Office of the Information & Privacy Commissioner
Nova Scotia

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September 28, 2016

Honourable Leo A. Glavine
Minister of Health and Wellness
1894 Barrington Street, 17th Floor
Halifax, NS B3J 2R8
health.minister@novascotia.ca

VIA Email

Dear Minister Glavine:

Re: PHIA Review Recommendations

As the Information and Privacy Commissioner for Nova Scotia I have oversight responsibilities under the *Personal Health Information Act* (*PHIA*).[1] Since June 2013 my office dealt with a total of 1750 matters relating to *PHIA*. This included requests for reviews, complaints, consultations, breach notifications and general inquiries. As a result of this experience, we have identified seven areas where *PHIA* requires improvement to better serve Nova Scotians.

Key among my concerns is the privacy breach reporting provision in *PHIA*. The current notification provision does not require that my office receive notification of significant breaches. As a result, the notification provision fails to adequately protect the interests of Nova Scotians and creates risks for health custodians. I recommend an improved breach notification provision that better reflects best practice across the country.

A number of complaint investigations in the past three years raised issues with respect to the disposition of records. These complaints showed that Nova Scotia health custodians are unsure of their obligations when they retire or leave their practices for other endeavors. I recommend that *PHIA* be amended to clarify rules for how custodians handle personal health information when ending their practices.

Nova Scotians' personal health information is increasingly stored and accessed through large databases. These databases are interoperable, allowing convenient access to personal health information. This trend will only accelerate. Looking forward we must ensure that the data is properly secured, that responsibility for the data is clearly assigned and that individuals are able to access their own health information. I recommend amendments to *PHIA* that will clarify each of

[1] I am appointed as the "Review Officer" under *PHIA* but am known as the Information and Privacy Commissioner.

these points and ensure that the data is properly protected. This will also help ensure certainty as new health technology projects come online.

A further issue that has arisen on several occasions in the past three years relates to the powers of substitute decision makers. *PHIA* fails to make clear that the substitute decision maker can exercise all of the powers conferred on individuals under the law. Nova Scotians who are not capable of making decisions on their own behalf are therefore unable to exercise all of the rights given to them by *PHIA*. I therefore recommend some improvements in the substitute decision maker provisions.

My final three recommendations relate to ensuring that there are ongoing periodic reviews of *PHIA*, that my office has the authority necessary to provide effective and meaningful oversight and that minor typographical errors are corrected in *PHIA*.

As a practical matter, my office will require additional resources in order to meet our current and any future additional oversight obligations.

I therefore recommend the following amendments to *PHIA*:

Recommendation #1: Breach Notification
Amend ss. 69 and 70 to require notification of breaches to affected individuals and the Commissioner where there is a real risk of significant harm.

Recommendation #2: Disposition of Records
Amend *PHIA* by adding provisions to clearly regulate the disposition of records.

Recommendation #3: Electronic Health Record
Amend *PHIA* by adding provisions that assign responsibilities for interoperable health databases in use in Nova Scotia to prescribed entities.

Recommendation #4: Substitute Decision Makers
Amend s. 21(1) to permit the substitute decision maker to exercise any right or power conferred on an individual under *PHIA*.

Recommendation #5: Periodic Review of PHIA
Amend s. 109 to allow for regular reviews of the Act.

Recommendation #6.i: OIPC Power to Compel Production
Amend s. 92(2)(b) to allow the Commissioner to require any relevant record to be produced to the Commissioner whether or not the record is subject to the provisions of the Act.

Recommendation #6.ii: OIPC Joint Investigations
Add a provision in s. 91(2) allowing for the exchange of information with extra-provincial commissioners for the purpose of coordinating activities and handling reviews and complaints involving two or more jurisdictions.

Recommendation #6.iii: OIPC Restrictions on Disclosure
Add a provision enumerating the permitted uses and disclosures of information by the Commissioner and her staff and a provision specifying the immunity of the Commissioner and her staff.

