

# Manitoba Ombudsman

## REPORT ON COMPLIANCE WITH RECOMMENDATIONS UNDER

### *THE PERSONAL HEALTH INFORMATION ACT*

CASE 2011-0513 AND 2011-0514 (web version)

#### CANCERCARE MANITOBA

#### PRIVACY COMPLAINTS: USE OF PERSONAL HEALTH INFORMATION AND SECURITY OF PERSONAL HEALTH INFORMATION

**SUMMARY:** On August 3, 2012 CancerCare Manitoba provided its response to the ombudsman's report with recommendations under *The Personal Health Information Act* accepting all of the recommendations. CancerCare requested additional time to comply with some of the recommendations and the ombudsman agreed that the proposed time frames for implementation were reasonable. On September 30, 2013 CancerCare reported to the ombudsman that it had completed implementation of all the recommendations contained in the report.

#### COMPLIANCE WITH THE RECOMMENDATIONS

On August 3, 2012 CancerCare Manitoba responded to the ombudsman's report with recommendations in cases 2011-0513 and 2011-0514 accepting all seven of the recommendations. Under *The Personal Health Information Act* (PHIA), a personal health information trustee has fifteen days from the date of acceptance to comply with recommendations. CancerCare requested that it be allowed additional time to implement some of the recommendations and the ombudsman agreed that the proposed time frames were reasonable in the circumstances. The ombudsman committed to monitoring the actions taken by CancerCare to implement the recommendations.

CancerCare has now completed implementation of all the recommendations. Below are the details of CancerCare Manitoba's compliance with each:

**Recommendation #1** - The ombudsman recommends that CancerCare Manitoba send a letter to the complainant, apologizing for the employee's breach of privacy.

Accepted – CancerCare Manitoba will send a letter to the complainant in accordance with subsection 48(6) of the Act. It will be forwarded to the complainant with a copy to your office no later than August 18, 2012.

Compliance - A letter of apology was sent to the complainant by courier on August 9, 2012.

**Recommendation #2** - The ombudsman recommends, in accordance with section 6 of the regulation, that CancerCare Manitoba conduct ongoing PHIA training for all staff and that such training be tracked by CancerCare.

Accepted - CancerCare Manitoba will continue to conduct ongoing PHIA training for all staff. Regarding implementation of a PHIA training tracking mechanism, work on this has already begun. As we intend to leverage our in-house payroll application to do so, the reporting functionality requires testing and adoption of an intradepartmental process is necessary. Therefore we respectfully request an extension to August 31, 2012.

Compliance - This work required a significant investment of resources at CancerCare and took more time than initially expected to accomplish. This work is now complete and programs are in place. An Orientation/Training and Tracking Process was developed and implemented. CancerCare worked with the WRHA Privacy Officers Committee to develop tools for training new and existing staff. Tracking of PHIA refresher as well as orientation training has been established through the use of an in-house payroll application that records skills and competencies of employees. PHIA Training and Awareness Checklists designed to track employee compliance with training and awareness requirements were developed for new and existing staff and copies have been forwarded to our office for review. In the past year, 96 of 119 new staff (81%) have completed the new training protocol and signed privacy pledges. **No access to personal health information is granted to any new staff member until these requirements have been completed.** Also in the past year, 359 existing staff members have completed PHIA refresher training. This represents almost 50% of CancerCare staff and physicians and CancerCare continues to work towards a goal of 100% completion. CancerCare is also cooperating with the WRHA Privacy Office and other provincial privacy offices in the collective development and implementation of online PHIA learning tools for continuing education of all WRHA staff with an email address (planned for roll out in early 2014).

Additionally, PHIA educational material is available on a shared network drive and easily accessible to directors, managers, supervisors and staff in all areas. CancerCare has reported that it has developed staff awareness programming such as “Privacy Tip of the Month” and the

sharing of relevant articles and other information regarding PHIA, privacy breaches and best practices. “Frequently Asked Questions” were developed and shared and PHIA is a standing item on departmental staff meeting agendas. Several PHIA education sessions were held and these were well attended.

Our office had an opportunity to observe the results of a special public awareness campaign CancerCare conducted in the fall of 2012. We noted posters and tent cards were developed with the slogan “Do Your Part – Be Privacy Smart” and displayed prominently throughout its offices. CancerCare reported that, as part of this campaign, general tips and reminders were added to all employee paystubs.

**Recommendation #3** - The ombudsman recommends, in accordance with subsection 8(1) of the regulation, that CancerCare conduct an audit of its security safeguards every two years, including administrative, technical and physical safeguards.

