted : Introducing a new service - FIPPA Access Practices (FAP) Check-Up



Are you a FIPPA Coordinator? Would you like an informal check-up to strengthen the FIPPA Access Practices in your public body? Are you interested in receiving verbal feedback without the formality of a written report?

The FAP Check-Up is a new initiative that will start in February 2012. Like our formal audit initiative (the FIPPA Access Practices Assessment), the FAP Check-Up involves the review of closed FIPPA files, where access has been refused in whole or in part, or where records do not exist. The areas that are reviewed are compliance with section 12, compliance with timeliness, and the adequacy of the contents of the FIPPA file including adequacy of records preparation (to ensure that a line-by-line review has been undertaken).

But unlike the formal audit, the FAP Check-Up provides you with verbal observations and findings, only. No letters! No reports! No recommendations!

Participation in the pilot project does not have any impact on whether or not your public body will be selected for a future formal audit, but the check-up could help you put your FIPPA files into better shape.

If you want more information or want to make an appointment, call Carol Markusoff at 982-9141.

The Specialist Ombudsman: Working behind prison walls

Many people are surprised when they discover that statistically, a large percentage of inquiries made to our intake services unit originates from within Manitoba's correctional facilities. This is not unique to Manitoba - Ombudsman offices across the country report similar experiences. Handling and investigating corrections-related cases can be challenging and requires specialized knowledge and skills.

To assist investigators and other professionals who work in the corrections field, the Forum of Canadian

Ombudsman hosted a two and a half day conference in Halifax from October 12 to 14, 2011. "The Specialist Ombudsman: Working Behind Prison Walls" included interactive sessions on mental illness as it relates to criminal justice, dispute resolution systems, disciplinary boards, women in the correctional system, special populations such as aging inmates, and discussions on lessons learned from specific cases. Two investigators from the Manitoba Ombudsman's office participated in the event.

New PHIA Investigation Report posted on web

In late November, Manitoba Ombudsman released an investigation report under *The Personal Health Information Act* where recommendations were made to the Flin Flon Clinic. This is the first PHIA investigation report to be released, and the sixth report to be posted on the Ombudsman's website in 2011. Both PHIA and FIPPA require, as of 2011, that recommendations be made available to the public.

In the case of the Flin Flon Clinic, a third party alerted our office that partially burned medical records containing personal health information were found blowing on and

around a highway near Flin Flon. As the situation raised concerns about the Clinic's policy and practice with respect to the destruction of personal health information in a manner that protects the privacy of the individuals the information is about, the Ombudsman initiated an investigation under PHIA.

Two recommendations were issued to the clinic to bring it into compliance with the Act, and both recommendations were accepted. Read the full report on our website by clicking on "investigation reports" at www.ombudsman.mb.ca/access.htm.

Mark your calendars!

Put caring about privacy into action. Manitoba Ombudsman is pleased to announce the 1st annual Western Canada Health Information Privacy Symposium (formerly Prairie Health Information Privacy Day), to be held April 30 to May 1, 2012 at the Coast Plaza Hotel, in Calgary, Alberta.

The symposium, "Health Information Privacy - Who Cares?" is intended for health information trustees of all sorts and is focused on giving practical guidance to both beginners and seasoned privacy experts.

The Western Canada Health Information Privacy Symposium is hosted by Manitoba Ombudsman, the Information & Privacy Commissioner of Alberta, the Information & Privacy Commissioner of British Columbia and the Information & Privacy Commissioner of Saskatchewan.

Upcoming events

January 28, 2012	Data Privacy Day 2012: Less Is More. Some Things Are Better Left Unshared
February 15, 2012	Brown Bag Talk for Access and Privacy Coordinators and Officers. Please consult our website or call 982-9130 for details or to register.
April 30 - May 1, 2012	Western Canada Health Information Privacy Symposium (WCHIPS) held in Calgary, AB. Event information is available at http://www.wchips2012.ca/index.php



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