



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
Prince Edward Island

Order No. PP-15-001

Re: Health PEI

Prince Edward Island Information and Privacy Commissioner

Maria C. MacDonald

March 12, 2015

Summary: The Office of the Information and Privacy Commissioner received several complaints about the privacy of personal information at the Emergency Department of the Queen Elizabeth Hospital in Charlottetown, PE. Each complainant wished to remain anonymous. Due to the frequency and similarity of the complaints, the Acting Commissioner at that time initiated an investigation. Coincidentally, the hospital was scheduled to undergo major renovations and construction began one month after the investigation was initiated. Based on a tour of the renovated facilities, the present Information and Privacy Commissioner found that the renovations adequately addressed most of the privacy concerns. The Commissioner found that the Public Body's use of large-screened monitors to display personal information in the corridors of the treatment area is an unreasonable invasion of personal privacy and not statutorily authorized under the *Freedom of Information and Protection of Privacy Act*. The Commissioner further found that the Public Body has not met its obligation to make reasonable

security measures to protect personal information. The Commissioner ordered the Public Body to stop disclosing the personal information of patients and recommended that the Public Body consider location and content of the disclosure of personal information.

Statutes and Regulations

Cited or Considered: *Freedom of Information and Protection of Privacy Act*, SPEI 2001, c 37, RSPEI 1988, c F-15.01, ss 1(i), 15(2)(j)(ii), 15(4)(a.1), 35, 37(1)(a.1), 37(1)(c), 50(1)(a); *Mental Health Act*, SPEI 1994, c 39, RSPEI 1988, c M-6.1; Hospital Management Regulations, PEI Reg EC49/11; *Hospitals Act*, SPEI 2005, c 9, RSPEI 1988, c H-10.1

I. BACKGROUND

- [1] Several people complained to the Information and Privacy Commissioner in 2007 and 2008 regarding the Emergency Department at the Queen Elizabeth Hospital in Charlottetown, PE (the “ER”). All the complaints were about privacy of medical information at the registration and triage stations of the ER.
- [2] The complaints about the ER were that:
- (i) the activities at the registration and triage stations were clearly visible to those in the waiting area;
 - (ii) the nurses’ questions to the patients at the registration and triage stations, as well as the patients’ answers, were easily overheard by those in the waiting area;
 - (iii) in one reported instance, a nurse asked a medical question to a patient who was sitting in the waiting area, disclosing personal information of the individual to everyone else in the waiting area; and
 - (iv) completed forms on the desk at the registration station were face-up and easy to read, containing the patients’ names, addresses, telephone numbers and personal health numbers.
- [3] At the time of the complaints the waiting area and the registration and triage stations were very close to each other. Patients gave preliminary information to the clerk at the

registration station. More detailed medical information was requested and occasionally some medical testing was performed at the triage station. Both stations had no doors and had large windows so nearly all of the activities at these areas could be overheard or observed by people in the waiting area.

- [4] Clause 50(1)(a) of the *Freedom of Information and Protection of Privacy Act*, R.S.P.E.I. 1988, c. F-15.01 (the “*FOIPP Act*”) says that a Commissioner may conduct investigations to ensure compliance with any of the provisions of the *FOIPP Act*:

50. (1) In addition to the Commissioner’s functions under Part IV, with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

(a) conduct investigations to ensure compliance with any provision of this Act or compliance with rules relating to the destruction of records set out in any other enactment of Prince Edward Island;

- [5] Due to the frequency and similarity of the complaints made about the ER and because all of the complainants wished to remain anonymous, Acting Information and Privacy Commissioner Karen A. Rose (the “Acting Commissioner”) commenced a formal investigation.

II. ISSUE

- [6] Does the manner in which Health PEI (the “Public Body”) collects, uses and discloses personal information at the ER, particularly in the waiting area and at the registration and triage stations, contravene Part II of the *FOIPP Act*?