Recommendation #7: Housekeeping Amendments

- Section 45(4) makes reference to s. 9(2) which does not exist. Recommend correcting or removing this reference.
- Section 101(1) refers to itself; it is likely intended to refer to 100(1).

I have attached a detailed explanation for each of the recommendations listed above. I would be pleased to discuss these recommendations and to answer any questions you may have. I have made this letter and my detailed recommendations publicly available on our website.

Yours truly,

Catherine Tully
Information and Privacy Commissioner for Nova Scotia

Enclosure

Office of the Information and Privacy Commissioner for Nova Scotia
***Personal Health Information Act* Review Recommendations**

1. Breach Notification

Problem

The current breach notification requirement in ss. 69 and 70 of the *Personal Health Information Act* (*PHIA*) is inconsistent with every other breach notification law in Canada.[2] *PHIA*'s requirement fails to protect the rights of Nova Scotians in that it does not subject health custodians to independent oversight of significant privacy breaches. Under the current law custodians are not required to notify individuals when:

- the custodian determines, on a reasonable basis that personal health information has been stolen, lost or subject to unauthorized access, use, disclosure, copying or modification;
- but that it is unlikely that a breach of personal health information has occurred;
- or there is no potential for harm or embarrassment.

When a custodian makes this determination, he or she must then notify the Commissioner.[3]

There are three significant problems with this approach:

1. **Systemic Issues:** Breaches resulting in a real risk of significant harm may be caused by a systemic problem or may be isolated events. If a significant breach is the result of a systemic problem then it is likely to recur. Without independent oversight there is no way for patients to be assured that systemic problems have been properly managed.
2. **Prevention Strategies:** Every breach requires a review and implementation of prevention strategies. Since there is no independent review of a health custodian's response to serious breaches, there is no way of determining whether or not effective or indeed any prevention strategies have been implemented.
3. **Adequacy of Notification:** While it may be that individuals are receiving notification of serious breaches there is no independent verification of this. In fact, in the past three years no individual has provided our office with a breach notification letter from a health custodian. This may suggest that notifications fail to advise individuals of their rights to an independent review through our office.

Last year health custodians reported a 75% increase in minor breaches to the Commissioner. We have no way of knowing if there was an equivalent increase in breaches that resulted in a real risk of significant harm.

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[2] See for example the New Brunswick *Personal Health Information Privacy and Access Act*, s. 49(1)(c); Newfoundland *Personal Health Information Act*, s. 15(4); Alberta *Personal Information Protection Act*, s. 34.1 and 37.1; Canada *Digital Privacy Act* s. 10.1.

[3] The Commissioner is called the "Review Officer" in the *Personal Health Information Act*. In order to avoid ongoing confusion about the role of the Review Officer, in consultation with the Department of Justice I changed my name in the fall of 2015 to the Information and Privacy Commissioner.

If the Office of the Information and Privacy Commissioner for Nova Scotia (OIPC) receives a complaint about a breach, it does have the power to investigate the incident. However, a further weakness in the notification requirement is that it does not include a requirement that health custodians tell people they can complain to the OIPC. As a result no individual has ever come to our office with a breach reporting letter from a health custodian and so Nova Scotians may be unaware of their right to seek assistance from the OIPC.

I would add that the current provision is illogical. It makes no sense to say that an unauthorized access, use, disclosure etc. could possibly not breach personal health information since a breach is, by definition, an unauthorized access, use, disclosure etc.

Background

The trend across Canada in recent years has been to create a statutory duty to report significant breaches to the affected individual and to the Commissioner. Newfoundland, New Brunswick, Ontario, Alberta and Canada all have breach reporting requirements summarized below.

Newfoundland *Personal Health Information Act*, SNL 2008, c. P-7.01, s. 15(4):

- Where the custodian reasonably believes there has been a material breach as defined in the regulations the custodian shall inform the Commissioner.
- Commissioner may recommend that the custodian notify the individual in certain circumstances (s. 15(5)).
- "material breach" – Factors relevant in determining what constitutes a material breach include sensitivity, number of people, whether the custodian reasonably believes that the personal health information involved has been or will be misused and whether the cause of the breach or the pattern of breaches indicates a systemic problem.

