

Practice Tool for Exercising Discretion:

Emergency Disclosure of Personal Information
by Universities, Colleges
and other Educational Institutions

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Practice Tool for Exercising Discretion:

Emergency Disclosure of Personal Information by Universities, Colleges and other Educational Institutions

In emergency situations, privacy laws in Ontario and British Columbia¹ do not prohibit universities, colleges or other educational institutions from responsibly disclosing a student's personal information, including information about their mental, emotional or other health conditions, to parents or others who may be able to help in a crisis.

Ontario's *Freedom of Information and Protection of Privacy Act* (Ontario FIPPA) and *Municipal Freedom of Information and Protection of Privacy Act* (Ontario MFIPPA) permit the disclosure of personal information "in compelling circumstances affecting the health or safety of an individual." They also allow for disclosure "in compassionate circumstances, to facilitate contact with the spouse, a close relative or a friend of an individual who is injured, ill or deceased."²

Ontario's *Personal Health Information Protection Act* (Ontario PHIPA) also allows for the disclosure of personal health information if the health information custodian³ "believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons." Ontario PHIPA also permits disclosure "for the purpose of contacting a relative, friend or potential substitute decision-maker of the individual, if the individual is injured, incapacitated or ill and unable to give consent personally."⁴

Similarly, BC's *Freedom of Information and Protection of Privacy Act* (BC FIPPA) allows for the disclosure of personal information if "compelling circumstances exist that affect anyone's health or safety." BC's FIPPA also allows disclosure "so that the next of kin or a friend of an injured, ill or deceased individual may be contacted."⁵ BC's *Personal Information Protection Act* (BC PIPA), which applies to the private sector, contains similar provisions.⁶

In other words, *life trumps privacy*, and our laws reflect that reality.

Tragedies should not occur as a result of a misunderstanding of privacy legislation.⁷ There is no question that the decision to disclose a student's personal information without consent is extremely difficult and requires a reasoned judgment call.⁸ The decision rests, on a case-by-case basis, with whoever is responsible, be that a doctor, student counsellor, residence advisor or the head⁹ of an institution. A great deal of deliberation and discretion must be exercised, often very quickly. The decision must be made very carefully and sensitively, but privacy laws do not stand in the way of an educational institution's ability to make this decision, where appropriate.¹⁰

reveals a grave... health or safety hazard to the public.”¹⁴ In BC, an institution must, “without delay, disclose to the public, [or] to an affected group of people...information about a risk of significant harm to the...health or safety of the public or a group of people.”¹⁵

Example: Significant Risk of Harm to the Public

A school counsellor has observed that one of her student patients is very angry and has been expressing feelings of deep despair and hopelessness. He blames others for his misfortunes and has expressed ideas of “getting even.” The student has no known friends. The counsellor has read essays written by the student that are violent, graphic and very disturbing. Having mentioned his blog, the counsellor read a number of the student’s postings that were also disturbing and self-aggrandizing. One blog posting included a photo of the student with what appears to be an improvised explosive device. The counsellor’s professional opinion is that the student is on the verge of a breakdown and she is concerned that he will harm himself or others. She recognizes her duty to respect the student’s privacy, but believes there is a significant risk that the student may act out his desire for revenge. She determines that it may be necessary to disclose the student’s personal information in order to prevent significant harm to the student, fellow students, or to the public.

Several other urgent situations are described in the Fact Sheet, Disclosure of Information Permitted in Emergency or other Urgent Circumstances, available on the Ontario IPC’s website, www.ipc.on.ca.

Notification of Disclosure

If a student’s personal information is disclosed, you may be required to give notice of the disclosure to the student. Different *Acts* have different notification requirements. In compelling circumstances affecting the health or safety of an individual, Ontario *FIPPA* and *MFIPPA* require that upon disclosure, notification be mailed to the last known address of the individual to whom the information relates.¹⁶ BC *FIPPA* allows for postponing notification if “the head of the public body considers that giving this notice could harm someone’s health or safety.”¹⁷

If personal health information is disclosed pursuant to Ontario *PHIPA*, it requires, subject to certain exceptions, that notification be given to the individual at the “first reasonable opportunity.”¹⁸ BC *PIPA* requires notice under the *Act* to be mailed to the last known address of the individual whose personal information is being disclosed.¹⁹

