



Executive Summary

Order HO-001

On October 1, 2005, the Commissioner received a telephone call from a Toronto Star reporter regarding the fact that patient health records were strewn across the streets of downtown Toronto as part of a film shoot. Given the seriousness of this incident, the Commissioner immediately visited the location to conduct a site visit and to ensure that the records were secured.

The Commissioner and her staff moved quickly to ensure that the extent of the breach was contained and that the records were retrieved from a number of sources, including the reporter, the recycling company that provided the records to the film shoot and a member of the public who had contacted the IPC. An investigation of the incident was immediately commenced pursuant to the *Personal Health Information Protection Act* (the *Act*).

The investigation determined that the health records, most of them dating back to 1992, originated with a Toronto X-ray and ultrasound clinic (Toronto Clinic). Boxes containing the records were removed, without notice, from a locked storage area by the Toronto Clinic's landlord and placed near the building's common parking area. A Toronto Clinic staff member, realizing that the records were not secure, placed them in her vehicle and drove them to a Richmond Hill clinic owned by the same corporation. From there, the boxes were picked up by the Paper Disposal Company that provided shredding services for both clinics. However, because of a misunderstanding on the part of an employee of the Paper Disposal Company, some of the boxes were marked for recycling, not shredding. These boxes were passed on to a recycling company who subsequently sold the records – intact – to a film company for use on its set.

The facts of this case demonstrate the critical need for the secure disposal of records containing personal health information. Industry standards make clear that secure disposal means permanently destroying the records by irreversible shredding or pulverizing, thus making them unreadable. Recycling can never be equated with secure disposal. Further, any health information custodian who is relying on a third party to dispose of records must have a written agreement in place setting out the obligation for secure disposal and requiring the third party to provide written confirmation once the secure disposal has occurred.

The Commissioner's investigation found that:

- The information in the records qualifies as personal health information as defined in the *Act*;
- The Paper Disposal Company is an 'agent' of the Toronto Clinic as defined in the *Act*;
- The Toronto Clinic failed to take reasonable steps to ensure that the personal health information in its custody or control was protected against theft, loss and unauthorized use or disclosure as required by section 12(1) of the *Act*;
- The Toronto Clinic failed to ensure that the personal health information within its custody and control was disposed of in a secure manner as required by section 13(1) of the *Act*;
- The Clinic failed to comply with the requirements of section 17(1) of the *Act* which makes it responsible for ensuring the proper handling of personal health information by its agent, the Paper Disposal Company. This obligation requires a written contractual agreement setting out the agent's duty to securely shred the materials. The contract must require the agent to provide an attestation confirming the fact that shredding has been completed;
- The Paper Disposal Company's action in forwarding the records to a recycling facility instead of shredding them, while caused by a mistaken belief, was not in accordance with section 17(2) of the *Act*.

Based on these findings, the Commissioner has ordered the following:

- The Toronto Clinic is ordered to review its information practices to ensure that records of personal health information in its custody or control are securely stored and protected against theft, loss and unauthorized use or disclosure;
- The Toronto Clinic is ordered to put into place a written contractual agreement with any agent it retains to dispose of personal health information records. The agreement must set out the obligation for secure disposal and require the agent to provide written confirmation through an attestation once secure disposal has been conducted;
- The Paper Disposal Company is ordered to put into place a written contractual agreement with any health information custodian for whom it will shred personal health information that includes the obligation for it to shred securely and irreversibly and to provide an attestation of destruction;

- The Paper Disposal Company is ordered to ensure that any handling of personal health information by a third party company be documented in a written contractual agreement that binds the third party to the requirements of the *Act* and its contractual agreement with the health information custodian;
- The Paper Disposal Company is ordered to put into place procedures that prevent paper records containing personal health information designated for shredding from being mixed together with paper that is being disposed of through the recycling process.

This Order will establish the practice to be followed by all health information custodians and their agents in Ontario, with respect to the Commissioner's expectations for the secure disposal of health information records under Ontario's new Health Information Privacy Law.



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