



SAFEGUARD

A quarterly newsletter published by the Office of the Information and Privacy Commissioner

Volume 9, Issue 1

February 2025

Contact Information

Office of the Information and Privacy Commissioner

Mailing Address:
PO Box 13004, Station A
St. John's, NL A1B 3V8

Telephone:

709-729-6309

Toll Free in Newfoundland and Labrador:

1-877-729-6309

Email:

commissioner@oipc.nl.ca

Website:

www.oipc.nl.ca

Follow us on social media!

LinkedIn:

<https://LinkedIn.com/company/oipc-nl>

This Issue:

- Welcome Commissioner Hatfield!
- OIPC Office has Moved
- Reminder to Custodians when Transferring Custodianship of Medical Records and Continuing Duties
- Custodian Obligation – The Importance of Policies and Procedures
- PHIA Privacy Breach Statistics November 1, 2024 – January 31, 2025

Welcome Commissioner Hatfield!

Kerry Hatfield is the new Information and Privacy Commissioner

Kerry R. Hatfield was appointed the Information and Privacy Commissioner for Newfoundland and Labrador effective December 5, 2024.

Kerry comes with extensive knowledge and experience in access and privacy issues from her 20 plus year legal practice, including 11 years providing legal strategy and advice to the Eastern Regional Health Authority, now NL Health Services. Kerry was made Director of Corporate Legal Services in 2022 upon the establishment of NL

Health Services, amalgamating the previous regional health authorities. Kerry has expertise in regulatory compliance in privacy, security, data governance, and information management within the healthcare sector and broad-based experience in corporate governance, contracts, and procurement.



Prior to working in the healthcare sector, Kerry worked as a partner in private practice at a St. John's law firm where she specialized in privacy, access to information, and litigation including representing the Office of the Information and Privacy Commissioner (OIPC) at both the Supreme Court of NL and the Court of Appeal. Kerry obtained a Bachelor of Arts from Mount Allison University in 1997 and a Bachelor of Laws from the University of New Brunswick in 2001. Kerry has been a member of the Law Society of Newfoundland and Labrador since 2002. She is past president and director of the Rotary Club of St. John's Northwest and a member of the Board of Directors for the Bowring Park Foundation. Outside of work, Kerry is a mom to

two sons and enjoys spending her time with family and friends. In her spare time, Kerry enjoys the great outdoors and is often found hiking, running, or walking the family dog Penny.

Commissioner's Message

It is an honour to represent the province as the new Information and Privacy Commissioner. I believe strongly that privacy rights are a necessary component to instill confidence and trust by citizens in our public institutions. When a person's privacy rights are respected, their trust in society grows. Unfortunately, the reverse is also true which makes the work that public bodies and custodians do to protect privacy in Newfoundland and Labrador essential to our society's well-being. I look forward to working with all parties who interact with the OIPC including public bodies and custodians who work tirelessly every day to ensure democracy is protected and our rights to privacy are upheld.

I wish to thank Acting Commissioner Jackie Lake Kavanagh for providing leadership and support to this Office while the recruitment for a permanent Commissioner was underway and I wish Ms. Lake Kavanagh all the best.

OIPC Office has Moved

OIPC has moved to a new office space! After a decade in the NL Housing Corporation Building, we have a new physical office space located in the Beothuck Building here in St. John's, NL.

Our New Physical Address is:

20 Crosbie Place
Beothuck Building
St. John's, NL

Our Mailing Address, Telephone Numbers and Email Remain the Same

Mailing Address:
PO Box 13004, Station A
St. John's, NL A1B 3V8

Telephone: 709-729-6309
Toll Free in Newfoundland and
Labrador: 1-877-729-6309

Email: commissioner@oipc.nl.ca

Reminder to Custodians when Transferring Custodianship of Medical Records and Continuing Duties

Although OIPC has written about this topic before, we still receive lots of questions from custodians and patients about the transferring of medical records and custodian duties. This mostly occurs when a custodian retires, leaves the province, or ceases operations. Patients are concerned about their medical information and custodians need to know what their responsibilities are when transferring custody of medical records to another custodian or closing their practice.

Custodians are responsible for ensuring compliance with the **Personal Health Information Act** (PHIA) including having information practices for the personal health information (PHI) in their custody or control. This includes the secure storage and protection of their patients' PHI, as well as providing access to it upon request.

When do a custodian's obligations under PHIA cease?

A custodian's obligations under PHIA only cease when they have transferred custody and control of a record of PHI to another custodian in accordance with section 4(3) of PHIA.

