



P10-08-MS Garbage Dump No Place for Criminal Law Files

A criminal lawyer disposing of records from his home office accidentally tossed some closed client files into a garbage bin. When the garbage arrived at the local dump, an employee called the police, who came and retrieved two grocery bags full of records from the dump. Although the police attempted to locate all the records, they also told the dump employees to place the next load of garbage directly over the spot where the records had been found in the hope that doing so might prevent the further disclosure of any additional records that had not been retrieved.

When the police notified us of the privacy breach, we called the lawyer, who was mortified and quickly made efforts to secure the documents from the police station. He then improved his closed file record keeping and billing practices so that if he ever lost another group of files, he would be able to quickly determine which files had been lost and notify the affected parties if necessary.

The lawyer properly identified the harm that might result from the breach as being the possibility of hurt, humiliation and damage to reputation of clients whose criminal records may have been disclosed. He also acknowledged that the witnesses and victims could also be similarly impacted.

Many of his clients had no fixed address and lived on the margins of society with serious social ills, including homelessness, mental health concerns and addiction issues. Few had an active telephone number or email account. As a result, the lawyer was able to contact very few former and/or current clients, and we concluded that further notification was unnecessary as it was likely that the breaches had been adequately contained insofar as the records had been either recovered or were buried under further loads of garbage and therefore practically inaccessible.

We also considered whether crime victims and witnesses should be notified of the breach. However, we were concerned that the victims, and the witnesses to a lesser extent, might be re-victimized if the lawyer contacted them to notify them of the privacy breach. Since it appeared that the privacy breach was contained, there seemed little utility in requiring notification of all these people. We also considered the likelihood that some of them, like the lawyer's clients, had moved and could no longer be located.

As a result of the privacy breach, the lawyer implemented several changes to his file closing procedures:

1. He created a computerized system for logging every file at the time of opening and closing, and of assigning a closed file number to each file upon its conclusion.
2. All closed files, including those returned to the lawyer after the breach, were assigned a number retroactively and entered into the database. The lawyer created empty file folders for permanently lost closed files and placed a note in each one explaining the loss of those records.
3. All closed files are stored in numbered bankers' boxes. The closed box numbers are included in the database entries for each closed file along with its closed file number. The outside of each box identifies which closed files it contains. The list for each closed box will be taped to the top and one side of each box.
4. Boxes of closed files that are to be destroyed, because they are beyond the age that the Law Society of British Columbia requires them to be kept, are clearly marked as such and labelled on the top and sides with signs reading "FOR SECURE DISPOSAL ONLY". These closed file boxes are stored in the storage room of the law office until such time as they are securely destroyed by a bonded and licensed mobile shredding company.
5. When a file is securely destroyed, the lawyer now updates his database to indicate the date when the numbered closed file was destroyed and who securely destroyed it.
6. All other closed file boxes are now consolidated and stored in the storage room at his law firm, which has a security alarm that is activated when the building is closed.
7. The lawyer now keeps a separate binder for each calendar year, separate from the closed files, that contains all billing information. If duplicate copies stored in each closed file should be lost, the lawyer would still be able to readily access their billing information and create a list of closed files.