

APPENDIX 13

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY: FACT SHEET

Releasing Personal Health Information to Third Parties

Reader's Summary

This fact sheet provides guidelines for releasing clients' information to third parties, such as family or friends of the client or health care providers. The *Freedom of Information and Protection of Privacy Act* allows health care providers employed by a public body¹ (e.g. hospitals and publicly funded clinics) to disclose the personal information of clients to third parties under certain circumstances. Public bodies may release personal information to third parties if the client consents to the release. Public bodies may release necessary personal information to third parties without the consent of the client where disclosure is required for continuity of care or for compelling reasons if someone's health or safety is at risk.

Disclosure of Client Information by Health Care Providers

Health care providers are regularly required to make decisions on disclosure of information relevant to a person's health. This information is the client's personal health information. Clients often ask for access to their test results, assessments or progress notes. In addition, there may be circumstances when providers need to disclose client information to third parties outside this provider-client relationship.

Authority to Release Client Information to Third Parties

The *Freedom of Information and Protection of Privacy Act* (the Act) allows for disclosure of personal information:

- 1) to third parties inside and outside of Canada, if the client has consented to the release of the personal health information to the third party²; or
- 2) to third parties inside Canada if the disclosure is for
 - the purpose for which the personal information was originally obtained or collected; or
 - a use consistent with the purpose for which the personal information was originally obtained or collected³ (see “consistent use” below); or
- 3) to third parties inside or outside of Canada if compelling circumstances exist that affect anyone’s health or safety. Under this section of the Act, notification of disclosure must be mailed to the client⁴.

Consistent Use

A use of personal information is considered to be consistent with the purpose for which the information was originally obtained or collected if the use:

- 1) has a reasonable and direct connection to that purpose; and

- 2) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information or causes it to be used or disclosed.

If a client’s personal information was collected for health care purposes, public bodies may release necessary information to third parties for “continuity of care”. This means public bodies may disclose personal information to health care professionals, family members, or to other persons, such as friends and relatives, involved in a client’s care for the purpose of that care. The release of the information must be in the best interests of the health of the client.

Preserving Client Trust and Privacy

Although public bodies have authority to disclose personal information, they also have a responsibility to minimise invasion of client privacy. Wherever possible, consent for the release of personal information should be obtained from the client.

Each release of information must be considered on its merits, in keeping with the standard of reasonable clinical judgment. The provider must strike a balance between the need to share the client’s information with a family member or other third party who is involved in the client’s care

and the need to safeguard the client's trust and privacy. In exercising his/her judgment on whether to release personal information to a third party, the health care provider should ask why the information needs to be released and consider the three grounds for release listed above.

It is recommended that health care providers explain the limits of confidentiality early in the provider-client relationship. When disclosing client information to third parties, document what information is being released, to whom it is being released, and the reason the third party "needs to know" the information.

There are no definitive rules regarding the release of personal information. Releases of personal information need to be considered on a case-by-case basis. A client's history, their health, and the care provided by the third party are mitigating factors which the health care provider needs to consider prior to disclosing any personal information.

Obtaining consent from the client is generally preferred when releasing any personal information to a third party. However, health care providers do encounter circumstances when consent is not viable. The examples below are a discussion of some of these circumstances. When disclosing information without consent, the health care provider must be confident the release of the information is in the client's

best interests, is required for the continuity of care of the client, and only the information that is absolutely necessary is released to the third party.

Examples:

- 1) An adult with schizophrenia is being discharged from a psychiatric unit. Although she does not have a close relationship with her family, they do take an active role in ensuring her day-to-day needs for food and shelter are met, and they also monitor her health status. The client is suspicious and distrustful of her family members, and asks her clinician not to share any information about her with them.

In deciding whether or not to disclose the client's personal information to the family, the health care provider should consider whether the family's "need to know" outweighs the client's wishes. If the provider believes it is in the best interests of the client to disclose personal information to the family so they can provide care to the client, the health care provider may do so [section 33.2(a)]. The provider should exercise caution to ensure only necessary information is released. Reasons for disclosing the client's personal information should be recorded in the clinical file.

- 2) An adult is admitted to a hospital in Kelowna because he has been in a physical altercation. The clinician at the hospital determines the adult is from

Victoria, believes he has a mental illness and may be violent or dangerous. The clinician calls psychiatric units in Victoria to obtain confirmation of this diagnosis, and information about the patient's history, including the client's possible medications. The health care professionals at the psychiatric unit may release to the clinician in Kelowna for continuity of care [section 33.2(a)].

- 3) Parents have an adult son with a mental illness. The son lives in their basement and will not leave his room. Although the parents provide shelter and care for their son, they are in fear of him, and do not know what to do. The parents contact the hospital where their son has been hospitalized and his mental health worker.

The hospital and the mental health worker may release the son's personal information which is necessary to assist the parents provide care to their son [section 33.2(a)]. The head of the health care body could also release information to the parents if there are compelling circumstances that affect the health or safety of the parents [section 33.1(1)(m)]. *

- 4) A father has an adult son with an addiction and a mental illness. The son has attempted suicide and has been committed involuntarily to a psychiatric unit. The psychiatric unit is only able

to keep the son committed for a limited time, and wishes to refer the son to a detoxification service. The son refuses to go. The father would like to find out more about his son's condition to assist his son pursue ongoing therapy and counselling.

