



NEWS RELEASE

For immediate release

August 1, 2018

Commissioner's investigation identifies critical vulnerabilities in the e-health system

HALIFAX - In two privacy breach investigation reports issued today, Catherine Tully, Nova Scotia's Information and Privacy Commissioner, determines that monitoring of electronic personal health information databases is a critical vulnerability in the province. As a result, intrusion into the private lives of patients is a real and present danger.

On December 21, 2017, the Privacy Commissioner began investigating a series of privacy breaches involving a pharmacist employed as the manager at a community pharmacy operated by the Sobeys National Pharmacy Group.

The Commissioner determined that both the Department of Health and Wellness (DHW) and Sobeys National Pharmacy Group (Sobeys) failed to adequately monitor access to personal health information contained in the Drug Information System. Further, the breach investigations initially conducted by the DHW and the pharmacy were not adequate.

The Department of Health and Wellness initially reported to the Commissioner that the breaches had been contained and that there was no evidence of malicious intent.

However, the Commissioner's investigation determined that the pharmacist had:

- a personal relationship with all of the affected individuals;
- created false profiles in order to access personal health information;
- disclosed sensitive personal health information to her spouse;
- continued to use the personal health information even after her employment was terminated.

In total, the pharmacist inappropriately accessed the personal health information including prescription history and medical conditions of 46 individuals over a two-year period.

"The temptation to "snoop" is difficult for some individuals to resist. Custodians of electronic health records must anticipate and plan for the intentional abuse of access by authorized users," Tully said.

The Commissioner makes a total of 18 recommendations focused on improving auditing programs and strengthening the privacy breach management protocols. In addition, the Commissioner has made a recommendation directly to the Minister of Health and Wellness that

the offence provisions in the *Personal Health Information Act* be amended to lengthen the time for prosecution to two years.

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For more information, contact:

Catherine Tully
Information and Privacy Commissioner for Nova Scotia
Phone: 902-424-4684
Email: oipecns@novascotia.ca
Twitter: [@NSInfoPrivacy](https://twitter.com/NSInfoPrivacy)

BACKGROUNDER

August 1, 2018

About the Information and Privacy Commissioner for Nova Scotia

The Information and Privacy Commissioner for Nova Scotia is also known as the Review Officer and the Privacy Review Officer and is appointed as the independent oversight authority under the *Personal Health Information Act*.

Personal Health Information Act

The *Personal Health Information Act (PHIA)* applies to “custodians”. The Department of Health and Wellness (DHW) and the Sobeys National Pharmacy Group (Sobeys) both qualify as custodians in relation to the personal health information contained in the Drug Information System (DIS).

Jurisdiction to investigate

Pursuant to s. 92(2)(b) of *PHIA*, the Commissioner may “initiate an investigation of compliance if there are reasonable grounds to believe that a custodian has contravened or is about to contravene the privacy provisions and the subject-matter of the review relates to the contravention.”

Investigative process

The Commissioner initiated this investigation following receipt of a breach notification from the Department of Health and Wellness on December 20, 2017. Investigators interviewed the following DHW staff:

- director of privacy and access,
- Drug Information System program manager, and
- Drug Information System audit specialist.

Investigators interviewed the following staff from Sobeys:

- chief privacy officer,
- national director of regulatory and quality,
- legal counsel,
- pharmacy district manager, and
- local pharmacy employees.

Office of the Information and Privacy Commissioner for Nova Scotia (OIPC) investigators also obtained and reviewed copies of audit reports, policies, procedures, user agreements, privacy impact assessment, personal health information inventories and computer system user manuals.

What are the findings and recommendations with respect to the Department of Health and Wellness?

In summary, the main findings include:

- A pharmacist engaged in unauthorized access to sensitive personal health information over a two-year period. In that time, she accessed the personal health information of 46 individuals for personal reasons. In doing so she created falsified pharmacy records.

- The DHW does not have an adequate or effective breach investigation protocol. As a result, the DHW failed to identify all affected individuals and failed to provide notification “at the first reasonable opportunity” as required by law.
- While there are some effective administrative safeguards in place, they were not effectively used and are not sufficient to protect Nova Scotians from this type of “snooping” behaviour.
- The DHW has failed to adequately audit the organizations who have been granted access to the Drug Information System.
- The DHW does not have sufficient safeguards in place to protect the database content of its broadly defined electronic health information systems.

With respect to the Department of Health and Wellness, the Commissioner makes 10 recommendations:

1. The DHW develop and implement an effective investigation protocol for the DIS that ensures the DHW takes the lead and has authority to determine corrective action.
2. The DHW re-contact all 46 affected individuals to determine if the pharmacist has been in contact with them since April 2018. If so, the DHW must take further legal action to prevent the ongoing unauthorized use or disclosure of the personal health information.
3. The DHW revise its Privacy Breach Protocol to prescribe that where a user is found to have breached the privacy of any individual(s) via one of the electronic databases, detailed audits of that user’s activity in other implicated databases are automatically conducted.
4. The DHW revise its Privacy Breach Protocol to clarify that notification at the first reasonable opportunity requires that notification occur within days and to ensure that notification letters include clear and specific information regarding the breach.
5. The DHW establish a protocol for investigating anonymous tips on its Health Privacy 1-800 line.
6. The DHW amend the DIS User Agreement to make it mandatory that user organizations monitor and audit their own systems and to make the type and frequency of the DHW monitoring of user organization audits and audit capacity explicit.
7. The DHW conduct training for all users of the DIS on the use of DIS notations – to ensure any use of the DIS not associated with prescription activity is explained.
8. The DHW update its Privacy Policy to reflect current positions and to remove ambiguity about agency status of individuals not employed by the DHW.
9. The DHW develop more robust and systematic auditing policies and practices.
10. The DHW amend *PHIA* to add provisions that assign responsibilities for interoperable health databases in use in Nova Scotia to prescribed entities.

What are the main findings and recommendations with respect to Sobeys National Pharmacy Group?

In summary, the main findings include:

- Sobeys failed to act in a timely fashion to properly and thoroughly investigate and contain these privacy breaches.
- The breaches have not yet been adequately contained because 28 false profiles continue to exist on the Sobeys’ local system.

- Sobeys has several effective administrative safeguards including policies, training and monthly tips to staff.
- Sobeys took a number of effective steps to remediate the work environment following these breaches.
- Sobeys does not have adequate technical auditing capacity to detect unauthorized access by authorized users of its system.

With respect to the Sobeys National Pharmacy Group, the Commissioner makes eight recommendations:

1. Sobeys develop and implement a privacy breach management protocol and provide training on the protocol to management within six months.
2. Sobeys immediately notify the 28 individuals whose personal information was improperly copied into its POS system.
3. Sobeys delete all false profiles from the POS system after providing a copy of the record to affected individuals.
4. Sobeys update, within 45 days, its Operational Standards for pharmacies in Nova Scotia and information brochures intended for Nova Scotian customers to include a correct reference to Nova Scotia's *Personal Health Information Act* and the privacy complaints process.
5. Sobeys make documenting the reason for DIS access for non-dispensing situations mandatory for all pharmacy staff.
6. Sobeys require all pharmacy staff to read this report.
7. Sobeys improve its Quality Improvement Audit process by doing it more frequently, involving more management and non-management staff and including a regular review of the audit logs for the POS system.
8. Sobeys obtain and implement the technical auditing capacity to regularly conduct proactive user activity audits of its POS system within six months.

For more information, contact:

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