New Brunswick *Personal Health Information Privacy and Access Act*, SNB 2009 c. P-7.05, s. 49(1)(c):

- Notify the individual and the Commissioner at the first reasonable opportunity if personal health information is stolen, lost, disposed of or disclosed to or accessed by an unauthorized person.
- Notification is not required if the custodian reasonably believes that the event will not have an adverse impact on the provision of health care or the individual, or will not lead to the identification of the individual.
- Regulations include information that must be provided in notice.

Ontario *Personal Health Information Protection Act*, SO 2004, c. 3, Sch. A, s. 12:

- If personal health information that is in the custody or control of a health custodian is stolen or lost or if it is used or disclosed without authority the custodian shall notify the individual at the first reasonable opportunity.
- Custodian must advise the individual of his or her right to complain to the Commissioner.
- Custodian must notify the Commissioner if the breach meets the prescribed requirements.

Alberta *Personal Information Protection Act*, SA 2003, c. P-6.5 (not yet in force):

- Organization must notify the Commissioner without unreasonable delay where a reasonable person would consider that there exists a real risk of significant harm (s. 34.1).
- Commissioner can require notification of individual where there is a real risk of significant harm (s. 37.1).
- Regulations include detailed list of content for notices.

Alberta *Health Information Act*, RSA 2000, c. H-5. s. 60.1 (via Bill 12, *Statutes Amendment Act, 2014*, 2014 c8 s4) (not yet in force):

- Where there is a risk of harm to the individual as a result of a loss of personal health information or any unauthorized access to or disclosure of personal health information the custodian must notify the individual, the Commissioner and the Minister in accordance with regulations.

Canada *Digital Privacy Act*, SC 2015, c. 32, s. 10.1 requires organizations to:

- Notify individuals and the Privacy Commissioner as soon as feasible of any breach that poses a "real risk of significant harm".
- Notify any third party that the organization believes is in a position to mitigate the risk of harm.
- Form and content of notification and identification of risk factors may form part of the regulation – consultations currently underway.

The most recent new reporting provisions include a requirement on the health custodian or public body to also keep a complete record of all breaches (minor and major) available for inspection by the Commissioner.

Canada *Digital Privacy Act* s. 10.3:

- Requires organizations to keep and maintain a record of every breach of security safeguards involving personal information under its control.

European Union General Data Protection Regulation (GDPR), Article 33.5:

- The organization shall document any personal data breaches including its effects and remedial action taken.
- The documentation must enable the Commissioner (known as the supervisory authority) to verify compliance with the GDPR requirements.

Recommendation #1: Breach Notification

Amend ss. 69 and 70 to require notification of breaches to affected individuals and the Commissioner where there is a real risk of significant harm as follows:

- Require notification of affected individuals and the Commissioner if it is reasonable in the circumstances to believe that the breach creates a real risk of significant harm to an individual.
- Require notification without unreasonable delay.
- Include content requirements for notification to individuals including: specific details about the cause of the breach, the type of data lost or stolen, an explanation of the risks of harm they may experience as a result of the breach, and information about their right to complain to the Commissioner.
- Require maintenance of a record of all data breaches by health custodians with specified details available to the Commissioner upon request.
- Remove notification to Commissioner of minor breaches but add clear authority for the Commissioner to request the breach record maintained by the custodian.
- Authorize the Commissioner to investigate a health custodian's decision not to notify and, if the Commissioner considers it appropriate, to require that the health custodian notify the individual of the privacy breach.

2. Disposition of Records

Problem

PHIA lacks clarity around when a custodian's obligations end and what should be done with records when a custodian ceases to practice. There is no legislated obligation or power to require the appointment of a replacement custodian who has failed to properly wind up affairs. Citizens' privacy rights are not protected – the OIPC investigated improper disposal of records in dumpsters, and records simply shipped out of province without warning. Custodians' interests are not well served by lack of clarity as they are unable to define the end of their business operations.

