Yukon Information and Privacy Commissioner

CONSIDERATION REPORT

File HIP17-08I

Pursuant to subsection 103 (1) of the
Health Information Privacy and Management Act

Diane McLeod-McKay, B.A., J.D.
Information and Privacy Commissioner (IPC)

Custodian: **Yukon Hospital Corporation**

Date: **March 16, 2018**

Summary: The Office of the Information and Privacy Commissioner received a complaint from a complainant that the Yukon Hospital Corporation (YHC) disclosed records containing her and her child's personal health information contrary to the *Health Information Privacy and Management Act* (HIPMA). The disclosure was made to a health centre in a community operated by the Department of Health and Social Services (HSS) and was for the purpose of providing her and her newborn with at-home, follow-up health care after her discharge from Whitehorse General Hospital. The YHC submitted that it had authority to disclose the personal health information under subsection 58 (a) of HIPMA. After settlement attempts failed, the Information and Privacy Commissioner (IPC) considered the complaint in a formal Consideration hearing. There were two issues under Consideration. Following her analysis of the evidence presented by the parties, on the first issue, the IPC found that YHC did not meet all the requirements under subsection 58 (a) regarding the disclosure. The IPC also found that

YHC did not exercise its discretion as required by subsection 58 (a) given that the disclosure was done to comply with a mandated process established by HSS. She further determined that no other disclosure provision applied to authorize the disclosure. She could not decide the second issue given that it was contingent on her finding that YHC had authority for the disclosure. The IPC made four recommendations. She recommended that YHC take steps to recover or destroy the personal health information disclosed to the health centre. She recommended the Custodian work with Perinatal Services BC to determine whether it should modify its practice of disclosing personal health information to health centres for mothers and newborns receiving at-home follow-up health care in Yukon. She also recommended YHC adopt the practice of informing individuals about this disclosure so that they can exercise their right of refusal. Her last recommendation was that YHC review its practice of disclosing personal health information as mandated by HSS to ensure the practice does not cause it to contravene HIPMA.

Statutes Cited:

Health Information Privacy and Management Act, SY 2013, c 16

Health Information General Regulation, YOIC 2016/159

Interpretation Act, RSY 2002, c 125

Personal Information Protection and Electronic Documents Act, SC 2000, c. 5

Cases Cited:

Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401, [2013] 3 SCR 733, 2013 SCC 62 (CanLII)

Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 SCR 27, 1998 CanLII 837 (SCC)

Decision HIP16-02I, Department of Health and Social Services, October 6, 2017 (YK IPC)

Decision HIP17-08I, Yukon Hospital Corporation, November 14, 2017 (YK IPC)

Explanatory Notes:

[1] All statutory provisions referenced below are to the *Health Information Privacy and Management Act* (HIPMA) unless otherwise stated.

I BACKGROUND

[2] On April 19, 2017, the Office of the Information and Privacy Commissioner (OIPC) received a complaint from an individual (Complainant) dated April 18, 2017, wherein she alleged Yukon Hospital Corporation (YHC) disclosed her and her child's personal health information to a community health centre operated by the Department of Health and Social Services (Health Centre) contrary to HIPMA (Complaint). In her Complaint, the Complainant indicated she learned of the disclosure after returning to her community following the birth of her child when she was contacted by an employee of the Health Centre who had detailed knowledge about her care and treatment at Whitehorse General Hospital (Hospital). She further indicated she did not give her consent for the disclosure.

[3] An investigator was assigned to notify YHC about the Complaint and attempt settlement. In a letter dated April 26, 2017, YHC was informed about the Complaint, as well as the settlement and Consideration procedure.

[4] On July 27, 2017, using her delegated authority, the investigator extended the 90-day timeline in subsection 103 (2) by 60 days, as per subsection 103 (3), to allow more time to attempt settlement.

[5] On August 25, 2017, the investigator informed the IPC that she was unable to settle the Complaint. YHC was informed the same day of the failed settlement.

[6] After considering whether any of the factors in subsection 101 (2) applied in respect of the Complaint and deciding they did not, I instructed the Registrar to notify the parties of the Consideration.

II CONSIDERATION PROCESS

[7] The Registrar prepared the Notice of Consideration on August 25, 2017, and sent it to the parties. The date for Consideration in the Notice was September 22, 2017.

[8] Initial submissions for the Consideration were received from the Complainant on September 12, 2017, and from YHC on September 14, 2017. The submissions were exchanged and a reply was received from both on September 21, 2017.

[9] In the submissions received from YHC was an objection to the IPC completing the Consideration of the Complaint on the basis that she has lost jurisdiction as a result of being out of time under section 103.

[10] In order to address the alleged loss of jurisdiction by the YHC, I issued a Decision.[1] My findings were that subsections 103 (2) and (3) of HIPMA are directory. Consequently, I concluded I did not lose jurisdiction as a result of not completing the Consideration within the timelines set out in those subsections.

[11] The submissions of YHC included that "the Commissioner ought to dismiss the Complaint on the basis that the Complaint is not well-founded because YHC's disclosure to the [Health Centre] of records containing personal health information of the Complainant and the Newborn was clearly authorized by HIPMA and clearly complied with the applicable requirements of HIPMA."

[12] I will not address this matter as a preliminary issue in this Consideration given that, after settlement failed, part of my Consideration process is to consider whether any of the circumstances under subsection 101 (1) apply to the issues under Consideration. I followed that procedure in this Consideration and, prior to instructing the Registrar to issue the Notice of Consideration, decided that none of the circumstances in that subsection apply. I will add that if I were to dismiss the Complaint on the basis suggested by YHC, it would be an abdication of my responsibilities and a neglect of my public duty under HIPMA, given that the very heart of the issues is whether YHC met its obligations under HIPMA in disclosing this information. Whether the Complaint is well founded can only be determined through Consideration.

[1] Decision HIP17-08I, Yukon Hospital Corporation, November 14, 2017, (YK IPC).

III JURISDICTION

[13] YHC is "the operator of a hospital" and as such is a custodian as defined in section 2 (Custodian). Subparagraph 7 (1)(a)(ii) indicates that HIPMA applies to the collection, use and disclosure of personal health information by "any other custodian, if the collection, use or disclosure is undertaken for the purpose of providing health care, the planning and management of the health system or research."[2] The Complaint made by the Complainant is that the Custodian disclosed her and her child's personal health information to the Health Centre for the purpose of providing her with post-partum health care at home contrary to HIPMA. The timing of the disclosure was after HIPMA came into effect. As such, I find that HIPMA applies to the disclosure by the Custodian.

