



Labrador-Grenfell
Health

SUBJECT: **PRIVACY BREACH MANAGEMENT**
APPROVED BY: Chief Executive Officer _____
EFFECTIVE DATE: 2013 08
REVIEW/REVISED DATE:

Purpose:

To define what constitutes a breach of privacy and/or confidentiality and to outline the formal process followed by Labrador-Grenfell Health when such a breach is suspected and/or confirmed.

Policy/Standard:

Labrador-Grenfell Health must protect personal health and/or other confidential information relating to clients, employees and the business of the organization. All employees and other entities engaged with the Health Authority must make every effort to ensure that information to which they have access is kept confidential and private.

A privacy breach occurs when there is an unauthorized collection, use and/or disclosure of confidential information in any format (i.e. written, electronic or verbal), including both intentional and unintentional actions.

All persons directly or indirectly affiliated with Labrador-Grenfell Health have a responsibility to report breaches of privacy and/or confidentiality without fear of reprisal.

There are some limited situations, as defined by the Personal Health Information Act, where disclosure of personal health information without a client's consent is permissible under certain circumstances (refer to Sections 36-46 of the *Personal Health Information Act, SNL 2008, c. P-7.01*).

Materials Required:

- Clinical Safety Reporting System (CSRS)

Related Policies:

- Privacy and Confidentiality

P&A-9-010



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| • Oath/Affirmation of Confidentiality | P&A-9-020 |
| • Security of Confidential Information | P&A-9-030 |
| • Disclosure | PSQ-5-040 |
| • Occurrence Reporting and Management | PSQ-5-020 |

Procedure:

In the event that a breach of privacy and/or confidentiality is suspected and/or has been confirmed, the following steps must be followed and may need to be carried out simultaneously:

STEP 1: DISCOVERY AND IMPLEMENTATION OF BREACH PROTOCOL

- The person discovering the breach must immediately report the occurrence to their manager/supervisor or designate and refer the breach to the Regional Privacy Office.
- Comply with the applicable occurrence reporting process (see Step 4).
- The Regional Privacy Office, in consultation with other departments (as required), will assess the validity and seriousness of the occurrence and assist in determining/implementing the response protocol.
- Depending on the seriousness of the breach, others within the organization may need to be contacted.
- If a breach is confirmed, immediately address the priorities of containment and notification as outlined in Steps 2 and 3.

STEP 2: CONTAINMENT

The manager/supervisor and employee, in consultation with the Regional Privacy Office, must determine that all necessary steps are taken to prevent further breaches, including:

- Retrieval of any confidential information that has been disclosed.
- Determining if any copies have been made or retained by unauthorized persons.
- Determining whether the privacy breach involves unauthorized access to any other confidential information (i.e. electronic information systems) and take whatever steps are necessary and appropriate to prevent further breaches.
- Obtaining the contact information for parties involved.



STEP 3: NOTIFICATION

- Any individual whose personal health and/or confidential information has been the subject of a privacy breach must be notified at the first reasonable opportunity, unless it is reasonably believed that the breach will not have an adverse effect on 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.
- Regardless of the above exceptions, Labrador-Grenfell Health must notify affected individuals when the Privacy Commissioner has advised the Health Authority to do so.
- In consultation with the Regional Privacy Office, and if applicable, with Senior Executive, the Communications and Patient Safety and Quality Departments, the Department of Health and Community Services and Legal Counsel, it will be determined if the individual who is the subject of the breach must be notified and who will be responsible for notification.
- When notifying individuals affected by a breach, information provided must include details of the extent of the breach, specifics related to the nature of the personal/personal health information involved and the steps that will be initiated by Labrador-Grenfell Health to address the breach, both immediate and long-term. Individuals affected by the breach must also be advised of their right to contact the Newfoundland and Labrador Office of the Information and Privacy Commissioner (NL-OIPC) directly if they are not satisfied with the measures that have been taken by Labrador-Grenfell Health.
- The most appropriate form of notification may depend on certain factors, such as the sensitivity of the information that was disclosed. If further discussion is needed outside the scope of the Labrador-Grenfell Health, the NL-OIPC may be contacted for further discussion and decision-making with respect to the most appropriate type of notification. The NL-OIPC can also be contacted to discuss exceptional circumstances, such as when notification is not reasonably possible, or when it is believed that notification may be detrimental to the individual.
- Where an individual has been notified of a privacy breach in writing, a copy of this notification must be placed on the individual's health or community record and logged accordingly (refer to Appendix A for Sample Disclosure Letter). Should an individual be notified of a privacy breach in an alternate format (i.e. in person; via telephone), this disclosure must also be followed by a written notification as per Appendix A, placed on the

individual's health or community health record and logged accordingly. In all cases, a copy of this notification must be forwarded to the Regional Privacy Office.

