

Perry, Tim HLTH:EX

To: Perry, Tim HLTH:EX
Cc: Parker, Alana HLTH:EX

From: "Fletcher, Quinn HLTH:EX" s.15

s.15

Date: August 5, 2021 at 11:28:00 AM PDT

Subject: RE: Alberta OIPC Investigation Report on Babylon

Hi Everyone,

I've read the report and can offer a brief analysis here, and by all means let me know if you want something more detailed that looks at each of the issues raised by the investigator in more detail.

In general, the implications for BC vary because the report is centred on compliance with the *Alberta Health Information Act* (HIA), which applies to the physicians employed by Babylon rather than Babylon itself. This is a crucial difference because in BC, the relevant statute would be the *Personal Information Protection Act* (PIPA) that would in fact apply to Babylon (now Telus MyCare). Of the six instances of non-compliance identified by the investigator, only two are mirrored in PIPA: a requirement to have policies to support implementation of the Act, and requirements to maintain reasonable security, although the HIA provisions around security extend into 'administrative, technical and physical safeguards' to prevent unauthorized access etc. One of the issues is that the HIA limits collection and use of health information to a 'limited manner', which is more consistent with FOIPPA than PIPA's consent model. Therefore the collection of the selfie and photo ID that the investigator considers unnecessary may actually be authorized in BC under PIPA, even if the investigator's rationale is sound. Another issue is that health information stored or used outside of Canada is subject to additional requirements and Babylon's agreements with various sub-contractors did not meet those requirements.

My overall analysis is that ultimately Babylon did not tailor any of their internal products, policies or systems to the needs of the Alberta legislation to which their physicians were subject and put them in a position of non-compliance. For example, the report provides excerpts of Babylon's responses to the investigators findings and several times they attempt to defend themselves by claiming the OIPC is pointing out 'technical issues' caused by the unique provisions of the HIA that don't fit with their blanket approach, which is pretty comical given that the HIA is the applicable statute. s.13

s.13

The report does include a description of the changes made following Telus' acquisition of Babylon Canada that indicate a greater degree of tailoring products to meet the provincial requirements and close some of the compliance gaps but the issue of appropriate safeguards for health information stored outside of Canada and the overcollection of health information through the verification procedures remain outstanding.

I hope this provides some insight for folks and I'm certainly happy to discuss further.

Best,

Quinn Fletcher (He/His/Him)

C: s.22

Sr. Director, Privacy
Digital Policy, Security and Privacy Branch

From: Thambirajah, Natasha HLTH:EX <Natasha.Thambirajah@gov.bc.ca>
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Subject: RE: Alberta OIPC Investigation Report on Babylon

Hi Ted – I have cc'd Sukhy Sidhu and Quinn Fletcher here and will defer to them on what our privacy team will be doing with this.

My understanding of the Alberta context is that s.16

s.16

s.16 Sukhy/Quinn – do please add anything here if you think I've missed something. Here's a link to an article on the matter:

<https://www.cbc.ca/news/canada/calgary/babylon-health-app-1.5605570>

N

From: Patterson, Ted HLTH:EX <Ted.Patterson@gov.bc.ca>
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Subject: RE: Alberta OIPC Investigation Report on Babylon

Thanks for sharing Natasha. Will someone in the HSIMIT privacy team be doing an analysis of implications in the BC context?

T

From: Thambirajah, Natasha HLTH:EX <Natasha.Thambirajah@gov.bc.ca>
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Subject: Alberta OIPC Investigation Report on Babylon

FYI – AB’s report on Babylon was released yesterday <https://www.oipc.ab.ca/media/1165671/h2021-ir-01.pdf>

The findings indicate Babylon is not completely compliant with legislation in many areas.

N

Natasha Thambirajah

Director, Digital Health Policy

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