

Privacy Breaches

Resources and Guidelines to Manage a Breach of Personal Information or Personal Health Information

On January 1, 2022, amendments to FIPPA and PHIA came into force. These amendments now include mandatory breach reporting provisions. In accordance with the legislation, public bodies and **trustees** are required to report a privacy breach if it has been determined that there is a real risk of significant harm to an individual resulting from the breach. In such cases, public bodies and **trustees** are required to notify Manitoba Ombudsman as well as the individuals(s) affected by the privacy breach.

Is a physiotherapist or owner of a clinic employing physiotherapists a trustee?

PHIA legislation defines a trustee as:

PHIA uses the term "trustee" to refer to the persons and organizations that are subject to the requirements in the Act respecting collection, use, disclosure, retention, destruction and security of personal health information.

So, if you are a physiotherapist managing health information as a contracted employee at a clinic or in your own private business, you are defined as a trustee.

What is a privacy breach?

Privacy breaches occur when personal health information is:

- Stolen
- Lost
- Accessed
- Used
- Disclosed
- Destroyed
- Altered

Do I have to report a privacy breach?

Trustees are required to notify the individual whose information was subject to the privacy breach as soon as practicable after the privacy breach becomes known to the trustee, where a privacy breach could reasonably be expected to create a real risk of significant harm to the individual.

The Manitoba Ombudsman Access and Privacy Division have developed Key Steps in Responding to Privacy Breaches under FIPPA and PHIA¹ to assist public bodies and trustees in managing a privacy breach. The four key steps outlined are:

1. **Contain the Breach:** Take immediate common-sense steps to limit the breach.
2. **Evaluate the Risks Associated with the Breach:** Determine if there is a real risk of significant harm to the affected individual(s), what other steps are necessary to mitigate the risk and the urgency of action.
3. **Notify and Report:** Notify both the individual(s) affected by the breach, as well as Manitoba Ombudsman, if it has been determined that the privacy breach poses a real risk of significant harm.
4. **Prevent Further Breaches:** Develop or improve safeguards to prevent future breaches after evaluating the cause and severity of the breach.

Part of the process is to determine the risk associated with the breach. This is essential as the trustee will need to determine if a privacy breach could reasonably be expected to create a real risk of significant harm to the individual resulting in required notification of the event.

What is real risk of significant harm?

"Significant harm" includes, in relation to an individual, bodily harm, humiliation, damage to the individual's reputation or relationships, loss of employment, business or professional opportunities, financial loss, identity theft, negative effects on the individual's credit rating or report, and damage to or loss of the individual's property.

Section 8.7 of the Personal Health Information Regulation sets out the list of factors that trustees must consider in determining if a privacy breach could reasonably be expected to create a real risk of significant harm to an individual, including:

- (a) the sensitivity of the personal health information involved;
- (b) the probability that the personal health information could be used to cause significant harm to the individual;
- (c) any other factors that are reasonably relevant in the circumstances

The Manitoba Ombudsman office has provided Privacy Breach Risk Rating tools for both FIPPA and PHIA that can be found under Privacy Breach Resources on their website¹.

If it is determined there was significant risk with the breach, the Ombudsman also provides a Privacy Breach Notification Letter Checklist¹ to guide the letter to be sent to the individuals impacted by the breach.

Reporting a Privacy Breach to the Manitoba Ombudsman

If it is determined that a privacy breach has created a real risk of significant harm to individuals, a trustee or public body must report the breach to the Manitoba Ombudsman. This can be completed using the Privacy Breach Reporting form found on their website as a fillable PDF¹. This form can also be used if consultation of the Ombudsman is being sought about a privacy breach.

It is the responsibility of physiotherapists, in the role of trustees, to understand their obligations with respect to personal health information including actions to be taken if a breach occurs. It is essential to familiarize yourself with privacy legislation including PHIA and FIPPA in your role as a health care professional.

References

1. Manitoba Ombudsman. Access and Privacy Division – Privacy Breach Resources. <https://www.ombudsman.mb.ca/info/privacy-breaches.html> . Accessed September 5, 2024.