



SAFEGUARD

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Commissioner

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Survey – Help Us Improve our Newsletter, Guidance Documents and Conferences!

OIPC is conducting a survey on our newsletter, guidance documents, and conferences. We want to hear your thoughts on these resources and the topics you are interested in. This will help us develop a plan to ensure our resources meet your needs.

The survey should only take about five minutes and your responses are anonymous. Information is being collected under the authority of section 61(c) of the **Access to Information and Protection of Privacy Act, 2015** (ATIPPA, 2015). The survey can be accessed [here](#).

If you have questions, please contact OIPCSurveys@oipc.nl.ca. We thank you in advance for your input!

Updates and Reminders: New and Updated Forms, Guidelines, and Guidance

New Form: OIPC has developed a [Written Authorization Form](#) to support complainants who wish to designate a third party representative, such as a spouse or lawyer, to act on their behalf during the complaint process. This will be used on a go-forward basis by OIPC.

Update OIPC's Address in Your Template Letters: Custodians are reminded to update their letter template to reflect our new physical address: 20 Crosbie Place, Beothuck Building, St. John's, NL. Our mailing address remains the same: PO Box 13004, Station A, St. John's, NL, A1B 3V8.

Use the Updated Breach Reporting Forms: Custodians must use the new [Reporting a Privacy Breach Form](#) for reporting privacy breaches to our Office. If you need assistance on how to fill in the new form, please refer to our [Guidelines](#). **Warning: Old breach reporting forms received after December 31, 2025, will not be accepted and will need to be resubmitted using the new form.**

If you have any questions or feedback about our forms, guidelines or guidance, including suggestions on topics for guidance resources, please let us know!

Access Requests for the Deceased's Health Records: Spotlight on Section 7(e)

This is the first in a series of articles about handling the personal health information of a deceased individual.

Section 52(1) of the **Personal Health Information Act (PHIA)** establishes an individual's right of access to a record containing his or her personal health information that is in the custody or under the control of a custodian. This right of access can be exercised by a representative, as established in section 7, with 7(e) specifically referencing representatives of a deceased individual, stating:

7. A right or power of an individual under this Act or the regulations may be exercised ... (e) where the individual is deceased, by the individual's personal representative or, where there is no personal representative, by the deceased's nearest relative, and for this purpose, the identity of the nearest relative may be *determined by reference to section 10 of the Advance Health Care Directives Act*;

While the term "personal representative" is not defined in PHIA, Black's Law Dictionary, eighth edition, defines personal representative as, "Technically, while an executor is a personal representative named in a will, an administrator is a personal representative not named in a will."

It is logical to rely on this conclusion for PHIA as well. As such, a personal representative is the individual legally appointed to manage the deceased person's estate. This includes either an executor (named in a will) or an administrator (appointed when an executor has not been named or is unable to act). This appointment is reflected in a court order that grants the Letters of Probate or Letters of Administration that is issued by the Supreme Court of Newfoundland and Labrador.

There is a hierarchy of who is the "nearest relative," determined in the following order under section 10 of the [Advance Health Care Directives Act](#):

- spouse;
- children;
- parents;
- siblings;
- grandchildren;
- grandparents;
- uncles and aunts;
- nephews or nieces; and

- another relative.

Custodians must take **reasonable steps** to confirm the authority of the person making the access request – their appointment as a representative of the estate or their relationship to the deceased – before releasing personal health information.

Watch the February edition of *Safeguard* for the second article in this series!

Snooping - PHIA, ATIPPA, 2015 and Audit Reports

This is the third in a series of articles about snooping. The February edition of *Safeguard* will outline expectations with regard to detecting and containing snooping incidents as we continue our series on snooping!

When investigating snooping incidents, it is important to understand what legislation should be considered for various components. As OIPC has not issued a report on these matters, the following are general considerations and preliminary analysis; the legislation is not super clear on this topic.

Do Audit Reports Contain Personal Health Information?

Let's first look at the audit reports. Audit reports generally contain the patient's name, the name of the individual accessing the information, as well as a description of the information they have viewed or could have viewed (i.e. registration module, labs, dates and times, etc.).

PHIA establishes a definition of personal health information in section 5, stating, in part:

5. (1) In this Act, "personal health information" means identifying information in oral or recorded form about an individual that relates to ... (b) the provision of health care to the individual, including information respecting the person providing the health care;...

Section 5(1)(b) is clarified further in section 5(2):

- (2) For the purpose of paragraph (1)(b), "information respecting the person providing health care" means, in relation to that person, the following information as applicable:
 - (a) the name, business title, address and telephone number;
 - (b) licence number; and
 - (c) profession, job classification and employment status.

The above appears to establish that audit reports contain the personal health information of an individual.

Purpose of Audit Reports

Many custodians rely on audit capabilities of electronic systems to ensure compliance with section 48.

Custodians should ensure they understand and have documented the purpose of its audit reports. Many custodians cite system auditing capabilities as a safeguard to assist with compliance with section 15, which requires custodians to take reasonable steps to ensure that, "... (a) personal health information in its custody or control is protected against theft, loss and unauthorized access, use or disclosure;..." Another common safeguard are policies, such as acceptable use policies, that would establish why individuals have been given access to systems and what constitutes an acceptable use. Such policies would also generally outline the consequences of inappropriate use of system access and detail any audit process, including frequency of random audits.

