

Checklists for Trustees:



The Saskatchewan Information and
Privacy Commissioner



October 3, 2013

Checklists for Trustees: Misdirected Faxes

The use of fax machines to send documents containing personal health information is a common practice in the health care sector and used for speed and convenience. However, trustees have a duty under *The Health Information Protection Act* (HIPA) to protect personal health information under their custody or control from unauthorized collections, uses and disclosures. Pursuant to section 16 of HIPA, trustees are required to have reasonable safeguards to protect personal health information including written policies and procedures when faxing.

A “misdirected fax” is a fax containing personal health information that is received by an individual without a need-to-know. This would result in an unauthorized disclosure of personal health information pursuant to section 27(1) of HIPA and a privacy breach. **NOTE: Even if a misdirected fax is received by another trustee, without a need-to-know it qualifies as a privacy breach.**

Below are best practices checklists for what to do if you send or receive a misdirected fax.

What to do if you receive a misdirected fax:

- ✓ Recognize that this is a significant matter with the need for some urgency to address both privacy implications and continuity of care for the subject individual.
- ✓ Determine if you have a need-to-know.
- ✓ Notify your privacy officer.
- ✓ Use the fax cover sheet or fax header to determine who the ‘sender trustee’ is.
- ✓ Contact the sender trustee to advise of the breach so they can ensure continuity of care for the subject individual.
 - When possible, speak to the organization’s privacy officer so that the incident can be logged and investigated and safeguards implemented if necessary to prevent similar occurrences.

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- ✓ Discuss with the sender trustee how to contain the breach and what to do with the misdirected fax (eg. return by mail, secure destruction, etc.) When possible, give the sender trustee confirmation once the agreed upon action has been performed.
 - **Do not keep a copy of the misdirected fax.**
 - Do not attempt to forward the misdirected fax to the intended recipient as this could compound the breach. Leave that to the sender trustee.
- ✓ Consider notifying the Office of the Information and Privacy Commissioner (OIPC) who has a legislated mandate to investigate privacy breaches and ensure they are properly managed. Factors to consider include:
 - Is the sender trustee identifiable?
 - Is the personal health information particularly sensitive?
 - Are there multiple faxes with apparent multiple sender trustees?
 - Is the problem recurring after proper steps have been taken to contain past occurrences?

The OIPC will ask if you have first made attempts to contact the sender trustee and then ask that you *mail* in the personal health information (misdirected fax) with any relevant details to our office.

- ✓ You may also consider contacting your relevant college or professional association or the Ministry of Health for guidance. This may be beneficial in ensuring continuity of care. However, use caution to not compound the breach. Consider these bodies' mandates, need-to-know and disclosure provisions in HIPA before sharing personal health information of identifiable individuals.

What to do if you have sent a misdirected fax:

- ✓ Contact your organization's privacy officer for guidance and support. Also consult the OIPC resource *Helpful Tips: Privacy Breach Guidelines*.

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- ✓ Contain the breach: Immediately contact the organization(s) to which the misdirected fax(es) has been sent.
 - Confirm that the fax has been received.
 - Explain that the fax contains personal health information and has been sent in error.
 - If you have the original fax, ask the recipient if they have the capability to destroy the personal health information securely (eg. capability to shred in a cross-cut shredder). Ask for confirmation that destruction has occurred.
 - Otherwise, ask that the recipient return the personal health information by mail or send a courier for pick up.
 - Request that the recipient not keep any copies of the personal health information. Ask for confirmation.
 - Inform the recipient of the mandate and role of the OIPC should they have further concerns or questions.
 - Document the conversation.
- ✓ Ensure the personal health information reaches the intended recipient.
- ✓ Once the breach has been contained investigate root causes of the breach.
 - Determine root cause of the breach. Any relevant information management service providers (IMSPs) would play a role in this stage.
 - Review written section 16 policies and procedures on faxing personal health information to ensure that best practices were followed.
 - Determine if the employees involved in the breach were aware of the section 16 policies and procedures and had received training.
 - Begin writing internal investigation report.
- ✓ Analyse the breach and consider the associated risks to both the trustee and affected individuals.

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- ✓ Consider notifying the affected individuals.
- ✓ Consider notifying the OIPC. When privacy breaches are proactively reported to the OIPC, depending on the scale and severity of the breach, it will likely open a 'preliminary file' to monitor the response of the trustee and ensure best practises are being followed. The file is then closed once the trustee's internal investigation has satisfactorily come to a close. If the breach is covered by the media, the trustee will have the benefit of assuring the public it is working with the OIPC.
- ✓ Complete an internal investigation report. Report should focus on ways to prevent future occurrences.

What can be expected in an OIPC Investigation

- ✓ If the OIPC is made aware of a privacy breach involving misdirected faxes by an affected individual or third party, the trustee will be informed of a formal investigation by a written notification letter. If the breach is proactively reported by the trustee or IMSP, under the discretion of the Commissioner, likely a 'preliminary file' will be opened to monitor the response of the trustee.
- ✓ In either case, the OIPC will request the trustee's internal investigation report. The report should contain, but is not limited to, the following:
 - Number of faxes, affected individuals and recipients. Times and dates of misdirected faxes. Data elements contained in the faxes.
 - Details of trustee's efforts to contain the breach.
 - A determination if there was a need-to-know or if there was an unauthorized disclosure of personal health information.
 - Specific details of the circumstances leading to the misdirected fax(es). Role of IMSP services in the breach.
 - Trustee's determination of the root cause of the breach.
 - Trustee's review of section 16 policies and procedures on faxing personal health information and training of staff.

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- Whether the trustee has notified affected individuals. Why or why not?
- Trustee's steps to prevent further occurrences.
- Internal investigation report should also include supporting documents such as section 16 policies and procedures for faxing personal health information, written agreements with IMSP's, samples of cover sheets, etc.
- ✓ Once the OIPC receives the trustee's internal investigation report, it will review and create an analysis. It may request further information. It will make preliminary recommendations to the trustee. The trustee will have opportunity to respond.
- ✓ At the Commissioner's discretion, he may issue a formal public Investigation Report:
 - If the scale and severity of the breach warrants public notification;
 - If it is a systematic issue involving many trustees;
 - If the trustee has not properly investigated the problem or will not comply with his recommendations; and/or
 - If he recommends to the Minister of Justice and Attorney General that charges be initiated pursuant to the offence provisions found in section 64 of HIPA.

Resources on Privacy Breaches and Faxing Personal Health Information

Saskatchewan Office of the Information and Privacy Commissioner (www.oipc.sk.ca)

- ✓ Helpful Tips: Privacy Breach Guidelines
- ✓ *Helpful Tips: Privacy Considerations - Faxing Personal Information and Personal Health Information*
- ✓ *Report on Systemic Issues with Faxing Personal Health Information*

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Alberta Office of the Information and Privacy Commissioner (www.oipc.ab.ca)

- ✓ *Guidelines on Facsimile Transmission*

British Columbia Office of the Information and Privacy Commissioner (www.oipc.bc.ca)

- ✓ *Faxing and Emailing Personal Information*

Manitoba Ombudsman (www.ombudsman.mb.ca)

- ✓ *Manitoba Ombudsman Practice Note: Privacy Considerations for Faxing Personal and Personal Health Information*

Office of the Privacy Commissioner of Canada (www.priv.gc.ca)

- ✓ *Fact Sheet: Faxing Personal Information*

For more information, contact:



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