



**PERSONAL INFORMATION PROTECTION ACT**  
**Breach Notification Decision**

<b>Organization providing notice under section 34.1 of PIPA</b>	Trackside Physical Therapy (Organization)
<b>Decision number (file number)</b>	P2019-ND-156 (File #012831)
<b>Date notice received by OIPC</b>	July 30, 2019
<b>Date Organization last provided information</b>	August 29, 2019
<b>Date of decision</b>	October 23, 2019
<b>Summary of decision</b>	There is a real risk of significant harm to the individuals affected by this incident. The Organization is required to notify those individuals pursuant to section 37.1 of the <i>Personal Information Protection Act</i> (PIPA).
<b>JURISDICTION</b>	
<b>Section 1(1)(i) of PIPA “organization”</b>	The Organization operates in Alberta and is an “organization” as defined in section 1(1)(i) of PIPA.
<b>Section 1(1)(k) of PIPA “personal information”</b>	<p>The incident involved all or some of the following information:</p> <ul style="list-style-type: none"><li>• name,</li><li>• personal health number,</li><li>• date of birth,</li><li>• clinic physiotherapy assessment, and</li><li>• treatment files.</li></ul> <p>This information is about identifiable individuals and is “personal information” as defined in section 1(1)(k) of PIPA.</p>
<b>DESCRIPTION OF INCIDENT</b>	
<input checked="" type="checkbox"/> loss <input type="checkbox"/> unauthorized access <input type="checkbox"/> unauthorized disclosure	
<b>Description of incident</b>	<ul style="list-style-type: none"><li>• On July 2, 2019, the Organization discovered that a power surge damaged the clinic’s hard drive which contained client personal information. The back-up in place was not sufficient to recover the data.</li><li>• On July 3, 2019, the Organization took the hard drive to a local data recovery lab.</li></ul>

	<ul style="list-style-type: none"> <li>• The lab indicated that the unit was damaged, preventing normal operation of the device but suggested recovery might be possible, but the hard drive had to be shipped to an affiliate lab.</li> <li>• The hard drive was shipped by courier, but was lost in transit and has not been recovered.</li> </ul>
<b>Affected individuals</b>	The incident affected approximately 1,800 individuals residing in Alberta.
<b>Steps taken to reduce risk of harm to individuals</b>	<ul style="list-style-type: none"> <li>• Informed current clients of the loss.</li> <li>• Informed the College of Physical Therapists of Alberta of the incident.</li> <li>• Following up with the courier regarding its internal search.</li> </ul>
<b>Steps taken to notify individuals of the incident</b>	Current and returning patients have been notified verbally, with a follow-up in writing between July 15 – July 31, and from August 12 to present. Past clients have not been notified.
<b>REAL RISK OF SIGNIFICANT HARM ANALYSIS</b>	
<p><b>Harm</b> Some damage or detriment or injury that could be caused to affected individuals as a result of the incident. The harm must also be “significant.” It must be important, meaningful, and with non-trivial consequences or effects.</p>	<p>The Organization reported “...the Edmonton data recovery lab indicated ‘the unit has failed Read /Write heads and has platter damage/ contamination preventing normal operation of the device’. At this point the hard-drive is not functional and there is limited chance that the data can be accessed and cause harm.”</p> <p>In my view, a reasonable person would consider that the contact and identity information at issue could be used for the purposes of identity theft and fraud. The medical issue at issue could be used for the purposes of humiliation and/or embarrassment. These are significant harms. Because the Organization cannot identify what other specific personal information may have been on the hard-drive, it is not clear what other possible harms may exist.</p>
<p><b>Real Risk</b> The likelihood that the significant harm will result must be more than mere speculation or conjecture. There must be a cause and effect relationship between the incident and the possible harm.</p>	<p>The Organization reported that “...the Edmonton lab stated, ‘The drive is not functional at this stage. If someone plugged it in, they could not access data as the read/write heads are against the platters and the drive would become more damaged. In order to access that data, someone will have to have specialized equipment, and the proper matching read/write heads from a donor drive transplanted onto the damaged drive. With particulate matter still on the platters from the original head crash, the new heads won't last any significant time before they would crash again, most likely increasing the damage if not monitored closely.’ As per this description, the possible access to data and damage is very limited.”</p>

	<p>In my view, the likelihood of harm resulting from this incident is increased because the hard drive containing the personal information is lost and not found. It is not clear whether the loss was due to malicious intent or human error. In addition, despite the hard drive being damaged and the explanation provided by the Organization, originally, the local data recovery lab used by the Organization believed that data recovery was possible.</p>
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**DECISION UNDER SECTION 37.1(1) OF PIPA**

Based on the information provided by the Organization and given the circumstances of the incident, I have decided that there is a real risk of significant harm to the affected individuals.

A reasonable person would consider that the contact and identity information at issue could be used for the purposes of identity theft and fraud. The medical issue at issue could be used for the purposes of humiliation and/or embarrassment. These are significant harms. Because the Organization cannot identify what other specific personal information may have been on the hard-drive, it is not clear what other possible harms may exist. The likelihood of harm resulting from this incident is increased because the hard drive containing the personal information is lost and not found. It is not clear whether the loss was due to malicious intent or human error. In addition, despite the hard drive being damaged and the explanation provided by the Organization, originally, the local data recovery lab used by the Organization believed that data recovery was possible.

I require the Organization to notify the affected individuals whose personal information was collected in Alberta in accordance with section 19.1 of the *Personal Information Protection Act Regulation* (Regulation).

I understand the Organization started notifying current clients who were affected by the incident verbally, with a follow-up in writing between July 15 – July 31, and from August 12 to present in accordance with the Regulation. The Organization is not required to notify these affected individuals again.

Section 19.1(1) of the Regulation states that a notification to affected individuals must “... be given directly to the individual...”. However, section 19.1(2) says “... the notification may be given to the individual indirectly if the Commissioner determines that direct notification would be unreasonable in the circumstances.”

In this case, the Organization reported that direct notification to past clients would not be possible because “all customer contact data was on the damaged and now lost hard-drive...The operating software managed scheduling, contact info and client records so there are no paper records/ agenda/ directories that have been populated.” The Organization proposes to provide substitute notice to potentially impacted individuals by way of a notice on its website homepage, as well as posting a notice in its clinic.

Given the Organization’s submissions, I accept that indirect or substitute notice as described by the Organization is reasonable in this case, where the Organization is unable to contact affected individuals directly.

**The Organization is required to confirm to my Office in writing, within ten (10) days of the date of this decision, that it provided indirect notification as described above in compliance with the Regulation.**

Jill Clayton  
Information and Privacy Commissioner