

Caution:

This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT

ONTARIO REGULATION

to be made under the

PERSONAL HEALTH INFORMATION PROTECTION ACT, 2004

Amending O. Reg. 329/04

(GENERAL)

1. (1) Ontario Regulation 329/04 is amended by adding the following section:

Notice to Commissioner re: theft, loss, etc.

6.3 On or before March 1 in each year after 2018, a health information custodian shall inform the Commissioner of the number of notices given by the custodian under subsection 12 (2) of the Act in the previous calendar year.

(2) Section 6.3 of the Regulation, as enacted by subsection (1), is amended by adding the following subsection:

(2) At the request of the Commissioner, a health information custodian shall provide the Commissioner with the following information:

1. Information contained in any notice given by the custodian to an individual under subsection 12 (2) of the Act.
2. Information that the custodian relied on in deciding to notify the individual under subsection 12 (2) of the Act.

2. The Regulation is amended by adding the following section:

Notice to Commissioner, prescribed circumstances

6.4 (1) The following are prescribed for the purposes of subsection 12 (3) of the Act as circumstances in which a health information custodian must notify the Commissioner of a theft, loss or unauthorized use or disclosure of personal health information:

1. The health information custodian has reasonable grounds to believe that the personal health information that was stolen, lost or used or disclosed without authority has been or will be subsequently used or disclosed without authority.
2. The theft, loss or unauthorized use or disclosure is part of a pattern of similar thefts, losses or unauthorized uses or disclosures of personal health information under the custody or control of the health information custodian.
3. The health information custodian has given notice to a College in accordance with subsection 17.1 (2), (4) or (5) of the Act in respect of a theft, loss or unauthorized use or disclosure of personal health information.
4. The health information custodian would have been required to give notice to a College in accordance with subsection 17.1 (2) or (4) of the Act in respect of the theft, loss or unauthorized use or disclosure of personal health information by the custodian's agent if the agent were a member of the College.
5. The health information custodian has reasonable grounds to believe that the personal health information was intentionally used or disclosed without authority.
6. The circumstances do not meet the requirements in any of the preceding paragraphs, and the health information custodian determines that the theft, loss or unauthorized use or disclosure is significant, having regard to all relevant circumstances, including,
 - i. the nature of the personal health information that was stolen, lost or used or disclosed without authority,
 - ii. the number of records of personal health information that were stolen, lost or used or disclosed without authority,
 - iii. the number of individuals whose personal health information was contained in the record or records that were stolen, lost or used or disclosed without authority, and
 - iv. the number of health information custodians or agents responsible for the theft, loss or unauthorized use or disclosure.

(2) In this section,

“College” means a College as defined in subsection 17.1 (1) of the Act.

Commencement

3. [Commencement].