[14] Subsection 103 (1) states that, subject to subsection 101 (1), the IPC is required to consider the Complaint received from the Complainant under section 99 that cannot be settled under section 102. As I indicated above, I determined that none of the factors in subsection 101 (1) apply in respect of the Complaint and that attempts to settle the Complaint failed.

IV ISSUES

[15] There are two issues for Consideration. They are as follows.

1. Whether the Custodian's disclosure of the Complainant's and her child's personal health information, including personal health information contained in records identified as British Columbia Newborn Records Part 1; British Columbia Newborn Record Part 2; British Columbia Community Liaison Record Newborn; British Columbia Community Liaison Record Postpartum; and the British Columbia Labour and Birth Summary Record to the Health Centre is authorized under HIPMA?

2. If the disclosure of the Complainant's and her child's personal health information is authorized, did the Custodian comply with sections 15 and 16 of HIPMA?

[2] The parties agreed in the Fact Report that Yukon Hospital Corporation is a custodian under HIPMA.

V BURDEN OF PROOF

[16] Section 106 of HIPMA establishes the burden of proof for a Consideration. Paragraph 106 (1)(b) states as follows.

> *106 (1) In the consideration of a complaint under this Act*
>
> *(b) it is up to the respondent to prove they have acted in accordance with this Act and, if the review relates to their exercise of any discretion under this Act, that they exercised the discretion in good faith.*

[17] Given that the Complaint is about the Custodian's obligations to comply with HIPMA's provisions for the disclosure of the Complainant's and her child's personal health information to the Health Centre, it has the burden of proving it met these obligations

VI FACTS

[18] The facts agreed to by the parties relevant to the issues are as follows.

a. The Complainant was a patient receiving labour and maternity health care at the Hospital.

b. The Complainant delivered her baby at the Hospital.

c. The newborn received post-partum health care at the Hospital.

d. On discharge of the Complainant and her newborn baby from the Hospital, on or about [date], the Custodian disclosed the following records containing personal health information of the Complainant and her newborn baby to the Health Centre:

    i. British Columbia Newborn Records Part 1,

    ii. British Columbia Newborn Record Part 2,

    iii. British Columbia Community Liaison Record POSTPARTUM,

    iv. British Columbia Community Liaison Record NEWBORN,

    v. British Columbia Labour and Birth Summary Record.

(Records)

VII ANALYSIS

Issue One: Is the Custodian's disclosure of the Complainant's and her child's personal health information, including personal health information contained in the Records, authorized under HIPMA?

[19] The Custodian's submissions on this Issue are as follows.

> 34. [The Custodian] *disclosed the Records, which contained personal health information of the Complainant and the Newborn, to* [the Health Centre] *for the purpose of enabling public health nurses working at* [the Health Centre] *to provide at-home, follow-up health care to the Complainant and the Newborn.*
>
> 35. *HIPMA section 58(a) is applicable and authorized* [the Custodian's] *disclosure of the personal health information of the Complainant and the Newborn to* [the Health Centre] ***without*** *the consent of the Complainant or the Newborn because:* [Emphasis in original]
>
> - [The Custodian] *is a "custodian", as that term is defined in HIPMA section 2(1).*
> - [The Health Centre] *is both a "person" and a "custodian", as those terms are defined in HIPMA section 2(1).*
> - *The information in the Records constitutes "personal health information", as that term is defined in HIPMA section 2(1), of the Complainant and the Newborn.*
> - *The relevant medical doctor* [the Physician] *and* [the Nurse] *reasonably believed that the public health nurses working at* [the Health Centre] *would provide at-home, follow-up health care to the Complainant and the Newborn.*
> - *The Records were disclosed to* [the Health Centre] *for the purpose of enabling the public health nurses working at* [the Health Centre] *to provide at-home, follow-up health care to the Complainant and the Newborn.*

- *The personal health information contained in the Records was necessary for the public health nurses working at* [the Health Centre] *to provide at-home, follow-up health care to the Complainant and the Newborn. (See paragraphs 42 - 46 below.)*

- *The Complainant did not refuse or withdraw consent (in accordance with HIPMA requirements) to the disclosure of the personal health information to* [the Health Centre].

36. HIPMA section 58(a) is consistent with a stated purpose of HIPMA, namely to establish rules regarding personal health information that facilitate the effective provision of health care (see HIPMA section 1(b)). The effective provision of health care requires the sharing of relevant personal health information among a patient's treatment team, and it is not practicable or efficient to require the patient to give consent to that kind of information sharing each and every time health care is provided.

37. *The importance of information sharing among a patient's treatment team is discussed in Legal Liability of Doctors and Hospitals in Canada, 4th ed. (2007, Thomson Carswell), at pages 317-318 and 347-348, which explains the physician's duty to share relevant patient information with other care providers and notes that it is not sufficient for a physician to rely on the patient to provide relevant information to another member of the treatment team.*

38. *Health information protection statutes in other Canadian provinces, including the Alberta Health Information Act, sections 35(1)(a) and 36(a), permit health care providers to disclose an individual's personal health information to other health care providers without the individual's consent in various circumstances.*

39. *The relevant provisions in the Alberta Health Information Act were considered by the Alberta Information and Privacy Commissioner in Order H2002-005. The Alberta Commissioner held (at paragraphs 14-18) that those provisions authorized the disclosure of an individual's personal health information without the individual's consent.*

> 40. *For those reasons, HIPMA section 58(a) clearly authorized* [the Custodian's] *disclosure of the personal health information of the Complainant and the Newborn to* [the Health Centre] *for use by public health nurses to provide health care to the Complainant.* [The Custodian] *was not required to obtain the Complainant's or the Newborn's consent to the information disclosure.*
>
> 50. *In light of the clear authorization under HIPMA section 58(a), it is neither necessary nor appropriate for the Commissioner to consider whether the Complainant gave express or implied consent to the disclosure of personal health information, and YHC will not make submissions regarding that non-issue.*

[20] Included with its submission, the Custodian provided Affidavit evidence in support of its submission from the Physician, the Nurse and the Health Centre Director. It also submitted copies of the Records and several guides for completing the Records which were developed by Perinatal Services BC.

