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Fact Sheet

Disclosure of Information Permitted in Emergency or other Urgent Circumstances

Privacy legislation in Ontario does not prevent the rapid sharing of personal information in certain situations. While it is appropriate to recognize that personal information is protected by Ontario's privacy and access laws, it is also important to realize that these protections are not intended to stand in the way of the disclosure of vital – and in some cases, life-saving – information in emergency or other urgent situations.

In emergency and limited other situations, personal information, including personal health information, may need to be disclosed in a timely fashion, even if the person's consent has not been obtained. In such circumstances, the head of a public sector institution or a health information custodian (a defined term under the *Personal Health Information and Protection Act* or *PHIPA*), or those acting on their behalf, can – and in some cases must – disclose information that would normally be protected by Ontario's access to information and privacy laws. This information

may be a record or records containing personal information or personal health information, and the circumstances may include emergencies or critical situations affecting individuals or public health and safety, as well as situations calling for compassion.¹ Although these disclosures are the responsibility of the head of an institution or a health information custodian, it is important for anyone working in such settings to understand what is permitted in certain situations.

A head of a public sector institution or a health information custodian is given the authority by Ontario's access to information and privacy laws to disclose such information. These laws also protect a health information custodian or a head from damages, provided that the custodian or head has acted in good faith.

Listed below are some circumstances under which a custodian can disclose personal information or personal health information, in the absence of an individual's consent.

¹ "Head," and "personal information" are defined terms under the *Freedom of Information and Protection of Privacy Act* (FIPPA) and the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). "Health information custodian" and "personal health information" are defined in the *Personal Health Information Protection Act* (PHIPA). Please see <http://www.e-laws.gov.on.ca/>.



1. Public Interest and Grave Hazards

If there are reasonable and probable grounds to believe it is in the public interest to do so, and the record of information reveals a grave environmental, health or safety hazard to the public, heads of institutions are required by the *Freedom of Information and Protection of Privacy Act (FIPPA)* and the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* to disclose records to the public or to affected persons. This disclosure is required even if the information in the record relates to an individual and may affect his or her interests.^{2, 3}

Example: A fire department would be required to disclose information to help identify the source and location of a toxic discharge or emission if there were reasonable grounds to believe it would be in the public interest to do so and the information revealed a grave environmental, health or safety concern. The information might include the name of an individual, at whose business or home the discharge occurred.

2. Health and Safety of an Individual/ Risk of Serious Harm to Person or Group

When there are compelling circumstances affecting the health and safety of an individual, heads of institutions may disclose personal information to a person other than the indi-

vidual to whom it relates. *FIPPA* and *MFIPPA* allow this discretionary disclosure. However, the head must provide the appropriate notice to the individual to whom the information relates.⁴

Similarly, if a health information custodian believes on reasonable grounds that it is necessary, in order to eliminate or reduce a significant risk of serious bodily harm to a person or group of persons, to disclose personal health information without consent, the disclosure may be made. Such circumstances would even override an individual's prior express instructions not to disclose the relevant personal health information.⁵

Example: A health care practitioner at a university health centre or a college academic advisor would be permitted to disclose personal health information to a client's family or physician if there were reasonable grounds to believe it was necessary to do so to reduce the risk of suicide.

3. Disclosures to Public Health Authorities

When a health information custodian has a legal duty to disclose personal health information, *PHIPA* facilitates the fulfilment of that duty. *PHIPA* recognizes as lawfully required disclosures⁶, the requirements listed

² Both *FIPPA* and *MFIPPA* require that before disclosing the record, the head must give notice, if it is practicable to do so, to any person to whom the information in the record relates. The person may then respond and argue against disclosure. In an emergency, however, it may not be practicable to provide notice in advance of the disclosure.

³ Please see section 11 of *FIPPA* and section 5 of *MFIPPA*.

⁴ Please see sections 21(1)(b) and 42(h) of *FIPPA* and sections 14(b) and 32(h) of *MFIPPA*.

⁵ Please see section 40(1) of *PHIPA*.

⁶ Please see sections 6(3) and 43(1)(h) of *PHIPA*.



