

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

BREACH NOTIFICATION DECISION H2020-ND-01

December 9, 2020

ALBERTA HEALTH SERVICES

Case File Number 018057

[1] Alberta Health Services (AHS or the Custodian) notified me about an unauthorized disclosure of individually identifying health information under section 60.1(2) and 60.1(3)(a) of the *Health Information Act* (HIA). In its breach report, AHS also notified me that it would not be giving notice to the individual who is the subject of the individually identifying health information, as required by section 60.1(5) of the HIA.

[2] As provided by section 85.1(2)(a) of the HIA, I confirm AHS's decision not to give notice to the individual who is the subject of the individually identifying health information.

Commissioner's authority

[3] The relevant parts of section 60.1 and section 85.1 of the HIA read:

60.1(2) Subject to the regulations, subsections (4) and (5) and section 85.1, a custodian must as soon as practicable give notice in accordance with the regulations and subsection (3) of any loss of individually identifying health information or any unauthorized access to or disclosure of individually identifying health information in the custody or control of the custodian if there is a risk of harm to an individual as a result of the lost or unauthorized access or disclosure.

(3) The notice required by subsection (2) must be given to

(a) the Commissioner,

(b) the Minister, and

(c) the individual who is the subject of the individually identifying health information.

(4) A custodian must consider all relevant factors, including the factors prescribed by the regulations, in assessing for the purposes of subsection (2) whether there is a risk of harm to an individual.

(5) If a custodian considers that giving notice under subsection (2) to an individual who is the subject of individually identifying health information could reasonably be expected to result in a risk of harm to the individual's mental or physical health, the custodian may decide not to give notice to the individual, in which case the custodian must immediately give notice to the Commissioner of the decision not to give notice to the individual, and the reasons for the decision, in accordance with the regulations.

85.1(2) On considering the notice under section 60.1(5), the reasons the custodian provided for the decision not to notify the individual and any information provided under subsection (1), the Commissioner may

(a) confirm the decision of the custodian, or

(b) by order require the custodian to provide a notice that contains the information specified in the order, in the form, manner and within the time specified in the order.

Background

[4] On November 16, 2020, AHS notified me of an unauthorized disclosure of individually identifying health information. The circumstances of the breach were stated to be as follows:

A patient was given an appointment slip intended for another patient by AHS staff. The patient advised that they were given the incorrect appointment slip after their last appointment at the facility on June 29, 2020. The patient had the slip with them at their home until bringing it back during their follow up appointment. AHS staff were not aware of this error. As the error occurred in June 2020, AHS staff do not know for certain how the error occurred.

[5] The breach was discovered on October 19, 2020 when the patient presented at the facility and handed the appointment slip to AHS staff.

Analysis

[6] With its breach report, AHS included a completed Appendix A, to comply with section 8.3 of the *Health Information Regulation*. Appendix A is AHS's notice to me of its decision not to give notice to the individual whose health information was disclosed. Appendix A states AHS's reasons why giving notice could reasonably be expected to result in a risk of harm to the mental or physical health of the individual.

[7] In making its decision not to give notice, AHS relied on information provided by the affected patient's physician. AHS included in Appendix A the information provided by the physician. In my view, AHS reasonably relied on that information in deciding not to give notice.

My decision under section 85.1

[8] As provided by section 85.1(2)(a) of the HIA, I confirm AHS's decision not to give notice to the individual who is the subject of the individually identifying health information.

Jill Clayton
Information and Privacy Commissioner