In Ontario, before disclosing personal information for reasons of public health and safety, notice must be given to any person to whom the information in the record relates, if it is practicable to do so.²⁰ In BC, before disclosing personal information for reasons of public health and safety, the head must notify, if practicable, any third party to whom the information relates, and the BC Information and Privacy Commissioner. If notice is not practicable, the head must mail a notice to the last known address of the third party, and to the BC Information and Privacy Commissioner.²¹

3. Clear Decision-Making Roles and Responsibilities

Deciding to disclose personal information without consent is extremely difficult, requiring a very sound judgment call; nonetheless, the decision must be made. A great deal of deliberation and discretion must be exercised, yet the time for deliberation may be extremely limited. In consultation with mental health professionals, establish decision-making processes, assign roles, designate who is to maintain them and communicate this information to all involved. You must ensure that these include risk-assessment criteria to guide decisions in a prudent yet timely fashion.

Emergency Disclosure Contact

You must also be able to activate a pre-established communication method among relevant colleagues at a moment's notice. Immediate consultation supports both decision-making and initial steps in implementing the action plan.

4. Constant Effort – Educate, Train, Practice, Evaluate

Educate all stakeholders broadly and repeatedly. Train your staff on all relevant policies and practice using your protocols. Coordinating people from different areas and systems will require a well-communicated structure and procedure. Setting up scenarios and role-playing situations may assist in ensuring that when a rapid response is actually needed, it will be forthcoming.

Example: A Well-Prepared Protocol

Continuing from our second example, a counsellor has observed disturbing behaviour on the part of one of her student patients that leads her to believe that the student is on the verge of a breakdown. Concerned that the student will harm himself or others, she thinks that it may be necessary to disclose the student's personal information in order to prevent significant harm to the student or to the public. The counsellor calls the pre-established Emergency Disclosure Contact, who is immediately available to provide advice on the situation. After consultation with the Contact, the counsellor decides whether and how to disclose the student's personal information. The Contact also assists the counsellor in deciding whether to contact the police or security persons and/or take other appropriate action. If disclosure occurs and notification is required, the counsellor would notify the student of the disclosure, and prepare a written report. If the disclosure occurs, the Contact would then debrief and evaluate the protocol, with the goal of implementing appropriate adjustments.

More information

This fact sheet does not offer solutions for decision-making in individual cases under our privacy laws or other laws. It is intended to offer general information to those working in educational institutions about what our privacy laws actually provide for in this area. The most important point is that privacy laws **permit** the disclosure of personal information and personal health information, without consent, in emergency or urgent situations.

For further information about privacy legislation, visit our websites:

Office of the Information & Privacy Commissioner of Ontario: www.ipc.on.ca

Office of the Information & Privacy Commissioner for British Columbia: www.oipc.bc.ca

12. Statutes and policies that govern confidentiality of personal health information in Ontario include: Regulation 856/93 to the *Medicine Act, 1991* and Policy – Confidentiality of Personal Health Information (for physicians); Regulation 799/93 to the *Nursing Act, 1991* and Policy – Personal Health Information (for nurses); and Regulation 801/93 to the *Psychology Act, 1991* and Canadian Code of Ethics (for psychologists).
13. Please see section 67 of Ontario *FIPPA*, section 53 of Ontario *MFIPPA*, section 7(2) of Ontario *PHIPA*, section 79 of BC *FIPPA*, and section 3(5) of BC *PIPA*.
14. Please see section 11 of Ontario *FIPPA* and section 5 of Ontario *MFIPPA*.
15. Please see section 25 of BC *FIPPA*.
16. Please see section 42(1)(h) of Ontario *FIPPA* and section 32(h) of Ontario *MFIPPA*.
17. Please see section 33.1 (m) (ii) of BC *FIPPA*.
18. Please see section 16(2) of Ontario *PHIPA*.
19. Please see section 18(1)(k) of BC *PIPA*.
20. Please see section 11(2) of Ontario *FIPPA* and section 5(2) of Ontario *MFIPPA*.
21. Please see section 25 (3) and (4) of BC *FIPPA*.
22. The Virginia Tech Review Panel Report, published in August 2007, recommends the development of accurate guidelines and adoption of best practices to assist institutions to employ their discretion in appropriate ways. A report of the September 13, 2006 Dawson College shooting published by the Quebec coroner's office on September 5, 2008, also recommends that public institutions have emergency plans in place to deal with catastrophic events.