III. INTERNAL INVESTIGATION

- [7] Through a series of letters, the Public Body was asked to carry out its own internal investigation and report its findings to the Commissioner. The report was to include

details on the following:

- (i) the steps taken by the Public Body since the start of the investigation to protect the privacy of patients at the ER;
- (ii) the practices and procedures in place to protect the security of the personal information in the custody and control of the ER at the intake stage;
- (iii) the training provided to the ER staff; and
- (iv) the knowledge of the ER staff about the *FOIPP Act* and their legal responsibilities to ensure compliance with the *FOIPP Act*.

[8] Although the various privacy concerns raised were legitimate and taken seriously by the Public Body, there was little that could be done to immediately improve the physical layout of the ER. The Public Body provided details explaining how the new design from an upcoming major renovation would improve the privacy of patients at the ER

Privacy of patients at the ER

[9] Two of the privacy complaints were that activities at the registration and triage stations of the ER could be seen and overheard by people in the waiting area. These complaints were due to its physical layout and space limitations. At that time the registration station, where personal information was collected from patients, had floor to ceiling glass walls. The triage station, where details of the reasons for the patient's visit and other medical information was collected, had walls with large windows. Both areas had doorways, but no doors. The Public Body advised that doors would hinder wheelchair access and that the nurses needed to see and hear the activities to monitor patients in the waiting area.

Practices and procedures to protect the security of personal information

[10] One of the privacy complaints received by the Commissioner's office was that the public could read registration information on forms on a clipboard at the registration station. The Public Body identified the potential for individuals to also read the registration

clerk's computer screen. The Public Body reported that it reminded the intake staff to ensure forms containing personal information are protected from inappropriate viewing. The Public Body installed a privacy screen on the registration clerk's computer monitor, making it difficult for anyone other than the registration clerk to read the screen.

- [11] The Public Body provided information about policies related to confidentiality that applies to all of its hospital staff. The Public Body supplied a copy of a number of policies, including an acceptable use policy for computer systems, policies for security and access to patient record databases and a policy regarding protection of personal information. The Public Body noted that all staff is required to sign a pledge of confidentiality. Additionally, the Public Body noted that nurses and many other health care workers have professional codes of ethics that include confidentiality obligations.

Training provided to the ER staff

- [12] Another privacy complaint received by the Commissioner's office was that a nurse disclosed personal information of an individual in the waiting area. The nurse was not identified, so there was no opportunity for the Public Body to provide the nurse with specific coaching.
- [13] The Public Body provided information about the training that all of its staff receives. The Public Body stated that new staff of the hospital receive orientation that includes training in confidentiality. The Public Body reported that it provided a continuing education session about protection of personal information policies to managers and staff in the fall of 2008, at which 75% of the ER staff attended. The Public Body also reported that its staff will be receiving supplemental training through continuing education on confidentiality and privacy about computer systems.

Knowledge of the ER staff about the FOIPP Act

- [14] The Public Body advised it conducted an informal survey of its ER staff about the *FOIPP Act*. The staff equated their obligations under the law with their employment and professional confidentiality standards and ethical codes of conduct. The Public Body advised that it provided education sessions since then.

IV. INVESTIGATION

- [15] The Queen Elizabeth Hospital opened in 1982. In November 2007 the Public Body announced that part of the then 25-year old hospital, including the ER, would be redesigned and expanded. Construction began a month after the Acting Commissioner initiated her investigation and the ER underwent major renovations. The Public Body gave the present Commissioner a tour of the renovated facilities.

Observations

- [16] I rely on my observations, both from my tour of the renovated facility and also while visiting patients at the ER on three separate occasions in the last year and a half. In general, the present layout of the ER is privacy sensitive. Activity at the registration and triage stations are not in complete isolation, but there is no guarantee of complete privacy in a public space. I find the newly renovated layout has significantly improved the privacy of individuals seeking treatment at the ER.
- [17] The ER increased in size from 8,200 square feet with 19 patient care spaces to 24,000 square feet with 37 patient care spaces. The changes to the waiting area and registration and triage stations include:
- (i) the registration station is separated from the public by a service window;

- (ii) records on the registration clerk's desk are not easily read or accessed by the public;
- (iii) the registration clerks no longer collect personal information that describes why the patient is attending at the ER (this is now collected at the triage stations);
- (iv) the two triage stations have doors for privacy; and
- (v) access to the treatment areas is restricted.

