CATEGORY:	**ORGANIZATIONAL: INFORMATION MANAGEMENT**
SUB-CATEGORY:	**PRIVACY**
GROUP:	
DISTRIBUTION:	**ALL EMPLOYEES**
TITLE:	**DUTY TO NOTIFY AN INDIVIDUAL OF A PRIVACY BREACH**

PURPOSE

To provide a consistent understanding of the requirements to notify individuals of breaches under the *Personal Health Information Act*.

POLICY

With specific exceptions, where personal health information in Western Health's control has been:

a. stolen;
b. lost;
c. disposed of – except as permitted by this Act or the regulations; or
d. disclosed to or accessed by an unauthorized person.

Western Health must notify the individual who is the subject of the information at the first available opportunity.

The decision to notify an individual who is the subject of a privacy breach must be reached in consultation with the most appropriate manager(s)/directors(s) and the Regional Manager Information Access and Privacy. The decision to notify an individual who is the subject of a privacy breach that is defined as a material breach as defined by this policy and the *Personal Health Information Act* may require consultation with Senior Executive and the Regional Director Quality and Risk Management or designate.

Western Health **does not** have to notify the individual who is the subject of the information where Western Health reasonably believes that the theft, loss, unauthorized disposition, or improper disclosure or access of personal health information will **not** have an adverse impact upon either:

a. the provision of health care or other benefits to the individual who is the subject of the information; or

b. the mental, physical, economic or social well-being of the individual who is the subject of the information.

unless notification is recommended by the Privacy Commissioner. Consultation with the Regional Manager Information Access and Privacy must take place in these circumstances.

Where Western Health is acting in the capacity of researcher and has received the personal health information from another custodian, Western Health may not notify an individual who is the subject of the information that the information has been stolen, lost, disposed of in an unauthorized manner or disclosed to or accessed by an unauthorized person, unless the custodian who provided the information to Western Health for research purposes first obtains the individual's consent to be contacted by Western Health and informs Western Health that the individual has given consent.

Please also refer to the *Privacy Breach Management* and (9-03-10) *Disclosure of Occurrences* (6-02-16) policies for further direction.

DEFINITIONS

Direct Notification: Refers to the notifying individuals who have been affected by a privacy breach through direct mean including telephone, letter or in person.

Disclose: To make the information available or to release it but does not include a use of the information and "disclosure" has a corresponding meaning.

Indirect Notification: Refers to notifying individuals who have been affected by a privacy breach through indirect means including website information, posted notices or the media.

Material Breach: The factors that are relevant to determining what constitutes a material breach for the purpose of subsection 15(4) of the Personal Health Information Act include the following:

(a) the sensitivity of the personal health information involved;

(b) the number of people whose personal health information was involved;

(c) whether the custodian reasonably believes that the personal health information involved has been or will be misused; and

(d) whether the cause of the breach or the pattern of breaches indicates a systemic problem

Privacy Breach: A privacy breach occurs when there is unauthorized and/or inappropriate access, collection, use, disclose or disposal of personal/personal health or business information. Such activity is "unauthorized" if it occurs in contravention of *Access to Information and Protection of Privacy Act* (ATIPPA) or *Personal Health Information Act* (PHIA). The most common privacy breaches occur when personal Information of clients, employees or a corporation is stolen, lost or mistakenly disclosed. For example, a privacy breach occurs when a computer/laptop containing personal information is stolen or personal information is mistakenly emailed or faxed to the wrong person.

LEGISLATIVE CONTEXT

Access to Information and Protection of Privacy Act, 2015. Available at: http://www.assembly.nl.ca/legislation/sr/statutes/a01-2.htm

Personal Health Information Act (2008). Available at: http://www.assembly.nl.ca/legislation/sr/statutes/p07-01.htm

REFERENCES

Newfoundland and Labrador Personal Health Information Act, Provincial Policy Manual Version 1.2, February 2011

Province of Newfoundland and Labrador: *Personal Health Information Act*, SNL2008, C. P-7.01, s.20 and 44

KEYWORDS

Privacy breach, breach, duty to notify, notifying an individual

TO BE COMPLETED BY STAFF IN QUALITY DEPARTMENT

Approved By: Chief Executive Officer	Maintained By: Regional Manager, Information Access & Privacy
Effective Date: 11/March/2015	☑ Reviewed: 16/July/2018 ❒ Revised: 18/November/2020
Review Date: 18/November/2023	❒ Replaces: *(Indicates name and number of policy being replaced)* OR ☑ New