

LEGISLATIVE UPDATE

November 2017

Backgrounder

Annual Reporting of Privacy Breaches

Regulatory Amendments Relating to Annual Reporting of Privacy Breaches

The Ontario government recently amended a regulation under the *Personal Health Information Protection Act, 2004* (PHIPA) to require annual (i.e. statistical) reporting of privacy breaches to the Information and Privacy Commissioner (IPC) in prescribed circumstances. To view a copy of the Regulation, click [here](#).

Beginning in **March 2019**, health information custodians (HICs) will be required to provide the IPC with an annual report on privacy breaches during the previous calendar year (i.e. January to December 2018).

HICs should begin tracking privacy breach statistics as of **January 1, 2018**. To assist HICs in meeting their annual reporting obligations, the IPC has released a new resource, [Annual Reporting of Privacy Breach Statistics – Requirements for the Health Sector](#).

HICs are required to keep track of privacy breaches in four categories:

- Where PHI in the HIC's custody and control was stolen;
- Where PHI in the HIC's custody and control was lost;
- Where PHI in the HIC's custody and control was used without authority; and
- Where PHI in the HIC's custody and control was disclosed without authority.

The IPC's resource details the specific circumstances under which HICs are required to keep track of privacy breaches in each of these four categories, including thresholds for the number of individuals affected. In addition, this resource clarifies that HICs must keep track of all thefts, losses and unauthorized uses or disclosures, even if HICs do not report these incidents as part of point-in-time breach reporting to the IPC.

Health privacy breach statistics will be collected through the IPC's online statistics submission website in early 2019.

OHA Breach Reporting Tracking Tool

To assist member HICs with their compliance obligations, the OHA has prepared a Privacy Breach Reporting Annual Statistics Tracking Tool (in Excel format). This tool provides HICs with a template to track privacy breaches as they occur throughout the 2018 calendar year. This tool is available on the OHA website by [clicking here](#), under the "privacy" section.

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There are four tracking sheets in this tool; each sheet is intended for a different category of breaches that must be tracked (as above). Further sub-categories of tracking are provided in alignment with IPC guidance.

HICs are also required to keep track of how many individuals are affected by each type of breach, and this functionality is also provided within each sheet. Formulas have been pre-populated to allow for automatic calculations of the total number of breaches in each sheet.

Note: HICs may choose to modify this tool to suit their own internal purposes. For example, they may wish to ensure that privacy breach statistics are tracked with a monthly or quarterly format. This tool is fully modifiable to allow this additional functionality, if needed.

Additional Information

Questions about tracking or submitting privacy breach statistics to the IPC can be directed to info@ipc.on.ca, or 1-800-387-0073.

For further information, please contact Alice Betancourt, Legal and Policy Advisor at 416 205 1359 or abetancourt@oha.com