If a custodian has not transferred custody and control of their records of PHI to another custodian, then they remain responsible for complying with PHIA, **EVEN if they have closed their practice, retired or left the province.**

It is important to note that when a custodian is transferring their records of PHI to another custodian, the new custodian must meet the definition of a "custodian" under section 4(1) of PHIA. Agents, information managers, and administrative staff do not meet the definition of a custodian under PHIA and therefore cannot be responsible for the records of PHI as a custodian.

While PHIA does not specifically require a custodian to transfer their records of PHI to another custodian in the event of a practice closure, retirement, or at any other time prior to securely destroying the records in accordance with their records retention policy, it is considered a best practice to do so. A custodian remains responsible for these records, even if they are no longer directly involved in providing healthcare services. Their obligations under PHIA, including the obligation to provide patients with access to their medical records, persist until the responsibility for those records is formally transferred to another custodian.

In the event that a custodian who is a natural person dies, the duties and powers of that custodian under PHIA must be performed by a personal representative of the deceased until custody and control of the record of PHI passes to another person who is legally authorized to hold the record. Normally, the estate of the deceased would be responsible for custodian responsibilities under PHIA until the records of PHI are transferred to another custodian who meets the definition of a "custodian" under section 4(1) of PHIA.

Custodian Obligation - The Importance of Policies and Procedures

Custodians have many different obligations under PHIA, and while treating patients and providing healthcare is an essential component of their work, custodians also have other administrative type obligations that may not always be top of mind for them.

Having policies and procedures in place may not be something custodians think of right away; however, it is an **obligation under PHIA**. Custodians must have policies and procedures in place that describe the ways that they collect, use, and disclose personal health information (PHI).

Policies and procedures are also beneficial as they can act as a road map by providing a framework for how things should be done as well as ensuring consistency, accountability, and compliance with laws.

Policies and procedures are a great way to organize the day-to-day handling of PHI. By taking some time up front to plan and lay out how PHI should be treated, custodians can ensure compliance with PHIA and also rely on their policies and procedures if patients have questions or want clarification regarding their PHI.

Section 13(1) of PHIA states:

A custodian that has custody or control of personal health information shall establish and implement information policies and procedures to facilitate the implementation of, and ensure compliance with, this Act and the regulations respecting the manner of collection, storage, transfer, copying, modification, use and disposition of personal information whether within or outside the province.

The wording in this section of PHIA specifies that custodians **“shall”** establish policies and procedures, meaning that it is a mandatory activity. Custodians need to have policies and procedures as outlined above to be compliant with PHIA.

The policies and procedures that custodians must put in place need to outline how to:

- protect the confidentiality of PHI in its custody or under its control and the privacy of the individual who is the subject of the information;
- restrict access to an individual’s PHI by an employee, agent, contractor, or volunteer of the custodian to only that information that the employee, agent, contractor, or volunteer requires to carry out the purpose for which the information was collected or will be used;
- restrict access to an individual’s PHI by a health care professional who has the right to treat persons at a health care facility operated by the custodian to only that information that the health care professional requires to carry out the purpose for which the information was collected or will be used;
- protect the confidentiality of PHI that will be stored or used in a jurisdiction outside the province or that is to be disclosed by the custodian to a person in another jurisdiction and the privacy of the individual who is the subject of that information;

- provide for the secure storage, retention, and disposal of records to minimize the risk of unauthorized access to or disclosure of PHI.

PHIA also requires that the information policies and procedures include appropriate measures to address the risks associated with the storage of PHI, taking into account the manner and form in which the PHI is recorded, the location of storage, and the degree of sensitivity of the PHI to be protected.

The Department of Health and Community Services provides resources for policy and procedure development, located on their PHIA Resource page at <https://www.gov.nl.ca/hcs/phia/>.

PHIA Privacy Breach Statistics November 1, 2024 – January 31, 2025

Between November 1, 2024, and January 31, 2025, PHIA breach notifications decreased again with OIPC receiving only three breach notifications. The three breach reports came from two custodians. Two of the breaches involved personal health information being sent to the wrong individual and in each case, the impacted individuals were notified of the breach. The remaining breach involved a third party gaining unauthorized access to an IT system where personal health information was located. Approximately 13 individuals were affected in that breach. The individuals were notified of the breach and provided with a complimentary subscription for identity theft and credit monitoring.

Want Training?

We would like to remind custodians that OIPC offers PHIA training that can be customized to their needs!

We are also available to speak at annual general meetings and other events!



Interested custodians should email OIPC at commissioner@oipc.nl.ca.

There are also a number of PHIA resources available on OIPC's [website](#).