If the son will not consent to releasing this information to his father, and the psychiatric unit believes the participation of the father is necessary to improve the son's condition, they may release pertinent information to the father [section 33.2(a)].

The relevant sections from Part 3, Division 2 of the Act are as follows

Part 3 - Protection of Privacy

Division 2 - Use and Disclosure of Personal Information by Public Bodies

Section 32 - Use of Personal Information

A public body must ensure that personal information in its custody or under its control is used only

- (a) for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose (see section 34),
- (b) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the use, or

- (c) for a purpose for which that information may be disclosed to that public body under sections 33 to 36.

Section 33 - Disclosure of Personal Information

A public body must ensure that personal information in its custody or under its control is disclosed only as permitted under section 33.1 or 33.2.

Section 33.1 - Disclosure Inside or Outside of Canada

- (1) A public body may disclose personal information referred to in section 33 inside or outside Canada as follows:
 - (a) in accordance with Part 2;
 - (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to its disclosure inside or outside Canada, as applicable;
 - (c) in accordance with an enactment of British Columbia or Canada that authorizes or requires it disclosure;
 - (d) in accordance with a provision of a treaty, arrangement or agreement that
 - (i) authorizes or requires its disclosure, and
 - (ii) is made under an enactment of British Columbia or Canada;
 - (e) to a minister, if the information is immediately necessary for the performance of the duties of the minister;

- (f) to an officer or employee of the public body or to a minister, if the information is immediately necessary for the protection of the health or safety of the officer, employee or minister;
- (g) to the Attorney General or legal counsel for the public body, for use in civil proceedings involving the government or public body;
- (h) to the minister responsible for the *Coroners Act* or a person referred to in section 36 of that Act, for the purposes of that Act;
- (i) for the purposes of
 - (i) collecting monies owing by an individual to the government of British Columbia or to a public body, or
 - (ii) making a payment owing by the government of British Columbia or by a public body to an individual;
- (j) in the case of the Insurance Corporation of British Columbia, if
 - (i) the information was obtained or compiled by that public body for purposes of insurance provided by the public body, and
 - (ii) disclosure of the information is necessary to investigate, manage or settle a specific insurance claim;
- (k) for the purposes of
 - (i) licensing or registration of motor vehicles or drivers, or

- (ii) verification of motor vehicle insurance, motor vehicle registration or drivers licences;
- (l) for the purposes of licensing, registration, insurance, investigation or discipline of persons regulated inside or outside Canada by governing bodies of professions and occupations;
- (m) if
 - (i) the head of the public body determines that compelling circumstances exist that affect anyone's health or safety, and
 - (ii) notice of disclosure is mailed to the last known address of the individual the information is about, unless the head of the public body considers that giving this notice could harm someone's health or safety;
- (n) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted;
- (o) in accordance with section 36 (disclosure for archival or historical purposes).
- (2) In addition to the authority under any other provision of this section or section 33.2, a public body that is a law enforcement agency may disclose personal information referred to in section 33:
 - (a) to another law enforcement agency in Canada, or
 - (b) to a law enforcement agency in a foreign country under an arrangement, a written agreement, a treaty or provincial or Canadian legislative authority.
- (3) The minister responsible for this Act may, by order, allow disclosure outside Canada under a provision of section 33.2 in specific cases or specified circumstances, subject to any restrictions or conditions that the minister considers advisable.

Section 33.2 - Disclosure Inside Canada Only

A public body may disclose personal information referred to in section 33 inside Canada as follows:

- (a) for the purpose for which it was obtained or compiled or for a use consistent with that purpose (see section 34);
- (b) to comply with a subpoena, warrant or order issued or made by a court, person or body in Canada with jurisdiction to compel the production of information;
- (c) to an officer or employee of the public body or to a minister, if the information is necessary for the performance of the duties of the officer, employee or minister;
- (d) to an officer or employee of the public body or to a minister, if the information is necessary for the delivery of a common or integrated program or activity

- and for the performance of the duties of the officer, employee or minister to whom the information is disclosed;
- (e) to an officer or employee of a public body or to a minister, if the information is necessary for the protection of the health or safety of the officer, employee or minister;
 - (f) to the auditor general or any other prescribed person or body for audit purposes;
 - (g) to a member of the Legislative Assembly who has been requested by the individual the information is about to assist in resolving a problem;
 - (h) to a representative of the bargaining agent, who has been authorized in writing by the employee whom the information is about, to make an inquiry;
 - (i) to a public body or a law enforcement agency in Canada to assist in a specific investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result;
 - (j) to the archives of the government of British Columbia or the archives of a public body, for archival purposes;
 - (k) in accordance with section 35 (disclosure for research or statistical purposes).
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For more information contact:

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¹The *Freedom of Information and Protection of Privacy Act* does not apply to health care providers in private practice. It only applies to health care providers working for a public body. Private health care providers are subject to the provisions of the *Personal Information Protection Act* (PIPA).

² Section 33.1(1)(b) of the Act.

³ Section 33.2(a) of the Act.

⁴ Section 33.1(1)(m) of the Act.

- Any time Section 33.1(1)(m) of the Act is used, notification of this disclosure must be given to the individual whom the information is about. The requirement for notification does not apply to Section 33.2(a).