[21] The Complainant did not divide her submission by issue. Her submissions in respect of both issues are as follows.

> *I returned home to* [the community] *approximately a week following the birth of my* [child] *in Whitehorse on* [date].
>
> *On the day I returned home, I received a phone call from the public health nurse in* [the community] *advising me that she would be coming over to my private residence the following day to "do a follow up"*
>
> *I asked what the follow up was in regards to, and if it was necessary, as we had not yet even settled back in. She said something to the effect of "I can see that you had a lengthy delivery" and started asking me about "my traumatic birth experience", and that she wanted to come over to see how we (my* [child] *and I) were doing, and to give us some information.*
>
> *I was surprised that she had been given any information of my stay in the hospital at all. I had never reached out to public health, had never been to their office here in* [the community]*, and was not a patient of theirs, and neither was my* [child]. *I felt extremely uncomfortable with my personal health records and details of my delivery having been shared without my consent to a third party with whom I had never had*

contact with in the past. I felt like my privacy had been violated. When I asked how she had access to my medical records, I was advised that this was standard practice.

I think the services and information that public health offer are great and necessary. I am not questioning their role in the health care of a newborn (and mother) in the Yukon. I even believe that letting public health be aware that there in [sic] *a newborn/new mother in their community so they can officer services is fantastic. What I find offensive is the sharing of confidential health records without the knowledge or consent of the patient involved, and how much information is being passed on…*

[22] In reply to the Complainant's submissions, the Custodian provided the following general information about the submissions of the Complainant.[3]

(a) No Evidence from Complainant

5. The Complainant has not provided any evidence in support of the Complaint.

6. The Complainant's written submission is signed by the Complainant, but the submission is neither under oath nor affirmation. The Complainant's submission is not supported by any evidence under oath or affirmation.

7. The Complainant has not provided any evidence to dispute or contradict any of the evidence submitted by [the Custodian] *in response to the Complaint.*

[23] The Custodian then added its reply to the Complainant's initial submission specific to the Issues.

(b) Health Care by Public Health Nurses

8. The Complainant's submission acknowledges the importance of the health care that public health nurses provide to newborns and mothers in the Yukon.

[3] Only the relevant submissions are included here.

9. The Complainant's submission does not expressly state, but nevertheless implies, that the Complainant was not informed by doctors or nurses at the Hospital that the Complainant would be contacted by a public health nurse to arrange an at-home, follow-up visit to the Complainant and the Newborn.

10. That implicit assertion is contrary to the undisputed evidence of each of [the Physician] *and* [the Nurse]*, each of whom testify, in their sworn affidavits, that they told the Complainant that a public health nurse would visit the Complainant and the Newborn at home to provide follow-up health care, and the Complainant did not object or refuse those services. The evidence of* [the Physician] *and* [the Nurse] *is consistent with, and supported by, their contemporaneous written records.*

11. It would not be surprising if the Complainant did not remember her discussions with [the Physician] *and* [the Nurse]. *Those discussions occurred a few days after the Complainant gave birth to the Newborn and shortly before the Complainant's discharge from the Hospital.*

12. In the circumstances, [the Custodian] *submits that the Commissioner ought to accept the evidence of* [the Physician] *and* [the Nurse]*, and find that they each told the Complainant that a public health nurse would visit the Complainant and the Newborn at home to provide follow-up health care and the Complainant did not object or refuse those services.*

(c) Disclosure of Personal Health Information to [the Health Centre].

13. The Complainant's submission acknowledges that YHC disclosed the personal health information of the Complainant and the Newborn to public health nurses at [the Health Centre] *so that they could provide health care to the Complainant and the Newborn.*

14. The Complainant's submission states as follows: "What I find offensive is the sharing of confidential health records without the knowledge or consent of the patient involved, and how much information is being passed on".

15. That statement is similar to the statement in [date] *Complaint Intake Form, which complains that* [the Custodian] *released personal medical records to* [the Health Centre] *"without my permission".*

16. The simple answer to the Complainant's stated concern is that HIPMA section 58(a) clearly authorizes [the Custodian] *to disclose an individual's personal health information, without the individual's consent, to persons who provide, or who* [the Custodian] *reasonably believes will provide, health care to the individual…*

17. HIMPA section 58(a) reflects a policy decision by the Yukon legislature that is consistent with a stated purpose of HIPMA – to facilitate the effective provision of health care (see HIPMA section 1(b)).

18. The language in the Complainant's submission is similar to the language used by the complainant/applicant in Alberta Information and Privacy Commissioner Order H2002-005…In that case, the applicant stated: "I am greatly offended that a doctor can release information to third parties without even mentioning anything at all to the patient". The Alberta Commissioner dismissed the complaint because the Alberta Health Information Act authorized the disclosure of an individual's personal health information without the individual's consent in the circumstances of that case.

[24] In reply to the Custodian's submissions, the Complainant stated the following.

I am not disputing the role that Public Health/Community health plays in the follow up care of new mothers and newborns. I think this is a great initiative if the mother is having any difficulties, or is unable to follow up with their family doctor for whatever reason.

Although accessing their services is best practice, at the end of the day, those services are optional. I strongly believe that the patient should have the final say how much or if any records are disclosed. To the best of my knowledge, if a patient wanted to have a new medical professional have access to their past medical records, there is a procedure to be followed that includes the patient in question filling out a request for the sending party to share medical records, and providing specific and explicit consent to both the sending and receiving facilities. I certainly know that I have had to fill one out when I have moved from one community to another. Is this not standard practice for all medical record [sic] *in Yukon?*

There is a large discrepancy between being advised that a wonderful resource exists for follow up care if you are struggling with any post-partum concerns vs the expectation that a stranger; who is not currently involved in your care and who's services are not required, will enter and inspect your residence armed with your private

medical records with the purpose of making judgements on your mental health and your ability to care for your newborn on your return home from the hospital. (As per affidavits from [the Physician] *and* [Health Centre Director] *as one of the reasons why Community health requires medical records and necessity of at home follow up care)*

If the mental health of the mother or ability to provide care for her newborn is being called into question, then of course there is a need to report and need to act, but there are other avenues to follow that do not breach confidentiality.

Any other outside agency not directly involved in my care requesting medical records for follow up would not have access to my records without legally proving it necessary to an impartial third party.