In certain extreme instances, colleges that oversee regulated health professionals have the discretionary power to take custodianship of records. Our experience, and that of Commissioners across the country, shows us that these types of powers are rarely used. In addition, where the college and the regulated health professional disagree as to who is the custodian, this can create an impasse leaving the records, and the patient, in limbo. For *PHIA* purposes, a solution within the Act itself is needed.

Background

Other health information statutes across the country include provisions clarifying the end of a custodian's responsibility for personal health information. They also include rules clarifying custodians' abilities and obligations with respect to outsourcing records storage.

Newfoundland and Labrador *Personal Health Information Act*, SNL 2008, c. P-7.01:

- Custodianship does not cease until records of personal health information pass to another individual who is legally authorized to hold the records (s. 4(3)).
- Where the custodian fails to carry out his or her duties, the minister may appoint a person to act in place of the custodian (s. 4(4)).
- Custodian may enter into an agreement with an "information manager" to store or destroy records of personal health information. Obligations under those agreements are defined (s. 22).
- Creates a separate category of privacy breach where records are disposed of in an unauthorized manner (s. 15(3)(c)).

New Brunswick *Personal Health Information Privacy and Access Act*, SNB 2009 c. P-7.05:

- Custodianship does not cease until records of personal health information pass to another individual who is legally authorized to hold the records (s. 54(1)).
- A custodian may enter into an agreement with an "information manager" to store or destroy records of personal health information, pursuant to s. 52(1). Obligations under those agreements are defined, pursuant to s. 52(2), expanded on in Regulations.
- Pursuant to s. 54(2), the custodian or custodian's successor is obligated to advise individuals about the transfer of personal health information, how the individual may request access, and the retention period.

Ontario *Personal Health Information Protection Act,* SO 2004, c. 3, Sch. A:

- Custodianship does not cease until records of personal health information pass to another individual who is legally authorized to hold the records (s. 3(11)).
- A custodian is permitted to transfer records of personal health information under a confidentiality agreement to a potential successor so that the successor may evaluate the custodian's operations (s. 42(1)).
- A custodian may transfer records containing personal health information to a successor provided the custodian has taken reasonable steps to notify the individuals involved (s. 42(2)).

Saskatchewan *Health Information Protection Act,* SS 1999, c. H-0.021:

- Custodianship does not cease until records of personal health information pass to another individual who is legally authorized to hold the records (s. 22(1)).
- Where the custodian ("trustee") fails to carry out his or her duties, the minister may appoint a person to act in place of the custodian (s. 22(2)).
- A custodian may disclose records containing personal health information to an "information management service provider" to "process, store, archive or destroy" the records. The information manager's uses of the records are restricted by statute (s. 18).

Alberta *Health Information Act*, RSA 2000, c. H-5:

- A custodian may enter into an agreement with an "information manager" to process, store, retrieve or dispose of personal health information pursuant to s. 66(2). Obligations under those agreements are defined pursuant to s. 66(4) and 66(5) and expanded on in Regulation 7.2.

Recommendation #2: Disposition of Records

Amend *PHIA* by adding provisions to clearly regulate the disposition of records as follows:

- Clarify that custodianship over records containing personal health information extends until records are transferred to an authorized person.
- Authorize custodians to enter into agreements with information managers to complete disposition of records. Require that those agreements be made in writing.
- Confirm that fees that may be charged by information managers are those set out in *PHIA* s. 82.

3. Electronic Health Record

Problem

There is an urgent need to create clarity around who has control of large interoperable databases. Multiple custodians have access to the data and can add to and amend the data through the life of the patient. From a patient's perspective he or she may believe that his or her own custodian has complete control over the record or that "the government" has control over the record. Or, he or she may be entirely uncertain who is responsible for the record. The same is true for many custodians who access shared data without having a clear idea who is ultimately responsible for the data. Providing clarity on this issue will assist patients and custodians and will ensure that patients have a meaningful right of access. As electronic health record databases expand, this issue will become more and more of a problem. Addressing it now will create certainty for future e-health projects.