[18] When patients are moved to the treatment area, most are in a single occupancy room with walls and a door. The other beds in a shared setting have privacy curtains. I personally observed staff being privacy sensitive with respect to collecting and disclosing personal information and handling patient paperwork.

[19] I find that the Public Body has adequately addressed the privacy concerns about collection and disclosure of personal information in the waiting area and at the registration and triage stations of the ER, however, I observed one practice in the treatment area that I am concerned about.

[20] The registration and triage stations and waiting area are at the entrance of the ER. The treatment area is behind frosted glass doors that are normally locked. I observed some personal information legible on large-screened monitors in the corridors of the treatment area. The balance of this discussion is about this practice.

V. DISCUSSION

[21] The Public Body uses a patient management system in the treatment area of the ER that it calls a "tracking board," also known as a "digital whiteboard," a "grease board," or a "census board." A tracking board lists patient information in a table format. The information includes the patient's last name and first initial, age, room or bed number, initials of the treating doctor, and other notes. I have no evidence that information about

chief complaints, diagnosis, or test results are included in this table. Some of the information is in codes or symbols.

[22] The staff accesses and updates the tracking board from a number of desktop work stations in the ER, and it is displayed on large-screened monitors in the corridors of the treatment area of the ER. I am not concerned about the use of the tracking board to treat patients and manage the ER. I am concerned about the Public Body disclosing patient information to other patients and visitors in the treatment area of the ER. The information on the monitors is plainly visible to anyone in the corridors, and one of the monitors is close to the entrance to the treatment area where many patients and the visitors pass.

[23] I asked the Public Body to review its practice of displaying the tracking board prominently on large-screened monitors in the corridors of the treatment area. If it determined that its practice was within the scope of the *FOIPP Act*, I asked the Public Body to provide me with its reasoning. The Public Body does not consider the information to be identifiable personal information; therefore, it did not cite any legal authority to disclose the information.

[24] I considered the following questions:

- a. Does the tracking board contain personal information?;
- b. If so, does displaying the tracking board on large screen monitors in the treatment area corridors of the ER disclose personal information?;
- c. If so, is the disclosure of personal information considered an unreasonable invasion of personal privacy?; and
- d. Has the Public Body made reasonable security arrangements against such risks as unauthorized access or disclosure of personal information?

Does the tracking board contain personal information?

[25] “Personal information” is broadly defined at clause 1(i) of the *FOIPP Act* to mean recorded information about an identifiable individual, including the individual’s name and information about the individual’s health.

1. (i) “personal information” means recorded information about an identifiable individual, including
 - (i) the individual’s name, home or business address or home or business telephone number,
 - ...
 - (iii) the individual’s age, sex, marital status or family status,
 - (iv) an identifying number, symbol or other particular assigned to the individual,
 - (v) the individual’s fingerprints, blood type or inheritable characteristics,
 - (vi) information about the individual’s health and health care history, including information about a physical or mental disability.

[26] The Public Body does not believe that the tracking board information is personal information because it is not identifiable. The Public Body says that the last name and first initial is not enough information to identify a patient and, in fact, is sometimes not identifying enough. If there are individuals with similar last names at the ER at the same time, the Public Body italicizes their names to alert health care providers to pay close attention to ensure the staff attends to the correct patient.

[27] The last name and first initial of an individual are frequently identifying. Individuals who do not have common Anglo-Saxon names are readily identified by their last name and first initial. The first page of the phone book listings has more than a dozen individuals

who would be accurately identified by their last name and first initial. Even if a patient has a common family name and first initial, the tracking board also includes the patient's age. In combination with the last name and first initial, the individual's age will identify some patients. I find that the last name and first initial does identify some patients and is their personal information. Personal information is broadly defined, so the fact that an individual is at the ER seeking treatment is also his or her personal information.