Further, section 48 of PHIA establishes that custodians must maintain a record of certain disclosure information, with subsection 2 stating:

48 (2) Subsection (1) does not apply where a custodian discloses personal health information by permitting access to the information stored in the information system of the custodian, provided that when the information is accessed, the database automatically keeps an electronic log of the following information:

- (a) the user identification of the person that accesses the information;
- (b) the date and time the information is accessed; and
- (c) a description of the information that is accessed or that could have been accessed.

Right of Access to Audit Logs

Section 52 provides individuals with a right of access to records containing their personal health information that are in the custody or under the control of a custodian, which would include audit records. Section 58 identifies exceptions to access; if none of the audit record falls into an exception, it should be released in full.

Key Takeaways

- Information contained in audit reports includes personal health information as defined in PHIA.
- Custodians should ensure they have a clear purpose documented as to why they maintain audit records, which may include compliance with sections 15 and 48 of PHIA.
- Custodians should check for system-specific acceptable use policies to determine if the purpose for access is clearly stated, if unauthorized access is defined, along with the consequences of any inappropriate access.
- Custodians should broadly educate employees, agents, contractors, and volunteers on this policy.

Naming the Snooper and Disclosing Discipline Stemming from Snooping

In the August edition of Safeguard, an article discussed trends from Commissioner Reports across Canada where snoopers were identified publicly or audit reports of accesses to personal health information were provided to complainants. Sometimes discipline or employment status was released. What does legislation in this province say about such matters?

As established above, individuals have a right of access to their personal health information, with limited exceptions. In a snooping situation, individuals have the right to request audit records and could review who accessed their information, possibly leading them to identify the snooper.

Custodians that are also public bodies subject to ATIPPA, 2015

While an audit report, which includes an individual's personal health information, may reveal the name of a potential snooper, specifically naming the snooper and stating the resulting discipline bring in ATIPPA, 2015 considerations.

Section 5(4) of PHIA establishes that:

- 5(4) Notwithstanding subsection (3), personal health information does not include identifying information contained in a record that is in the custody or under the control of a custodian where:
- (a) the identifying information contained in the record relates primarily to an employee or agent of the custodian; and
 - (b) the record is created or maintained primarily for a purpose other than the provision of health care or assistance in providing health care to the employee or agent.

As Human Resource records of employees and agents are not personal health information under PHIA, we turn to ATIPPA, 2015:

- 2(u) "personal information" means recorded information about an identifiable individual, including
- (i) the individual's name, address or telephone number,
 - ...
 - (vii) information about the individual's educational, financial, criminal or employment status or history,

Discipline, employment status, and the name of the snooper is personal information as defined by ATIPPA, 2015. On the other hand, the name of the snooper in an audit report is the personal health information of the patient in accordance with PHIA. Directly naming the snooper is a consideration which falls under ATIPPA, 2015, for those custodians that are subject to both statutes. This leads to more questions about release of such details; section 40 contains a number of considerations, which may change depending on the specific circumstances of the situation.

Section 40 contains considerations for when the disclosure of personal information would and would not be an unreasonable invasion of personal privacy. Any custodian should look closely at this section and determine which sections may apply to the situation. Custodians should look to determine if the name, discipline, or employment status should be released. Further, they should consider if it should be proactively released or released if requested.

Custodians that are not public bodies subject to ATIPPA, 2015

Custodians that are not subject to ATIPPA, 2015 should consider if they have obligations under other legislation or employment laws, or through other mechanisms, such as contracts or policies and practices.

Key Takeaways

- PHIA establishes that individuals have a right of access to their own personal health information, including audit reports, with limited exemptions.
- Each snooping incident will be unique and will require an analysis that focuses on the specific circumstances to determine what information should be released.
- If custodians decide to disclose information, they must consider the requirement to release the minimum necessary information. For example, releasing specific disciplinary information versus employment status.
- To be effective, custodians should develop a policy on snooping, including consequences, and educate on it broadly.

Custodians struggling to make a decision on various aspects of snooping incident notifications should remember that the legislation is based on reasonableness. Custodians should document their decisions and considerations; this documentation will assist in supporting their actions should a complaint be filed.

Breach at “Ontario Health atHome”

In June, news broke of a [breach](#) at “Ontario Health atHome”, the province's home-care coordination service, that involved a third-party vendor. The incident may have exposed personal health information for at least 200,000 home-care patients and raised concerns about reporting requirements and notifying impacted individuals.

Custodians in this province are subject to PHIA. Some of the requirements of this Act include having reasonable safeguards in place to protect personal health information and reporting material breaches to OIPC. Both OIPC and the Department of Health and Community Services have resources to assist custodians in compliance, available online at:

[PHIA Guidance - Office of the Information and Privacy Commissioner;](#)
[The Personal Health Information Act - Health and Community Services.](#)

Custodians that have experienced a material breach must report to OIPC using the [Breach Reporting Form](#); additional information on how to complete the form is available [here](#). Custodians with questions can always contact OIPC at commissioner@oipc.nl.ca or by phone at 709-729-6309 or toll free at 1-877-729-6309.

PHIA Privacy Breach Statistics August 1 – October 31, 2025

Between August 1 - October 31, OIPC received two privacy breach notifications; this is a decrease from last quarter's five breaches. The breach reports came from two custodians: one involved personal health information of a patient being shared inappropriately via text and the other involved placing personal health information numbers into a portal rather than de-identified codes.

Want Training?

We would like to remind custodians that OIPC offers PHIA training that can be customized to their needs! This fall, we developed and conducted a training session for Vida Nova Recovery and spoke at the Newfoundland and Labrador Massage Therapists' Association's annual general meeting.

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](#).