Deciding for the mother, without her knowledge and potentially against her wishes, what is best for her care goes against standard practice and right to refuse medical services and violates the trust in the health care system. New mothers are under no contractual or legal obligation to access Public or Community health's services. I had made arrangements with a higher level of care, and was acting in the best interest of myself and my newborn following the direct advice of the physicians at [the Hospital].

[The Custodian] *states under their mission statement and core values "Believing in the dignity and human rights, honouring the individual, and demonstrating courtesy for others' feelings and circumstances." It was so disappointing to have no recognition or admission that things could be done better, or any apology if my experience was not normal and not in keeping with their standard practice. Rather than education and involving new parents in their own health care and their rights, I feel like it has left me feeling exposed and powerless.*

Advising a patient of a resource that is available to them is not the same as getting informed consent to disclose medical records. It is impossible to raise an objection or refuse a service if the patient is not aware of the services or what is involved in accepting those services...

The onus should be on the institution and health care professionals to inform the public of disclosure and right to refusal. I believe it would be in the best interest of the patient if there was at minimum a form at the hospital that required a signature from the patient giving consent to disclose any medical records, and informing them of what will be disclosed and to whom for what purposes. This would alleviate any

> *miscommunication or misinterpretations in the future and would protect not only the interests of the patient, but also that of both the sending as well as the receiving facilities…*

[25] The Complainant included an Affidavit with her reply submission that states the following.

> *I was a patient who was admitted at* [the Hospital] *for delivery and birth of my* [child] *on or about* [dates].
>
> *I was under the care of multiple doctors and nurses during my stay at the hospital. One of those nurses was* [the Nurse]. *One of the physicians was* [the Physician].
>
> *During my stay on the maternity ward at the* [Hospital], *a community health nurse from Whitehorse came to my room to explain the services provided by Public Health (Community Health). We let the nurse know we were from* [the community]*, and she said that we could still stop in to the Whitehorse office at any time, or call them if we had any questions or concerns. We specifically discussed* [medical treatment options] *and she did not know if there was any individuals in* [the community] [sic] *were trained in that area of expertise. She provided the address and contact information. At no time did she imply that we must have a follow up home visit, or that our records would be sent to* [the Health Centre].
>
> *During my stay at* [the Hospital]*,* [more than one nurse discussed medical issues with me] *and although this is not a condition requiring specific follow up or referral to the best of my knowledge, I was advised to contact my doctor or public health if* [the medical issues continued] *within a few days of discharge, or if I had any concerns.*
>
> *There was a discussion with one of the health care providers at* [the Hospital] *about community nursing and the services they provide. We advised the provider that community nursing (Public Health) had already stopped in and had a discussion with myself and my husband. The provider was pleased that we had already* [sic] *in contact with Public health (Community Health). To the best of my knowledge that was all that was discussed on the issue. We were opposed to* [sic] *home visit, and had it been specifically mentioned during our hospital visit, we would have objected. At no time were we advised that medical records would be sent to public health (community health).*

I was aware that in the past for some individuals, a community health nurse had provided a home visit. During my pregnancy I had been told by my neighbor that a nurse had come over to their private residence after the birth of their child. I was not aware if there were specific things or events that would initiate a home visit. I was unaware that this was a service that all new mothers are expected to submit to. This is something that my husband and I had discussed at the time, and neither one of us were comfortable with. We were not advised that we specifically had to opt out and refuse this service.

I was advised by one of the physicians at [the Hospital] *that due to the* [medical issues] *of my newborn during our stay, and because at the time of my discharge I was* [experiencing medical issues], *I should follow up with the Doctor in* [the community] *the week that I arrived home, and for several weeks afterwards to make sure* [my child's medical issues were being managed]. [The medical issues] *being normal, there was no urgent concern* [about the medical issues]. *It was discussed at this time who would be doing the majority of my follow up care, as my family doctor is located in Whitehorse, but we are currently residing in* [the community]. *It was asked if I would like a copy of my medical records to be sent to* [the medical clinic] *which is the doctors clinic in* [the community], *and I agreed to that as* [the community physician] *would be providing at least the immediate care for myself and my newborn.*

The day I arrived home, I was contacted by a Community Health nurse to arrange a home visit. From what I understood from my meeting with Public health at the hospital, follow up care was something that we as patients (myself and on behalf of my newborn) initiated if the services were required. My newborn was born healthy and was not exhibiting any concerning health problems outside of [the medical issues]*, which we had been advised to follow up with a doctor for. My* [child] *was not in need of* [medical treatment] *until* [my child] *was* three *months old. As per above notation,* [my medical issues were resolved] *and did not require follow up. I was surprised by the phone call, and unclear as to why we required a home visit if none of the services they offered were required at that time. The nurse was quite insistent, and during the conversation mentioned some details of my delivery and details of the birth of my newborn. I asked the nurse how she had access to that private information, and was advised that it was standard practice for* [the Hospital] *to forward on medical record* [sic] *following a birth in the Yukon. I was upset by this, as I felt it was a violation of my privacy, and I said as much to the community health nurse.*

I have confirmed with Community health that my objections and concerns at the time were noted in my file. I have requested and included a copy of my file from Community Health so as to be able to demonstrate that I was unaware, and was not expecting this contact or sharing of medical records, and therefore could not have consented or refused consent. I have also made an attempt to contact the specific nurse involved as well as to verify that I had questioned at the time what the purpose of the appointment was and therefore it would be unlikely that I was counselled in advance of the purpose and/or involvement of Community health in my follow up care. I have not received any reply from the nurse involved at the time of this submission.

I was not a patient of community health. My newborn was not a patient of community health. I had not requested or agreed to my personal health information to be shared with an agency with whom I did not require services.

At no point during my stay, during any of my follow up care, or in any of the affidavits is there any mention of any concern by any of the care providers of the status of my mental health, the health of my newborn, any required follow up care or ongoing concerns for my health, or my ability to care for said newborn.

At the first follow up visit with [the community physician]*, the phone conversation with the Community health nurse came up. I again expressed my displeasure and concern. Neither myself, nor* [the community physician] *were sure of exactly what or how much information had been disclosed.*

I was not advised by [the community physician] *or the Community Health Nurse that there was an official channel or avenue to express formal complaints to the Information and Privacy Commissionaire* [sic].

