
For Information

REPORT TITLE: **Public Disclosure of Businesses with COVID-19 Outbreaks**

FROM: Cathy Granger, Acting Commissioner of Health Services
 Kathryn Lockyer, Interim Commissioner of Corporate Services
 Lawrence C. Loh, MD MPH FCFP FRCPC FACPM, Medical Officer of
 Health

OBJECTIVE

To report to Regional Council regarding the disclosure of workplace outbreaks of COVID-19, according to the motion “Public Disclosure of Businesses with COVID-19 Outbreaks”, approved by Council on September 24, 2020.

REPORT HIGHLIGHTS

- Consistent with Provincial guidelines, Peel Public Health investigates every positive case of COVID-19.
 - There has been significant public interest in the nature of COVID-19 transmission occurring in the Region of Peel, with a particular interest around workplace outbreaks.
 - Peel Public Health will always disclose the name of a workplace if there is a risk to the public or if collaboration is required for contact tracing.
 - Peel Public Health currently discloses outbreaks in long-term care homes, retirement homes, schools and childcare centres to the public in line with provincial mandates that recognize the importance of disclosure in these institutional settings to support healthcare system planning and protect vulnerable populations.
 - Public health has a dual duty to protect the public where a risk is identified, but also, where no such risk is identified, to protect the confidentiality of individuals and their privileged personal health information that is used to control the spread of disease.
 - Current practice supports this dual duty, streamlines public health investigations, and reduces risk to employees by incentivizing workplaces to cooperate.
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DISCUSSION

1. Background

On September 24, 2020, Regional Council approved a motion titled “Public Disclosure of Businesses with COVID-19 Outbreaks” requesting staff to provide a report regarding the public disclosure of COVID-19 outbreaks in workplaces.

The COVID-19 pandemic has necessitated an unprecedented public health response in Peel with significant resource implications. Consistent with provincial guidelines, Peel Public Health investigates every positive case of COVID-19 reported among residents in the Region. Investigations include assessing the mode of transmission of each case and

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identifying all close contacts. Contacts of COVID-19 cases are assessed for symptoms, instructed to self-isolate and are provided additional supports as required. If an investigation identifies a workplace exposure, Peel Public Health works closely with employers to mitigate further transmission and ensure compliance with infection prevention and control measures, and also to ascertain the nature of risks to close contacts and the public.

Cases associated with workplace outbreaks made up at least 3 per cent (248 cases) of the total COVID-19 cases in Peel from January 31, 2020 to September 24, 2020¹. Workplace environments can facilitate the spread of COVID-19 between workers if precautions such as physical distancing measures are not in place. Peel Public Health continues to share potential risk factors for transmission in the workplace and support employers across the Region and in high risk sectors to implement preventive Infection Prevention and Control (IPAC) measures. Together, IPAC measures and case and contact management can effectively control workplace outbreaks of COVID-19 and reduce transmission risk.

2. Findings

a) Provincial policy on workplace disclosure for COVID-19

Currently, there is no Provincial mandate for public health units to disclose COVID-19 outbreaks in institutions or workplaces. The Province mandates long-term care and retirement homes to disclose the names of homes experiencing a COVID-19 outbreak as per the Control of Respiratory Infection Outbreaks in Long-Term Care Homes Guidelines, 2018². This requirement is in place to assist with healthcare system planning (i.e. acute care facilities and hospitals need to know which seniors settings are in outbreak to assist with transfers, among other activities).

The Province has indicated that public health units could disclose any declared school outbreaks in coordination with the Board of Education and the Ministry of Health, recognizing the significant role that schools as public institutions play in the community well-being³.

b) Provincial privacy legislation and disclosure of workplace outbreaks

The *Personal Health Information Protection Act (PHIPA)* sets out rules for the collection, use and disclosure of personal health information. These rules apply to all health information custodians in Ontario, such as Peel Public Health, and to individuals and organizations receiving personal health information from health information custodians. The rules in *PHIPA* recognize the unique character of personal health information as one of the most sensitive types of personal information. *PHIPA* protects “personal health information” or otherwise known as “identifying information”.

In this vein, *PHIPA* protects the name of workplaces from disclosure if, either alone or with other information, it will lead to disclosure of personal health information about an

¹Ontario Ministry of Health, Public Health Case and Contact Management Solution (CCM) extracted by Peel Public Health [24/Sep/2020at 1.00p.m.

² Ministry of Health and Long-Term Care (2018). Control of Respiratory Infection Outbreaks in Long-Term Care Homes, 2018.

³ Ministry of Health and Long-Term Care (2020). COVID-19 guidance: school outbreak management.

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employee. *PHIPA* does not explicitly protect the name of a workplace unless revealing the name of a workplace also means that conclusions can reasonably be made about an individual's medical history or COVID-19 status. For example, if there are 40 confirmed cases of COVID-19 in a workplace (where 100 employees work), disclosure of the workplace name, in addition to the fact that all employees in one particular department are COVID-19 positive, may require protection under *PHIPA*, because reasonable conclusions can be drawn about an employee's medical history or COVID-19 status by virtue of them being an employee of the named workplace in a particular department.

S. 40(1) of *PHIPA* allows a health information custodian to disclose personal health information if the custodian 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. The name of a workplace can generally be disclosed in two main scenarios:

- i. the information does not qualify as personal health information (the information does not directly or indirectly reveal personal health information of an identifiable individual); or
- ii. a health information custodian, such as the Medical Officer of Health, believes the disclosure is necessary to eliminate a significant risk of harm to the public, even if it means disclosure of personal health information [s. 40(1) of *PHIPA*].

c) Local public health disclosure approaches

i. Peel Public Health's disclosure approach

Peel Public Health will always disclose the name of a workplace if an investigation identifies a risk to the public or if collaboration is required for contact tracing. For instance, public awareness could be needed to properly implement protective measures if unidentified customers or members of the public have had a high risk of exposure. In addition, a call to the public can help identify the chain of potential infection if case and contact tracing is unable to identify contacts at high risk for exposure.