[28] Other than the names, the Public Body says that the majority of the information on the tracking board is in symbols and that those who do not work at the ER would not understand the symbols. I do not work in the ER and I do not understand all of the symbols and codes, but I understand some of them. The Public Body supplied a copy of a screen shot showing a sample of information displayed on the monitors. In the comments column, there were references to "Form 1" and "Form 2" admissions, which are procedures for involuntary admission under the *Mental Health Act*. Not all of the codes are secret codes known only by those who work at the ER.

[29] Not all of the information is encoded. The tracking board includes a column for comments; some of the remarks in that column contain personal information. I saw a remark "consult Dr. [name]". As this doctor is known as a specialist in a certain field of medicine, the remark discloses the nature of the individual's medical condition. It is that patient's personal information.

[30] I find that the tracking board in the treatment area corridors of the ER contains personal information as defined at clause 1(i) of the *FOIPP Act*.

Does displaying the tracking board on large screen monitors in the treatment area corridors of the ER disclose personal information?

[31] The tracking board is prominently displayed in treatment area corridors of the ER on large-screened monitors in letters large enough to be easily read from several feet away. My concern is not about staff use of this information to treat patients and manage the ER, but about disclosure to other patients and the visitors in the treatment area.

[32] The Public Body says:

The ED is a very secure area. All entrances into the patient care areas require a security card and swipe access to the doors. All patients who are admitted to the ED are accompanied by a health care provider to the room they are assigned. If family or friends arrive to stay with a patient in the ED they are escorted to the patient's room by either security or a volunteer. Visitors do not wander in the hallways or throughout the ED and they do not stop to read the tracking boards.

[33] I have no evidence about whether patients are accompanied, but remarks about escorted visitors have not been my personal experience or observation. I visited individuals in the ER on three occasions in the last year and a half. On two of my three visits, I was not escorted to the patient's room. The Public Body does not escort visitors out of the treatment area. During my accompanied tour of the renovated facilities, both my guide and I observed an individual wandering the halls of the treatment area unescorted. He was politely directed by ER staff to the exit. When I left the facility about 20-30 minutes later, the same individual was still in the treatment area of the ER, unescorted and standing in front of one of the large-screened monitors that clearly displays personal information.

[34] I have not observed anyone reading the tracking board in the treatment area corridors of the ER, but people are in these areas unescorted every day. The personal information is available for members of the public to read.

[35] I find that displaying the tracking board on large-screened monitors in the treatment area corridors of the ER in plain view of the other patients and visitors discloses personal information.

Is the disclosure of personal information an unreasonable invasion of personal privacy?

[36] The Public Body did not provide any authority for it to disclose personal information. I nevertheless considered whether disclosure is permitted under the *FOIPP Act*. Section 37 of the *FOIPP Act* lists circumstances that allow a public body to disclose personal information. None of them address this type of situation, but clause 37(1)(a.1) permits a public body to disclose personal information if disclosure is not an unreasonable invasion of a third party's personal privacy. This provision incorporates, by reference, section 15 of the *FOIPP Act*, which is the test for unreasonable invasion of personal privacy. Section 15 includes a list of what is not an unreasonable invasion of personal privacy, a list of what is presumed to be an unreasonable invasion of personal privacy, and a non-exhaustive list of considerations when assessing whether disclosure is an unreasonable invasion of personal privacy.

[37] The analysis is split into two veins, depending on whether the patient is admitted or not. According to the Hospital Management Regulations to the *Hospitals Act*, an individual is "admitted" to a hospital when "registered as in-patient and provided accommodation in the hospital". An individual who attends and is assessed and perhaps treated at an emergency department is initially an "out-patient". It is possible for someone to be an in-

patient at the ER, but not all individuals registered at the ER are admitted to the hospital; many remain an out-patient.