I had an appointment with the Child Development Centre on [date]*. During this appointment, I was advised by the healthcare practitioner that I could choose what was disclosed to whom in regards to our meetings and the relevant medical records. She discussed HIPMA, and the privacy legislation. It was at this time, I again brought up the breach of trust and what I felt to be a violation of privacy in regards to the disclosure of medical records to Public (community) health. I was advised at this time of the existence and role of the Information and Privacy Commissioners* [sic] *office, and that they investigate concerns like mine. The clinician provided me with their website information.*

> *I called the Information and Privacy Commissionaire's* [sic] *office and subsequently filed on* [sic] *official complaint within a week. Prior to filing an official complaint with the IPC, I contacted an employee at* [the Hospital] *whom I was led to believe was an individual who had dealings with complaints and feedback for the* [Custodian]. *In an attempt to find a resolution without involving the Privacy Commissioner, I left a message on the voicemail of* [the Custodian's employee], *but never received a reply from his office, or any other person from the Hospital*.

Subsection 58 (a)

[26] The Custodian indicated it is relying on subsection 58 (a) as its authority for this disclosure. Given that this is the first time I am interpreting subsection 58 (a), I will begin my analysis with a purposive interpretation of this provision.

[27] The modern approach to statutory interpretation is that the words of an Act are to be read in their entire context and their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.[4]

[28] In Yukon's *Interpretation Act*, it states that [e]very enactment and every provision thereof shall be deemed remedial and shall be given the fair, large, and liberal interpretation that best insures the attainment of its objects.[5]

[29] The purposes of HIPMA are set out in section 1. They are as follows.

> ***1*** *The purposes of this Act are*
>
> *(a) to establish strong and effective mechanisms to protect the privacy of individuals with respect to their health information and to protect the confidentiality of that information;*
>
> *(b) to establish rules for the collection, use and disclosure of, and access to, personal health information that protect its confidentiality, privacy, integrity and security, while facilitating the effective provision of health care;*

[4] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC).

[5] *Interpretation Act*, RSY 2002, c125, at section 10.

(c) subject to the limited and specific exceptions set out in this Act, to provide individuals with a right of access to their personal health information and a right to request the correction or annotation of their personal health information;

(d) to improve the quality and accessibility of health care in Yukon by facilitating the management of personal health information and enabling the establishment of an electronic health information network;

(e) to provide for an independent source of advice and recommendations in respect of personal health information practices, and for the resolution of complaints in respect of the operation of this Act; and

(f) to provide effective remedies for contraventions of this Act.

[30] In its submissions, the Custodian identified that "HIPMA section 58 (a) is consistent with a stated purpose of HIPMA, namely to establish rules regarding personal health information that facilitate the effective provision of care." The stated purpose the Custodian is referring to is subsection 1 (b). This submission ignores the first part of this purpose which is "to establish rules for the collection, use and disclosure of, and access to, personal health information that protect its confidentiality, privacy, integrity and security, while facilitating the effective provision of health care."

[31] Facilitating the effective provision of health care is only one aspect of this purpose. The other aspect is to establish rules that custodians *must follow* to collect, use, disclose and secure personal health information. This purpose, together with the others, clarify that HIPMA's overarching purpose is to maximize the privacy and security of personal health information collected, used and disclosed by custodians for health care and system management.[6]

[6] This is consistent with my findings in Decision HIP16-02I, Department of Health and Social Services, October 6, 2017 (YK IPC); and Decision HIP17-08I, Yukon Hospital Corporation, November 14, 2017 (YK IPC).

[32] In two recent decisions I issued interpreting other provisions in HIPMA, I stated the following about the context in which HIPMA provisions are to be interpreted.

> *The protection of personal information privacy has been recognized by our highest court to be quasi-constitutional in nature. The* [Supreme Court of Canada (*SCC)*] *in Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401 stated that "[t]he importance of protection of privacy in a vibrant democracy cannot be overstated."*[7] *Personal health information goes to the biographical core of individuals. Therefore, it is the most sensitive personal information that exists. Health information laws were developed to facilitate the flow of personal health information to provide individuals with healthcare and to effectively manage Canada's public health system while taking into account that the information collected, used and disclosed by custodians for these purposes is the most sensitive type that, if breached, could result in significant harm to individuals.*
>
> *HIPMA is no exception. It is clear from the purposes in HIPMA that the drafters recognized that to facilitate the flow of personal health information for health care and health system management, strong controls and accountability mechanisms are necessary to maximize privacy and security and minimize the risk of harm…*
>
> *The scheme of HIPMA is as follows.*
>
> *HIPMA applies to custodians. The term "custodian" is defined in section 2 to include the Department of Health and Social Services (HSS), the operator of a hospital or health facility, a health care provider, a prescribed branch, operation or program of a Yukon First Nation, and the Minister of HSS. Essentially, custodians are those persons or bodies in Yukon who engage in the provision of health care or who have responsibility for management of the health system.*
>
> …

[7] [2013] 3 SCR 733, 2013 SCC 62 (CanLII), at paras 20 to 22.

> *Section 7 of HIPMA sets out that it applies to the collection, use and disclosure of personal health information by the Minister, HSS or "any other custodian, if the collection, use or disclosure is undertaken for the purpose of providing health care, the planning and management of the health system or research."*
>
> *Section 11 specifies that HIPMA prevails over an Act or regulation, the provisions of which, conflict with those in HIPMA unless expressly stated otherwise.*
>
> *Section 13 states that a person who is a custodian…may collect, use, disclose and access personal health information only in accordance with HIPMA and the regulations.*
>
> *Sections 14 to 17 establish limits for the collection, use or disclosure of personal health information by Custodians. Sections 19 to 23 establish rules that custodians must follow in managing personal health information. Sections 49 to 60 establish the authority for custodians to collect, use or disclose personal health information. There are also rules a custodian must follow in obtaining consent for the collection, use or disclosure of personal health information and require custodians to notify individuals where a breach may cause significant harm.*[8]

[33] Another important aspect in understanding HIPMA's scheme is that HIPMA is considered 'consent based' legislation. What this means is that the general rule in HIPMA is that custodians are required to obtain an individual's consent to collect, use or disclose their personal health information subject only to limited and specific exceptions.[9]

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[8] Decision HIP16-02I, Department of Health and Social Services, October 6, 2017 (YK IPC), at paras 52 to 60; and Decision HIP17-08I, Yukon Hospital Corporation, November 14, 2017 (YK IPC) at para. 19.