This practice encourages business cooperation, increases the speed of contact tracing and preventing further spread of COVID-19. Blanket disclosures of business names make employers less likely to cooperate in Peel Public Health investigations, compromising the effectiveness of public health measures and exposing vulnerable populations employed at these workplaces to increased transmission risk. Default disclosure of outbreak information where no broader public risk exists may also expose employees to risks of discrimination, stigma, and harassment in the community, and may represent a breach of *PHIPA* particularly if other information can be used to determine their COVID-19 status.

Peel Public Health currently discloses outbreaks in long-term care homes, retirement homes, schools and childcare centres to the public, in accordance with provincial mandates for reasons described in earlier sections. These settings are already being reported to the Province, and they are available provincially. Outbreak information for these settings are updated daily on the Regional website.

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ii. Disclosure approaches in other Greater Toronto and Hamilton jurisdictions

Peel Public Health verified that current disclosure practices at the Region of Peel mirror those of local health units in the Greater Toronto Area (GTA).

Other health units report on outbreaks in long term care and retirement homes (Durham, York Region, Halton Region), hospitals (Toronto and Durham), and schools (York).

Public disclosure of workplace outbreaks follows the same criteria used by Peel Public Health, in issuing notice if a risk to the public is identified or if contacts must be notified to come forward.

On September 21, 2020, the Toronto Board of Health passed a motion to request the Medical Officer of Health to implement a system to publicly share details of workplace outbreaks without compromising individual privacy. Toronto Public Health is determining how best to implement this motion without impacting the cooperation of businesses or the Provincial mandate.

3. Proposed Direction

Given the significant public interest in workplace exposures, there is opportunity to improve public communications in order to increase public understanding of risk on summary and aggregate data (e.g. setting or industry type). Work is currently underway to develop new ways (e.g. utilizing social media) to facilitate greater public understanding of risk, the risk assessment process, and precautions taken in response to workplace outbreaks.

Peel Public Health will continue to always disclose the name and location of workplace outbreaks where: 1) There is a risk to the public; or 2) If collaboration is required for contact tracing.

Peel Public Health will also continue to explore new risk communication practices in a way that is consistent with practices across other public health units in Ontario.

Regional Council can also consider advocating for the implementation of a standard and consistent approach to outbreak disclosures across the province.

RISK CONSIDERATIONS

1. Sustainability of Workplace Collaboration with Public Health

Non-mandated disclosure of outbreaks in businesses can impede collaboration and investigation. As such, Peel Public Health only communicates outbreak information to the public when necessary, such as when not all contacts are identified or when there is increased risk to the public.

2. Privacy and Access to Information

In the first instance it is in Peel Public Health's discretion to determine if it is in the public's interest to disclose a workplace outbreak. When disclosure does not involve personal health information, it does not require protection under *PHIPA*, and carries no risk to privacy as a

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result of its disclosure. A statutory request for access to the information is a possibility. Such requests would be assessed in accordance with the governing statutory provisions and determined on a case by case basis with the possibility of an appeal to the Information and Privacy Commission for a final determination.

Notwithstanding the above, s. 40(1) of *PHIPA* allows a health information custodian such as Peel Public Health to disclose personal health information if the custodian believes (on reasonable grounds) that the disclosure is necessary. In this context, a balancing is necessary between the rights of the individual and public interest. Jurisprudence on the issue indicates that exercising disclosure under this section necessitates a case-by-case demonstration that there is no other reasonable way to prevent the risk, the likelihood and magnitude of harm is high, and the victim(s) are identifiable. Improper disclosure may be a privacy breach and an offence under *PHIPA*.

An individual found guilty of committing an offence under *PHIPA*, such as improper disclosure, can be liable for a fine of up to \$100,000, while an institution can be liable for a fine of up to \$500,000, in addition to the broad risk of civil litigation.

3. Reputation

Peel Public Health is relied upon for trusted, timely, evidence-based information related to COVID-19. In providing that information to the public, Peel Public Health reports COVID-19 outbreaks in certain settings that are already disclosed by the Province or partners to maintain public awareness, and also reports outbreaks in other settings where contact tracing cannot be completed or where public risk may exist.

CONCLUSION

Peel Public Health has an opportunity to optimize public communications regarding workplace disclosures of COVID-19 outbreaks, while still ensuring that individuals' privacy and the public interest is protected. Public Health recommends that Regional Council advocate to the Provincial government to develop a standard and consistent workplace disclosures approach across jurisdictions. Peel Public Health currently meets Provincial mandates by publicly disclosing long term care homes and retirement homes in outbreak, goes beyond Provincial mandates by publicly disclosing schools and childcare centres in outbreak and will continue to work toward sharing further information about workplace exposures in summary and aggregate to support greater public education and risk awareness.

For further information regarding this report, please contact Dr. Lawrence Loh, Medical Officer of Health, extension 2856, Lawrence.loh@peelregion.ca

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Reviewed and/or approved in workflow by:

Department Commissioners, Division Directors, Medical Officer of Health and Legal Services.

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Final approval is by the Chief Administrative Officer.

A handwritten signature in black ink, reading "Nancy Polsinelli". The signature is written in a cursive style with a distinct loop at the end.

N. Polsinelli, Interim Chief Administrative Officer