*Health Protection and Promotion Act*⁷ (HPPA) for certain custodians to report diseases defined as reportable, communicable or virulent, to the Medical Officer of Health.

PHIPA also provides that a health information custodian may disclose personal health information without a patient's consent to the Chief Medical Officer of Health or to a local medical officer of health⁸, in order to comply with the purpose of the HPPA⁹. That purpose includes preventing the spread of disease, and promoting and protecting the health of the people of Ontario. An example of such a disclosure might be a report of an outbreak in a hospital of a suspicious condition that is not identified as one of the reportable, communicable or virulent diseases, but which the health information custodian feels could be dangerous.

4. Compassionate Circumstances

In situations calling for compassion, when there is a need to notify the next of kin or a friend about an individual who is injured, ill or deceased, institutions may disclose personal information or personal health information without consent in order to facilitate this contact. FIPPA and MFIPPA allow this discretionary disclosure.¹⁰

Example: A municipal worker could contact a family member of an employee to advise that the employee had collapsed and was taken to hospital.

PHIPA allows a health information custodian to disclose personal health information without consent in order to contact a relative, friend or potential substitute decision-maker if an individual is injured, incapacitated or ill and unable to consent. Similarly, a health information custodian may also disclose personal health information about a person who is deceased for the purpose of informing any person who it is reasonable to inform that the individual is deceased and the circumstances of his or her death. A health information custodian may also disclose personal health information about a deceased person or a person suspected to be deceased (cause of death, or identifying information, for example) to his or her spouse, partner, sibling or child if it is reasonably required to enable these persons to make decisions about their own health care or about the health care of their children. PHIPA allows a health information custodian to disclose personal health information without consent about a deceased individual or one who is suspected of being deceased for the purpose of identifying the individual.

Example: After the 2004 tsunami disaster in Thailand and Sri Lanka, Ontarians were asked to obtain dental records (and DNA samples) of missing loved ones, to be compared with those of unidentified casualties at the scene. Ontario's PHIPA sanctions the release of such records without the consent of the individual

⁷ Please see, for example, sections 25-30 of HPPA.

⁸ Or a similar public health authority in another jurisdiction if the disclosure is made for a purpose substantially similar to a *Health Protection and Promotion Act* purpose. See Section 39 (2) of PHIPA.

⁹ Please see section 2 of HPPA.

¹⁰ Please see section 42(i) of FIPPA and 32(i) of MFIPPA.

to whom the information relates.

5. Providing Health Care

When consent cannot be obtained in a timely manner and disclosure is reasonably necessary for the provision of health care, a health information custodian may disclose personal health information to certain other health information custodians¹¹ (unless a person has pro-actively forbidden disclosure of the relevant personal health information).

Example: On receiving a blood test result containing an anomaly, a family physician decides that it would be advisable to consult a specialist but the patient is on a lengthy holiday. The family physician could disclose the personal health information to the specialist in order to obtain timely advice unless the patient had indicated that such results should not be disclosed to anyone without the person's express consent.

Liability protection

Heads of institutions, health information custodians and those people acting on their behalf are protected from actions or pro-

ceedings if they act in good faith and do what is reasonable under the circumstances.¹² This protection relates to, among other things:

- the disclosure (or non-disclosure) of information; or
- the giving of a required notice, if that person took reasonable care to give the required notice.

More information

For further information, please review *FIPPA*, *MFIPPA*, *PHIPA* and *HPPA*, which can all be found at www.e-laws.gov.on.ca, as well as other resources on the IPC website, www.ipc.on.ca. IPC resources include informational publications about all three Acts and their oversight by the IPC, and complete texts of all IPC decisions and orders.

Disclaimer

This fact sheet reflects the legislation as of July 2005. Proposed amendments to *FIPPA* and *MFIPPA* may be relevant to the topics explained here.

¹¹ Such a disclosure may be made to those custodians listed in section 3(1), paragraphs 1-4 of *PHIPA*. The listed custodians are primarily frontline health care providers and institutions. This kind of disclosure is addressed in section 38(1) of *PHIPA*.

¹² Please see section 62(2) of *FIPPA*, section 49(2) of *MFIPPA* and section 71 of *PHIPA*.

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