[9] HIPMA is distinct from the *Access to Information and Protection of Privacy Act* (ATIPP Act) in this regard, given that, in general, the ATIPP Act authorizes a public body to collect, use and disclose personal information without the individual's consent. There are important policy objectives for these distinctions that I will not discuss here.

[34] HIPMA, like many modern[10] health information privacy laws, was developed to be consistent with the privacy principles set out in the Canadian Standards Association Model Code for the Protection of Personal Information (Model Code).[11] During debate in the Legislative Assembly at second reading of HIPMA when it was Bill No. 61, the Honourable Doug Graham stated the following.

> *The foundation of our legislation and for most other jurisdictions' legislation is the Canadian Standards Association Model Code for the Protection of Personal Information. This code sets out the 10 basic principles that have become the national standard for privacy protection. Without going into detail, the principles include accountability, limiting collection, accuracy, safeguards, individual access and challenging compliance, among others. All 10 principles have been addressed in this new legislation.*[12]

[35] As indicated, there are 10 privacy principles in the Model Code.[13] Principle 3 states that "[t]he knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate."

[36] The Model Code is embedded within the Federal *Personal Information Protection and Electronic Documents Act* (PIPEDA). PIPEDA applies to all private sector organizations operating in Canada that are engaged in commercial activity. [14] Since 2004 it has applied to private sector for-profit health care providers. [15]

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[10] "Modern" in this context means those laws developed within the past 15 years in Canada.

[11] Model Code for the Protection of Personal Information, National Standard of Canada, CAN/CSA-Q830-96, Canadian Standards Association, ISSN 0317-5669, 1996.

[12] *Hansard*, Yukon Legislative Assembly, 1st Session of the 33rd Legislature, Second reading debate on *Bill No. 61: Health Information Privacy and Management Act*, at p. 3159.

[13] Model Code for the Protection of Personal Information, National Standard of Canada, CAN/CSA-Q830-96, Canadian Standards Association, ISSN 0317-5669, 1996, at p. ix.

[14] PIPEDA has broader application but its other applications are not relevant to this Consideration.

[15] PIPEDA was brought into force in Canada in phases. In January of 2004, it applied to the commercial sector across Canada, including private sector for-profit health care providers. The implementation of PIPEDA to these health care providers meant that two sets of privacy rules were in effect in the public and private health sectors that limited, or in some cases restricted, the sharing of personal health information between these sectors which is necessary for the electronic health record to achieve its objects. The application of PIPEDA to these health

[37] Provincial or territorial health information privacy legislation that is determined by the Governor-in-Council Canada to be "substantially similar" to the privacy rules in PIPEDA will oust the jurisdiction of PIPEDA over personal information that is regulated by the substantially similar law.[16] So far in Canada, only four provinces, Ontario, New Brunswick, Nova Scotia, and Newfoundland and Labrador, have health information privacy laws that have been declared substantially similar to PIPEDA.

[38] In its submissions, the Custodian stated that "[h]ealth information protection statutes in other Canadian provinces, including the Alberta Health Information Act, sections 35(1)(a) and 36(a), permit health care providers to disclose an individual's personal health information to other health care providers without the individual's consent in various circumstances." It also cited a case in which Alberta's former Information and Privacy Commissioner was interpreting the HIA. Given the vast differences in the legislative framework between the HIA and HIPMA, I caution custodians on referring to the HIA or decisions related thereto when interpreting HIPMA.

[39] Alberta's *Health Information Act* (HIA) was brought into force in 2001, prior to the application of PIPEDA to the for-profit health care sector. The HIA differs significantly from HIPMA and all other health information privacy laws developed to be substantially similar to PIPEDA. The reason is that the HIA is not considered consent based legislation. Under the HIA, as a general rule, custodians are not required to obtain consent for the collection, use and disclosure of personal health information. For this reason, it is doubtful that it would be declared substantially similar to PIPEDA without significant revision.

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care providers led to the development of substantially similar health information privacy laws in provinces and territories. The reason for enacting these laws was to eliminate the application of PIPEDA to those health care providers who collect, use, disclose and secure personal health information within a province or territory to facilitate the sharing of personal health information between the public and private health care sectors.

[16] In the *Canada Gazette Part I*, August 3, 2002, on p. 2386 it states that "…substantially similar" legislation is "legislation that provides a basic set of fair information practices which are consistent with the CSA Standard, oversight by an independent body and redress for those who are aggrieved"." On p. 2388, it states that "[s]ubstantially similar provincial/territorial legislation will be expected to: incorporate the ten principles in Schedule 1 (Section 5) of the PIPEDA…The principles are accountability, identifying purposes, consent, limiting collection, limiting use, disclosure, and retention, accuracy, safeguards, openness, individual access, challenging compliance…Special emphasis will be placed on the principles of consent, access and correction rights."

[40] As consent based legislation, the primary method by which an individual can exercise control over their own personal health information in HIPMA is through the consent provisions. In my two recent decisions I explained the significance of individual control in privacy laws.

> *The focus* [of privacy laws] *is on providing an individual with some measure of control over his or her personal information…*
>
> *The ability of individuals to control their personal information is intimately connected to their individual autonomy, dignity and privacy. These are fundamental values that lie at the heart of democracy.*[17]

[41] It is within the foregoing context that subsection 58 (a) must be interpreted. This subsection states as follows.

> *58 A custodian may disclose an individual's personal health information without the individual's consent*
>
> *(a) to a person who provides health care to the individual, or whom the custodian reasonably believes will do so, to the extent necessary to provide the health care, unless the individual has expressly refused or withdrawn their consent to the disclosure.*

[42] The following definitions are relevant to the interpretation of subsection 58 (a) and will be referred to in my following analysis.

> *Definitions*
>
> *2 (1) In this Act*
>
> *"agent" of a custodian means a person (other than a person who is prescribed not to be an agent of the custodian) who acts for or on behalf of the custodian in respect of personal health information, including for greater certainty such a person who is (a) an employee of the custodian,*

[17] Decision HIP16-02I, Department of Health and Social Services, October 6, 2017 (YK IPC), at para 70; and Decision HIP17-08I, Yukon Hospital Corporation, November 14, 2017 (YK IPC) at para. 18.