Admitted patients

- [38] For those patients who are admitted to the hospital, subclause 15(2)(j)(ii) of the *FOIPP Act* says that disclosing whether an individual is admitted to a health care facility or institution as a current patient or resident is not an unreasonable invasion of a third party's personal privacy, unless it would reveal the nature of the individual's treatment.
- [39] The legal permission for the Public Body to disclose that an inpatient has been admitted to the ER does not extend to disclosing the nature of the individual's treatment. This permission does not apply if the individual requests that the information not be disclosed. The Public Body advises that it is not technically able to mask or remove an individual's name from the tracking board. The Public Body is not able to respect an individual's request to not disclose that they have been admitted to the ER. The tracking board is not designed to comply with the provincial law.

Outpatients

- [40] Subclause 15(2)(j)(ii) of the *FOIPP Act* does not authorize the Public Body to disclose tracking board information of out-patients. Clause 15(4)(a) creates a legal presumption that it is an unreasonable invasion of a third party's personal privacy if the personal information being disclosed relates to a medical, psychiatric, or physiological history, diagnosis, condition, treatment, or evaluation. Disclosing the tracking board information of out-patients is presumed to be an unreasonable invasion of the personal privacy of an out-patient.

Consent

[41] Clause 37(1)(c) of the *FOIPP Act* gives a public body permission to disclose personal information if the individual consents. The law does not permit implied consent. The law requires that consent be written and that the written consent specify to whom the personal information may be disclosed. It is not possible for an individual to specify the members of the public who are in the corridors, so this is not an option for the Public Body.

[42] I considered whether the Public Body could ask for consent from patients to display their personal information on the monitors. Regardless of whether an individual gives consent or refuses, the Public Body advises that it cannot mask or remove a patient's name from the tracking board. In addition, I am concerned that asking the patients for consent could be misinterpreted by some as a condition to medical treatment.

One tracking tool

[43] It is not an unreasonable invasion of personal privacy to disclose that a patient has been admitted to the ER¹. It is presumed to be an unreasonable invasion of personal privacy to disclose that an outpatient is registered at the ER. All presumptions are rebuttable, and the assessment of whether or not disclosure of information is an unreasonable invasion of a person's privacy is considered on a case-by-case basis. If the Public Body undertook a case-by-case analysis, it may determine that it has the authority to disclose some outpatient's personal information, but a tracking board function that only tracks some patients undermines its effectiveness. To be an effective patient tracking tool, all patients need to be tracked. The display of the tracking board on the monitors in the corridors of the treatment area of the ER has to be evaluated as a whole.

¹ If the patient did not request that information not be disclosed, and if the disclosure does not disclose the nature of the treatment.

[44] As a whole, I find that disclosing personal information by prominent display in the corridors of the treatment area of the ER is an unreasonable invasion of personal privacy under section 15 of the *FOIPP Act*. As such, I find that under clause 37(1)(a.1) of the *FOIPP Act*, the Public Body does not have the statutory authority to disclose personal information.

Has the Public Body made reasonable security arrangements against risks of unauthorized access or disclosure?

[45] Section 35 of the *FOIPP Act* obliges public bodies to make reasonable security measures to protect personal information. Other jurisdictions have remarked about the standard of reasonableness for similar provisions; reasonable does not have to be perfect. The law does not specify particular technologies or procedures that must be used because each situation is different.

[46] The Public Body advises that it encodes much of the information on the tracking board. As noted above, not all of the personal information contained in the tracking board is encoded and some of the codes are decipherable.

[47] The Public Body relies on an honour system – that patients and visitors in the treatment area of the ER do not read the tracking board information. One of the monitors is located close to the entrance to the treatment area and it looks like a directory. I find it is unreasonable to assume that people do not read the monitors.

[48] It has been recommended that care be taken to protect the privacy of patients when using tracking boards by limiting access to them² and/or by not using patient names³. I suggested various less privacy invasive ways for the Public Body to take full advantage of the electronic patient management tool, including:

- (i) identifying patients by bed number instead of name;
- (ii) using password-protected, timeout screen savers⁴;
- (iii) displaying information on smaller screens not easily legible from a distance; and
- (iv) facing the screens away from the corridor⁵.