Background

Ontario recently amended the *Personal Health Information Protection Act* (*Part V.1*) to establish a governance framework for a shared provincial electronic health record. A prescribed organization will be required to maintain, audit and monitor logs relating to the shared provincial electronic health record and will further be required to respond to access to information requests. The proposed amendments include breach reporting requirements.

"Prescribed entity" is already contemplated in Nova Scotia's *PHIA* in ss. 38(2) to 38(6). Ontario's approach could be adapted to suit Nova Scotia.

Recommendation #3: Electronic Health Record

Amend *PHIA* by adding provisions that assign responsibilities for interoperable health databases in use in Nova Scotia to prescribed entities as follows:

- Assign specified duties to these prescribed entities including:
  - manage and integrate personal health information received from custodians,
  - ensure proper functions of the electronic health record,
  - ensure accuracy and quality of personal health information,
  - keep an audit log (record of user activity) with prescribed information requirements,
  - keep an electronic record of all instances where a consent directive (s. 17 *PHIA*) is made, withdrawn or modified, include prescribed information requirements,
  - audit and monitor records it is required to keep (consent directives, audit logs), and
  - make available record of user activity, consent directives and audit logs at the Commissioner's request.
- In developing and maintaining the electronic health record require the prescribed entities to:
  - take reasonable steps to limit the personal health information it receives to that which is reasonably necessary for developing and maintaining the electronic health record,
  - prohibit employees from viewing, handling or otherwise dealing with personal health information unless the employee agrees to comply with the restrictions that apply to the prescribed organization,
  - make available to the public and to each health information custodian that provides personal information to it a plain language description of the electronic health record and any directives, guidelines and policies of the prescribed organization that apply to the personal health information, and
  - conduct threat and risk assessments with respect to the security and integrity of the personal health information.
- Set clear standards for breach identification and notification to affected individuals, health custodians and the Commissioner.
- Amend s. 5(1)(b) to make clear that prescribed entities are subject to *PHIA* and to the oversight of the OIPC.

4. Substitute Decision Makers

Problem

PHIA s. 21(1) allows a substitute decision maker to consent to the collection, use and disclosure of personal health information if the individual lacks the capacity to consent. Section 80(1)(b) of *PHIA* says that nothing in *PHIA* prevents a custodian from communicating with the substitute decision maker with respect to a record of personal health information to which an individual has a right of access. However, there is no express allowance for a substitute decision maker to exercise the rights of access (s. 75), correction (s. 85) or review (s. 91) nor to receive notice of a privacy breach (s. 69). Allowing these four rights is essential to ensuring that Nova Scotians who lack the capacity to consent have the full protection afforded by *PHIA*. The lack of clarity regarding the authority of the substitute decision maker in these areas puts Nova Scotians who lack capacity at a disadvantage.

Background
Other jurisdictions in Canada confer broader powers on the substitute decision maker.

Newfoundland *Personal Health Information Act*, SNL 2008, c. P-7.01:
- A right or power of an individual under this Act or the Regulations may be exercised by individuals enumerated in list (s. 7).

Ontario *Personal Health Information Protection Act,* SO 2004, c. 3, Sch. A:
- If this Act permits or requires an individual to make a request, give an instruction or take a step and a substitute decision maker is authorized to consent on behalf of the individual to the collection, use or disclosure of personal health information about the individual, the substitute decision maker may make the request, give the instruction or take the step on behalf of the individual (s. 25).

Saskatchewan *Health Information Protection Act*, SS 1999, c. H-0.021:
- An individual may designate in writing another person to exercise any of the individual's rights or powers with respect to personal health information (s. 13).
- Any right or power conferred on an individual may be exercised by a list of enumerated individuals in specific circumstances (s. 56).

Recommendation #4: Substitute Decision Makers
Amend s. 21(1) to permit the substitute decision maker to exercise any right or power conferred on an individual under *PHIA*.