"consent", where the context permits, includes the power to give, refuse and withdraw consent;

"disclose", in relation to information in the custody or control of a person, means making the information available or releasing it to another person, but includes neither using the information nor its transmission between a custodian and an agent of that custodian;

"personal health information" of an individual means (a) health information of the individual, and (b) except as prescribed, prescribed registration information[18]… in respect of the individual;

"health information" of an individual means identifying information of the individual, in unrecorded or recorded form, that (a) relates to the individual's health or the provision of health care to the individual,…

"health care" means any activity (other than an activity that is prescribed not to be health care) that is or includes (a) any service (including any observation, examination, assessment, care, or procedure) that is provided (i) to diagnose, treat or maintain an individual's physical or mental condition, (ii) to prevent disease or injury or to promote health, (iii) as part of rehabilitative or palliative care, or (iv) for any prescribed purpose, or (b) the compounding, dispensing or selling of a drug, a device, equipment or any other item for the use of an individual pursuant to a prescription where a prescription is required by law;

Were the Records disclosed?

[43] Before I determine if subsection 58 (a) authorized the Custodian's disclosure of the personal health information, I must determine if the Records were disclosed.

[44] As indicated, "disclose" is defined in HIPMA as "in relation to information in the custody or control of a person, means making the information available or releasing it to another person, but includes neither using the information nor its transmission between a custodian and an agent of that custodian[.]"

[18] "Registration information" is defined in section 1 of the *Health Information General Regulation* to include "name, gender, date of birth, residential address, telephone number, personal health number, place of birth.

[45] The parties agreed in the Fact Report that the Custodian disclosed the Records containing the Complainant's and her child's personal health information to the Health Centre. The evidence shows that the Records were created by agents of the Custodian[19] and were in the Custodian's custody or control when its agent or agents, on its behalf, made the Records available or released them to the Health Centre. In the Nurse's Affidavit, she indicates at paragraph 12 that "…I either sent or requested a co-worker to send, by facsimile transmission to [the Health Centre] the following documents: [the Records].

[46] I agree with the parties that the Custodian disclosed the Records to the Health Centre and my finding is as such.

Does subsection 58 (a) authorize the disclosure?

[47] In order for the Custodian to rely on subsection 58 (a) for its authority to disclose the Records to the Health Centre, it will need to establish that:

a. the disclosure was without consent;

b. the disclosure was to a person who would provide health care, or whom the Custodian reasonably believed would do so;

c. the disclosure was to the extent necessary to provide the health care; and

d. the Complainant did not expressly refuse or withdraw her consent to the disclosure.

[48] As the disclosure of the Records was at the discretion of the Custodian, given the word "may" in this subsection, the Custodian will also need to prove it exercised this discretion in good faith before the Records were disclosed.

[19] The Custodian did not indicate in its submissions that the Nurse and Physician are its agents. That said, I am satisfied from the evidence that the Nurse was an employee of the Custodian when the disclosure occurred and that the Physician was privileged to provide patient care in the Hospital by the Custodian. See https://yukonhospitals.ca/privileges that speaks to the processes a physician must undertake in order to provide patient care in Yukon hospitals operated by the Custodian.

a. Was the disclosure without consent?

[49] The rules in HIPMA regarding consent are as follows.

[50] For consent to be valid in HIPMA, it must be either express or implied.[20] It must also be knowledgeable, relate to the personal health information and be given voluntarily without fraud or misrepresentation.[21] Consent will only be knowledgeable if the individual consenting:

a. knows the purpose of the collection, use or disclosure;

b. that they may give or withhold consent and having once given consent, may withdraw that consent; and

c. that without their consent the personal health information can only be collected, used or disclosed in accordance with HIPMA and the Regulation.[22]

[51] In her submissions, the Complainant stated the following.

> *I felt extremely uncomfortable with my personal health records and details of my delivery having been shared without my consent to a third party with whom I had never had contact with in the past.*[23]
>
> *…I was unaware, and was not expecting this contact or sharing of medical records, and therefore could not have consented or refused consent.*[24]
>
> *I had not requested or agreed to my personal health information to be shared with an agency* [referring to the Health Centre] *with whom I did not require services.*[25]

[20] See section 33.

[21] See section 38.

[22] See section 39.

[23] Complainant's initial submissions on p.1.

[24] Complainant's reply submissions on p.2.

[25] *Ibid.*

[52] This evidence suggests that the Complainant had no knowledge of the purpose of disclosing the Records to the Health Centre, that she could have given, withheld or withdrawn her consent to the disclosure of the Records, or that the information in the Records could only be disclosed in accordance with HIPMA. As the knowledgeable requirement for valid consent was not met in this case, the Complainant could not have given valid consent for the Custodian to disclose the Records to the Health Centre.

[53] This conclusion is supported by the evidence of the Custodian that "[its agents] told the Complainant that a public health nurse would visit the Complainant and the Newborn at home to provide follow-up health care, and the Complainant did not object or refuse those services."[26] Additionally, there is no evidence before me that the Custodian or its agents ever discussed or even mentioned to the Complainant that the Records would be disclosed to the Health Centre for her and her child's follow-up health care.

[54] Given the foregoing, I find that the Complainant did not consent to the Custodian's disclosure of the Records to the Health Centre.

b. Was the disclosure to a person who would provide health care, or whom the Custodian reasonably believed would do so?

Disclosure to a person

[55] "The Custodian disclosed the Records to the Health Centre. The Health Centre is within HSS. "Custodian" means a person…who is…the Department. "The Department" means "Department of Health and Social Services." I am satisfied that the Custodian disclosed the Records to a person.

Reasonably believes

[56] The Custodian submitted that the Physician and Nurse both "reasonably believed" that the public health nurses working at the Health Centre would provide at-home, follow-up health care to the Complainant and her child. Both the Physician and Nurse provided evidence in their Affidavits to support the assertion.

[26] Custodian's reply submissions at paras. 10 and 12 on p.3.

[57] The wording in section 58, together with its subsection (a), is that "[a] custodian may disclose an individual's personal health information without the individual's consent to a person who provides health care to the individual, or whom the custodian reasonably believes will do so." These underlined terms are not defined in HIPMA.

[58] The Oxford Dictionary defines "reasonably" as having sound judgement, in accordance with reason, or within the limits of reason. "Within reason" means within the bounds of sense or moderation. "With reason" means justifiably. "Believes" is defined as accepts as true, as conveying the truth, or to think or suppose.