[49] The Public Body says it cannot identify patients by their bed or room number instead of by their names because patients are moved and that during overflow situations not all patients are immediately assigned a bed. Further, the Public Body says that removing a patient's name from the tracking board "renders the tracking boards useless and puts patients at risk." The Public Body dismissed the password protected screen saver idea,

²The USA HIPAA Privacy Rule suggests a reasonable safeguard is to position whiteboards so they are not visible to the public. OCR HIPAA Privacy, *Guidance: Significant Aspects of the Privacy Rule, Incidental Uses and Disclosures* (3 December 2002), online: US Department of Health and Human Services <<http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveridentities/incidentalusesanddisclosures.html>>.

³Mines, Daniel MD, "The ED Status Board as a Threat to Patient Confidentiality" (June 1995) 25:6 *Annals of Emergency Medicine* 855. Suggests either option. Letter to the editor and reply.

⁴The security guidelines for provincial government employees is to log out, lock the workstation or use a password-protected screen saver when leaving a computer. Screen savers with passwords are required to deactivate the display of a session after five minutes of inactivity, unless exceptions are approved in writing by the Information Technology Security Coordinator for that department or area. PEI Public Service Commission, Human Resource Policy and Procedures Manual ss 5.06 attachment 4.01 "*Information Technology Security Handbook and Acceptable Use Policy for Computer Systems*" (January 2001).

⁵The security guidelines for provincial government employees is to position computer screens in such a way as to minimize the possibility of others reading the information. *Ibid*.

saying that “waiting to log into a computer is slow and time consuming for health care providers when in some cases every second counts for the patient”. The Public Body dismissed the above-noted ideas and offered no other administrative, technical or physical safeguards.

- [50] I do not accept that it is impossible for the Public Body to take full advantage of the benefits of the tracking boards to care for patients while making reasonable security arrangements to protect the personal privacy of those patients. I find that relying on an unspoken honour system does not satisfy the Public Body’s obligation to make reasonable security measures to protect personal information under section 35 of the *FOIPP Act*.

VI. FINDINGS

- [51] I find that the Public Body has adequately addressed the privacy concerns about collection and disclosure of personal information in the waiting area and at the registration and triage stations of the ER.
- [52] I find that the tracking board displayed on large-screened monitors in the treatment area corridors of the ER contain personal information as defined at clause 1(i) of the *FOIPP Act*.
- [53] I find that the Public Body discloses personal information contained in the tracking board displayed on large-screened monitors in the corridors of the treatment area of the ER in plain view of the patients and visitors.

- [54] I find that the disclosure of personal information in the tracking board displayed on large-screened monitors in the treatment area corridors of the ER is an unreasonable invasion of personal privacy under section under section 15 of the *FOIPP Act*.
- [55] I find that the Public Body's disclosure of some personal information in the tracking board displayed on large-screened monitors in the treatment area corridors of the ER is not a statutorily authorized disclosure under clause 37(1)(a.1) of the *FOIPP Act*.
- [56] I find that partially encoding information disclosed in a restricted access area and relying on an unspoken honour system does not satisfy the Public Body's obligation to make reasonable security measures to protect personal information under section 35 of the *FOIPP Act*.

VII. ORDER

- [57] I ORDER the Public Body to stop disclosing the personal information of patients in the tracking board by displaying it on large monitors legible by members of the public in the corridors of the ER treatment area. I am not ordering the Public Body to limit visitors or to cease using the tracking board as a health care communication and management tool, but to use the tracking board in a manner that respects and protects the personal privacy of the patients.

VIII. RECOMMENDATION

[58] If the Public Body wishes to display the tracking board on large screen monitors, I RECOMMEND that the Public Body:

- choose the location carefully, out of sight of patients and visitors; or
- limit the information posted, for example, de-identify patients by removing names.

Maria C. MacDonald
Information and Privacy Commissioner