- Depending on the circumstances of the breach and upon internal consultation, the Regional Privacy Officer may identify the need to inform the other external agencies, such as the NL-OIPC, law enforcement agencies and/or the media (refer to *Disclosure* policy, PSQ-5-040).
- ***All communication with the NL-OIPC will be conducted by the Regional Privacy Officer or designate.***

STEP 4: OCCURRENCE REPORTING

- Where appropriate, the individual who discovers the suspected or confirmed breach must record the details of the breach (i.e. names, dates, the nature or matter of the breach, etc.) as per the applicable occurrence reporting process:
 - All privacy occurrences and close-calls must be logged via the Clinical Safety Reporting System (CSRS), while answering "yes" to the question, "*Was this a breach of privacy/confidentiality?*" In addition to others that may need to provide follow-up, answering this question will ensure that the Regional Privacy Office receives immediate notification of all privacy-related occurrences.

STEP 5: CONDUCT AN INTERNAL INVESTIGATION AND FOLLOW-UP

Upon determination of a breach, the Regional Privacy Office will promptly conduct an internal investigation to:

- Determine that the immediate requirements of containment and notification have been addressed.
- Review the circumstances and where necessary, interview the individuals involved, collect relevant information and complete all necessary documentation.
- Review the adequacy of existing policies and procedures relating to the protection of private and/or confidential information to determine if changes are required (i.e. program wide procedures may warrant review);
- When required, advise the NL-OIPC of the investigation findings and work towards making any necessary changes.
- Determine if any further privacy education and training is required.

All phases of the investigation process will be documented and maintained via CSRS and/or by the Regional Privacy Office where hard copies exist. Investigation findings related to employee breaches will also be maintained on personnel files in the Human Resources Department.



CONSEQUENCES OF A PRIVACY/CONFIDENTIALITY BREACH

When a breach has occurred, those individuals deemed responsible may be subject to penalty or discipline up to and including:

- termination of employment;
- cancellation of contract or services;
- termination of the relationship with Labrador-Grenfell Health;
- withdrawal of privileges;
- legal action;
- where applicable, reporting to an individual's professional regulatory body will also be considered.

Disciplinary action will be in accordance with the Health Authority's Human Resources and Administrative Policies and Procedures and appropriate collective agreements, as applicable.

References:

Eastern Health (2008). *Privacy/Confidentiality Administration Policy Manual, ADM-030*. Retrieved from <http://www.easternhealth.ca/OurServices.aspx?d=2&id=743&p=740>

Province of Newfoundland and Labrador (2010). *The Personal Health Information Act Policy Development Manual*. Retrieved from http://www.health.gov.nl.ca/health/PHIA/PHIA_Policy_Development_Manual_Feb_2011.pdf

Province of Newfoundland and Labrador (2008). *Personal Health Information Act, SNL 2008, c. P-7.01*. Retrieved from <http://assembly.nl.ca/Legislation/sr/statutes/p07-01.htm>

Province of Newfoundland and Labrador (2002). *Access to Information and Protection of Privacy Act, SNL 2002, c. A-1.1*. Retrieved from <http://assembly.nl.ca/Legislation/sr/statutes/a01-1.htm>

Appendix A
Sample Disclosure Letter

_____ **(date)**

Dear _____,

This is a follow up to our _____ **(specify the nature of initial contact, such as telephone call; in-person visit; etc.)** on _____ **(date of initial contact)** regarding _____

_____ **(describe general nature of the occurrence).**

Labrador-Grenfell Health takes patient confidentiality and privacy very seriously and we are very sorry for any concern or inconvenience that we may have caused you because of this incident.

If you have any questions or concerns, please contact the undersigned at _____ **(contact information)**, or Labrador-Grenfell Health's Regional Privacy Office at 454-0162.

If you not satisfied with the measures Labrador-Grenfell Health has taken to address this matter, it is your right to contact the Newfoundland and Labrador Office of the Information and Privacy Commissioner at 1-877-729-6309. Thank you.

Sincerely,

_____ **(departmental contact person)**

cc: Client Health Record
Regional Privacy Office