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Nunavut Information and Privacy Commissioner

Nunavunmi Tuhagtauyukhaliqinirmun Kanngunaqtuliqinirmun Kamisina

Commissaire à l'information et à la protection de la vie privée du Nunavut

Commissioner's Final Report

Summary

[1] A Department of Health manager looked at a patient's personal information in circumstances where there was no clinical need to do so. A health-care worker reported the incident to management. Health concluded there was no privacy breach. Later, the worker alleged retaliation by the manager. The Commissioner finds there was a privacy breach, but there was no retaliation connected to the privacy breach. The Commissioner recommends that Health reconsider the manager's broad access to patient information.

Nature of Review and Jurisdiction

[2] This is a privacy breach review under section 49.1(2) of the *Access to Information and Protection of Privacy Act* (ATIPPA).

[3] I have jurisdiction over the Department of Health: ATIPPA, section 2, definition of “public body”.

Issues

[4] The issues in this review are:

a. Should this Review Report be public?

- b. Did the Health manager breach a patient's privacy by viewing the patient's personal information for an unauthorized purpose?
- c. Should the privacy breach have been reported to me?
- d. Should the patient have been notified of the privacy breach?
- e. Did the manager retaliate against the worker who reported the privacy breach?

Facts relevant to the first issue

[5] A Health manager looked at a patient's personal information in circumstances where there was no clinical need to do so. A health-care worker reported the incident to a different manager.

[6] After investigation, Health concluded there had been no privacy breach.

[7] Later, the worker alleged retaliation by the manager for having reported the privacy breach. The manager denies retaliation.

Law relevant to the first issue

[8] In *Department of Justice (Re)*, 2021 NUIPC 28 (CanLII) at paragraphs 8 to 11, I set out the law about publication of my Review Reports. I adopt that statement of the law for purposes of this decision.

[9] In brief: There is a strong presumption in favour of openness. There is a "high bar" for any exceptions.

Analysis of the first issue

[10] In this case, I find that the "high bar" for withholding a public decision has been met.

[11] The complaint involves the actions of a Health manager. Managers should receive as much scrutiny as anyone else, or perhaps even more because greater authority ought to carry greater accountability.

[12] My hesitation, however, is that the underlying facts include personal information about the manager. If I leave out those facts, the rest of my decision

will not make much sense. If I include them, I am unnecessarily intruding on the manager's own privacy.

[13] Moreover, a description of how the manager used their authority would leave little doubt about who I am writing about, because only one person has that specific authority. The purpose of a Review Report is not to vilify those involved. It is to ensure the public body – in this case, the Department of Health – learns the necessary lessons from a privacy breach and works to eliminate or reduce the risk of recurrence. Those objectives can be accomplished without publicly revealing, directly or indirectly, the manager's identity.

[14] Nevertheless I can release my conclusions, and the recommendations that flow from those conclusions, without compromising the manager's personal information or revealing their identity.

[15] Appendix A to this Review Report contains my full analysis. It will be made available only to Health and the Complainant.

Conclusion

[16] Appendix A to this Review Report should not be public.

[17] There was a privacy breach when the manager looked at the patient's personal information.

[18] Health should have reported the privacy breach to me.

[19] I do not have sufficient information to determine if there was a real risk of significant harm to the patient, so I make no finding about whether the patient should have been notified.

[20] The manager did not retaliate against the worker who reported the privacy breach.

Recommendations

[21] I recommend that Health review whether the manager's actions created a real risk of significant harm (RROSH) to the patient. If Health concludes there was RROSH, the patient should be notified of the privacy breach.

[22] I recommend that Health review the electronic medical records to which the manager (or any person holding the manager's position or acting under the manager's authority) has access; restrict or remove access where there is no operational need for it; and where access remains, develop policies and procedures, possibly including independent pre-approval, for when and how that access is used.

Graham Steele

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