

Office of the Information & Privacy Commissioner/Ontario

Diagnostic reports gone missing

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A health care facility reported that copies of certain patient diagnostic reports had not been placed in the patients' files, as directed. The facility was faced with how to fulfil its obligation under the *Act* to notify the affected patients.

The situation arose when the facility requested a clerical employee to file copies of 396 diagnostic reports in the relevant patients' files. The filing was to be done overnight and the employee reported having completed the task. When the individual patient files were checked, it was determined that none of the copies of the diagnostic reports had been filed, as requested. The employee insisted that the copies had been filed. The health care facility notified the police and asked them to investigate. None of the copies of the reports were recovered and none were found during a physical search of the facility. Since surveillance cameras provided no evidence to indicate that the employee had removed the copies of the diagnostic reports from the health care facility, it was concluded that the employee had most likely disposed of them at the facility. Copies of the missing diagnostic reports were later reproduced from the original electronic records and filed in the patients' files, as had originally been intended.

Generally, if personal health information is stolen, lost or accessed by unauthorized persons, the health information custodian is required to, at the first reasonable opportunity, notify the individual. Notification can be in writing, over the telephone or in person, depending on the situation.

In this particular case, the health care facility, in consultation with IPC, determined that contacting the patients in writing to provide notification was not the best approach. In deciding on the manner in which to notify them and what the first reasonable opportunity would be, the following factors were considered:

- There was no evidence to suggest that the information had been stolen from the health care facility;
- The copies of the diagnostic reports were most likely disposed of at the health care facility;
- The original diagnostic reports, which were in electronic form, were not compromised in any way;
- A written notification would necessitate a rather lengthy and complex explanation of all the details to ensure that the situation did not provoke undue alarm; and
- It appeared unlikely that individual patients could be harmed in any way by the loss of their personal health information under these circumstances.

Instead, to fulfil the notification requirements under the *Act*, the health care facility agreed to place a note in each patient's file. It was agreed that patients would also be informed about the incident, in person, at their next appointment with their health care provider.

The notification approach was designed to involve the patient's caregiver. It was hoped this would make notification easier, more effective and less stressful for the patients involved. The patient would be dealing directly with someone at the facility known to him or her and with whom the patient was likely to feel comfortable. The approach also ensured that the facility met its obligations under the *Act*.