5. Periodic Review of PHIA

Problem
PHIA only contemplates one review – this one. Regular reviews of access and privacy law is best practice, particularly in a world where new technologies create new opportunities and new challenges for privacy rights. With no regular review provision there is no way to ensure that *PHIA* remains current, incorporates best practices and meets the future needs of Nova Scotians.

Background
Review provisions across Canada include periodic review requirements, the need to strike a committee and that reports must be prepared within a prescribed time period. In practice, these reports are made public.

Alberta *Personal Information Protection Act,* Chapter P-6.5, s. 63:
- Review every six years by special committee of the Legislative Assembly.
- Special committee must submit its final report to the Legislative Assembly within 18 months of beginning the review.
- Recommendations may be for amendments to the Act or Regulations.

British Columbia *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996 c. 165, s. 80:
- Review at least once every six years by special committee of the Legislative Assembly.
- Must submit a report to the Legislative Assembly within one year of date of appointment of the special committee.
- Report may include recommended amendments to the Act or any other Act.

Newfoundland *Access to Information and Protection of Privacy Act, 2015*, s. 117:
- First review not more than five years after the coming into force of the Act and every five years thereafter.
- Minister responsible for the Act shall refer it to a committee for the purpose of undertaking a comprehensive review.
- Review must include a review of all exempting provisions.

Recommendation #5: Periodic Review of PHIA
Amend s. 109 to allow for regular reviews of the Act as follows:
- Reviews should be by an independent committee of the legislature.
- Conduct a review of *PHIA* every six years.
- Require that submissions to the committee and the report of the committee be made public.
- Report may include recommendations and amendments to *PHIA* or any other Act.

6. Commissioner's Powers and Obligations

(i) Power to compel production of records from non-custodian

Problem
PHIA s. 92(2)(b) allows the Commissioner to initiate an investigation where there are reasonable grounds to believe the privacy provisions are not being complied with. Section 99(1) gives the Commissioner the power to compel production of records and to enter and inspect premises in a review pursuant to s. 92(2)(b). However, this provision only explicitly applies to custodians. Unfortunately, privacy breaches, by their very nature, are not strictly confined to custodians' premises. Without the express authority to require production we cannot properly investigate a privacy breach nor can we act to demand that the non-custodian turn over the record or produce for inspection any record relevant to the breach investigation.

Background
An authority to demand a non-custodian turn over a record allows the Commissioner to properly investigate a breach in which personal health information is faxed, mailed, emailed or accessed electronically by a non-custodian. It allows us to intervene to contain a privacy breach and ensure Nova Scotians' right to privacy in their personal health information is fully protected.

Alberta *Health Information Act,* RSA 2000, c. H-5, s. 88:
- The power to compel production of any relevant record whether or not the record is subject to the provisions of the Act.
- The Commissioner may require any relevant record to be produced to the Commissioner and may examine any information in the record, whether or not the record is subject to the provisions of this Act.

Recommendation #6.i: OIPC Power to Compel Production
Amend s. 92(2)(b) to allow the Commissioner to require any relevant record to be produced to the Commissioner whether or not the record is subject to the provisions of the Act.

(ii) Power to share information with other information and privacy commissioners

Problem
With the creation of the electronic health record and the desire across Canada to allow patients to access health care and their health records no matter which Canadian jurisdiction they are in, issues will inevitably arise involving more than one jurisdiction. Privacy breaches know no borders. In order to effectively investigate such breaches the Commissioner requires the clear authority to work together with her regulatory counterparts to investigate these types of breaches and to coordinate activities to help prevent breaches.

Background
British Columbia and Alberta have provisions in their private sector privacy laws that are, like *PHIA*, considered to be substantially similar to the *Personal Information Protection and Electronic Documents Act*. As a result of experiences in the private sector (which can include health care providers), both jurisdictions determined that they required the ability to share information in order to conduct joint investigations.