Accepted - Efforts to support successful Privacy Compliance Audits (such as was conducted in March, 2011), comprising administrative and physical safeguards will continue and the audit has been adopted as “best practice” within the organization. CancerCare Manitoba will continue to identify opportunities to improve this audit to incorporate technical safeguards as recommended. Work on this will continue within the Fall 2012 and be completed in the winter of 2013.

Compliance – On July 23, 2013 CancerCare Manitoba advised our office that a Privacy Compliance Audit was completed during March and April, 2013 and audits will continue according to the recommended schedule (every two years in accordance with subsection 8(1) of the regulation). A copy of the 2013 audit report was provided to our office for review. We note, in particular, the addition of a section assessing compliance with technical safeguards relating to personal health information in electronic form.

**Recommendation #4** - The ombudsman recommends that CancerCare investigate which modules within its ARIA system offer an audit trail when personal health information is printed and provide the findings to our office.

Accepted - CancerCare Manitoba Information Services Department has confirmed that an audit trail currently exists when the following reports are printed in ARIA:

- Printed documents preview reports (by user)
- Physician Prescription Report
- Physician Prescription Report (with dispensing information)

CancerCare Manitoba Information Services Department has engaged our Vendor, Varian, to determine when other future ARIA version upgrades will allow for an audit trail. We are requesting an extension to September 28, 2012 to allow sufficient time for review and input from the Vendor.

Compliance – On September 26, 2012 CancerCare Manitoba wrote to our office advising that the module “Printed Documents and Preview Reports” provides the capability of auditing all patient information that has been printed by user, site and date.

**Recommendation #5** – The ombudsman recommends that CancerCare ensure its security practices adhere to the Manitoba government “Guideline for Auditing Records of User Activity”.

Accepted - CancerCare Manitoba will strengthen and expand its auditing process in adherence to the “Guideline for Auditing of User Activity”. Auditing of user activity will begin in the Fall of 2012, coordinated by the PHIA Privacy Officer working closely with respective Managers within our organization.

Compliance – On July 23, 2013 CancerCare Manitoba wrote to our office stating that its security practices have been brought into adherence with the “Guideline for Auditing Records of User Activity” and auditing is ongoing.

**Recommendation #6** – The ombudsman recommends that CancerCare, further to developing a formalized plan for auditing its electronic personal health information, provide our office with a report on its plan on how it will detect unauthorized use and disclosure of personal information.

Accepted - CancerCare Manitoba is committed to this project. As the plan will involve consultation with many stakeholders internally and externally to develop a new role-based security model that will control accessibility, define patient chart access based on specific location of care delivery, and provide enhanced auditing reports, we are anticipating providing a formalized project plan in Fall 2012. Project completion is on track for June 2013.

Compliance - On July 23, 2013 CancerCare Manitoba wrote to our office enclosing a copy of its *Report on Auditing Electronic Personal Health Information at CancerCare Manitoba*. The report outlines the procedures that will be followed in auditing access to personal health information for the purpose of assessing compliance with PHIA requirements. We note that the report also speaks to the enhancements made to the “Request for Service” procedure for requesting access to ARIA. The procedure will now require managerial signoff to indicate that PHIA familiarization has been completed before access is granted.

CancerCare reports that sixty-one random audits of user activity (internally and in partnership with our shared care external partners) have now been completed since June and will continue at the same rate on a random basis each month. CancerCare further reports that the random audits have been received favourably, both internally and by their “shared care” partner sites and that they have been commended for leading the way in implementing random audits of user activity. CancerCare notes that overall awareness of audit activity is increased, which in our view is one of the most effective ways to deter inappropriate access.

A copy of the manager’s tip sheet “Auditing Records of User Activity” and a copy of the audit reporting form were provided to our office for review.

**Recommendation #7** - The ombudsman recommends that, when investigating and responding to any future privacy breach of this kind, CancerCare proactively communicate with the affected individual to ensure the individual knows the specific personal health information that was breached, when and why it was breached, and the steps that CancerCare has taken and will be taking to protect the individual’s privacy in the wake of the breach.

Accepted - For any future substantiated breaches of this kind, a meeting with the affected individual will occur to discuss the breach events and ensuring the individual’s questions are answered. CancerCare Manitoba will advise the individual of his or her right to request a copy of the patient access log. If requested, CancerCare Manitoba staff will review the patient access log in his/her presence and inform the individual of his or her rights under the Personal Health Information Act accordingly. This process will be implemented immediately.

## **SUMMARY**

We are satisfied that CancerCare Manitoba has complied with the recommendations contained in our report. CancerCare has used this opportunity to enhance its overall privacy protection and our office would like to acknowledge its commitment to observing not just the letter but the spirit of the legislation.

Mel Holley  
Acting Manitoba Ombudsman  
October 11, 2013