Alberta *Health Information Act*, RSA 2000, c. H-5, s. 84:

- The Commissioner may exchange information with an extra-provincial commissioner and enter into information sharing and other agreements with extra-provincial commissioners for the purpose of coordinating activities and handling complaints involving two or more jurisdictions.

British Columbia *Personal Information Protection* Act, s. 44, s. 36:

- Commissioner must not disclose any information obtained in performing his or her duties except as provided under the Act.
- The Commissioner may exchange information with any person who has powers and duties similar to the Commissioner and may enter into information sharing agreements for the purpose of coordinating their activities and providing for mechanisms for handling complaints.

Recommendation #6.ii: OIPC Joint Investigations
Add a provision in s. 91(2) allowing for the exchange of information with extra-provincial commissioners for the purpose of coordinating activities and handling review and complaints involving two or more jurisdictions.

(iii) Restrictions on disclosure and immunity for Commissioner and staff

Problem
All modern access and privacy laws include a restriction on disclosure of information by the Commissioner and her staff as well as an immunity clause. *PHIA* has a general immunity provision (s. 105(1)) that does not specifically address this issue. Custodians and citizens need to know that information supplied to the Commissioner is received in confidence and will only be used in accordance with the restrictions specified in *PHIA*. Further, given the sensitivity of data and the increase in litigation regarding privacy, an immunity provision is necessary and in keeping with standards across Canada.

Background
Examples of both types of provisions can be found in legislation across Canada.

Newfoundland and Labrador *Access to Information and Protection of Privacy Act*, SNL 2015, c. A-1.2, s. 102, s. 104:

- The Commissioner, and a person acting for or under the direction of the Commissioner, shall not disclose information obtained in performing duties or exercising powers under this Act, except as provided.
- The Commissioner may disclose, or may authorize a person acting for or under his or her direction to disclose, information that is necessary to
  (a) perform a duty or exercise a power of the Commissioner under this Act; or
  (b) establish the grounds for findings and recommendations contained in a report under this Act.
- An action does not lie against the Commissioner or against a person employed under him or her for anything he or she may do or report or say in the course of the exercise or performance, or intended exercise or performance, of his or her functions and duties under this Act, unless it is shown he or she acted in bad faith.

Alberta *Health Information Act*, RSA 2000, c. H-5, s. 91, s. 92:

- The Commissioner, and anyone acting for or under the direction of the Commissioner, must not disclose any information obtained in performing his or her duties, powers and functions under this Act, except as provided.
- The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information that is necessary
  (a) to conduct an investigation or inquiry under this Act; or
  (b) to establish the grounds for findings and recommendations contained in a report under this Act.
- No action lies and no proceeding may be brought against the Commissioner, or against a person acting for or under the direction of the Commissioner, for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a duty, power or function under this Act

British Columbia *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996 c. 165, s. 47, s. 48:

- The Commissioner and anyone acting for or under the direction of the Commissioner must not disclose any information obtained in performing his or her duties, powers and functions under this Act, except as provided.
- The Commissioner may disclose, or may authorize anyone acting on behalf of or under the direction of the Commissioner to disclose, information that is necessary to
  (a) conduct an investigation, audit or inquiry under this Act, or
  (b) establish the grounds for findings and recommendations contained in a report under this Act.
- No proceedings lie against the Commissioner, or against a person acting on behalf of or under the direction of the Commissioner, for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a duty, power or function under this Act.

Recommendation #6.iii: OIPC Restrictions on Disclosure
Add a provision enumerating the permitted uses and disclosures of information by the Commissioner and her staff and a provision specifying the immunity of the Commissioner and her staff.

7. Housekeeping

Recommendation #7: Housekeeping Amendments

- Section 45(4) makes reference to s. 9(2) which does not exist. Recommend correcting or removing this reference.
- Section 101(1) refers to itself; it is likely intended to refer to 100(1).

Summary of Recommendations

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Amend ss. 69 and 70 to require notification of breaches to affected individuals and the Commissioner where there is a real risk of significant harm.

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