[59] The ordinary meaning of the words "reasonably believes" in the context of HIPMA's scheme and its purposes emphasize that, on a spectrum, there is a need for a higher threshold required to protect personal health information disclosed by custodians. Given this, I find that for a custodian to "reasonably believe" that person will provide health care to the individual, the custodian will need to establish that it had a justifiable basis to accept that as true.

[60] The evidence of the Nurse and Physician in regards to their respective belief is as follows.

[61] In the Nurse's Affidavit, she stated the following.

a. *…my routine practice when I complete the Discharge Checklist is to explain to the new mother that a public health nurse will contact the new mother when she goes home to arrange for a follow-up, at-home visit to the mother and newborn. I verily believe that I had that discussion with* [the Complainant].

b. *I do not recall* [the Complainant] *stating or indicating any objection to an at-home, follow-up visit by a public health nurse. Had* [the Complainant] *done so, then I certainly would have noted the objection in the "comment" section of the Discharge Checklist. The Discharge Checklist does not contain any note of that kind. For those reasons, I verily believe that* [the Complainant] *did not state or indicate that she did not want an at-home, follow-up visit from a public health nurse.*

c. *I intended the personal health information in the [Records] to be used by the public health nurses at* [the Health Centre] *to provide at-home, follow-up health care to* [the Complainant] *and the* [child].[27]

[62] In the Physician's Affidavit, she stated the following.

a. *I attended* [the Complainant] *and the* [child] *prior to discharge from* [the Hospital].

b. *I dictated the Discharge Summary on* [date].

c. *The Discharge Summary includes (on page 2) the following statement, which I dictated:*

> "*Parents plan to stay in Whitehorse tonight and then return to* [the community] *tomorrow. They will be seen by their GP within the first week and have Public Health follow up within a few days to check up on weight."*

d. *The reference to "Public Health" in the quoted statement is a reference to* [the Health Centre]*, which provides public health services, including at-home, follow-up health care to mothers and newborns, to individuals living in the* [community].

e. *…it is my routine practice to explain to each new mother that a public health nurse will visit the mother and their newborn at home a few days after discharge from the hospital to make sure that they are doing well, including by assessing the baby's weight (to make sure there is no undue weight loss) and colour (to make sure the baby has not developed jaundice) and to address any breastfeeding issues. I verily believe that I had that discussion with* [the Complainant]. *The quoted statement in the Discharge Summary is consistent with my having had that discussion with* [the Complainant].

f. *I do not recall* [the Complainant] *stating or indicating any objection to at-home, follow-up health care by a public health nurse or any objection to the disclosure of the personal health information of* [the Complainant] *and* [her child] *to a public health nurse. Had* [the Complainant] *done so, then I would have noted the objection in the Discharge Summary and given appropriate instructions to the*

[27] [Nurse] Affidavit, dated September 13, 2017, at paras. 10 to 12.

> *nursing staff at the* [Hospital]*. The Discharge summary does not contain any indication that* [the Complainant] *objected to at-home, follow-up health care by a public health nurse. For those reasons, I verily believe that* [the Complainant] *did not state or indicate any objection to at-home, follow-up health care by a public health nurse or to the disclosure of personal health information to a public health* nurse.[28]

[63] This evidence indicates that both the Nurse and the Physician conversed with the Complainant while in hospital, informing her that a public health nurse from the Health Centre would be in contact with her or visit her at home for follow-up care. Their belief was based on a standard practice. Both provide evidence, based on their charting, that they believe the Complainant did not object or refuse this care. In my view, this evidence supports that the Custodian, by virtue of its agents, had a justifiable basis on which to accept as true that the public health nurses at the Health Centre would provide the Complainant and her child with care.

Health care

[64] "Health care" is defined in section 2 as "any activity…that is or includes…any service…that is provided…to maintain an individual's physical or mental health condition and to prevent disease or injury or to promote health."

[65] The Custodian's submission does not address whether the care provided by public health nurses at the Health Centre is "health care" as defined by HIPMA. However, both Affidavits of the Health Centre Director and the Deputy Chief Medical Officer of Health (D/CMOH) describe this care.

[66] In the Affidavit of the D/CMOH, she provides the following.

a. *An at-home visit by a public health nurse…allows the nurse to assess the physical and mental health and well-being of the mother and newborn. For example, during an at-home visit the public health nurse can assess the newborn's ability to feed, weight and general health, and the mother's ability to effectively care for the newborn.*

[28] [Physician] Affidavit, dated September 12, 2017, at paras 9 to 14.

b. *During an at-home visit, the public health nurse can provide education, assistance and guidance to the mother, such as advice regarding feeding the newborn and care for the newborn's umbilical cord.*

c. *During an at-home visit, the public health nurse can identify and respond appropriately to actual or potential problems regarding the health and well-being of the mother or newborn*.[29]

[67] In the Affidavit of the Health Centre Director, she provides the following.

a. *During an at-home visit, the public health nurse assesses the physical and mental health and well-being of the mother and newborn, provides education assistance and guidance to the mother, and identifies and responds to actual or potential problems regarding the health and well-being of the mother or newborn…*[30]

[68] This evidence demonstrates that the at-home, follow-up health care provided by the public health nurses qualifies as health care.

[69] Based on the foregoing, I find that the Records were disclosed to the Health Centre by the Custodian because its agents reasonably believed the Complainant and her child would receive follow-up health care at home from the Health Centre's public health nurses.

c. Was the disclosure to the extent necessary to provide the health care?

[70] The evidence provided by the Custodian about the need to disclose the personal health information in the Records to the Health Centre for the purpose of at-home, follow-up health care is as follows.

> *In order for a public health nurse to provide proper post-natal, at-home health care to a mother and newborn, the public health nurse must have accurate and complete relevant information about the mother and newborn.*

[29] Deputy Chief Medical Officer of Health Affidavit, September 14, 2017, at paras. 10 to 12.

[30] Health Centre Director Affidavit, September 14, 2017, at para. 6.

The Department of Health and Social Services mandated a procedure to ensure that public health nurses have necessary information about mothers and newborn babies. That procedure involves the completion and delivery to the relevant public health nurse of the Records.

The Records were created by Perinatal Services BC (an agency of the British Columbia Provincial Health Services Authority) and adopted by Department of Health and Social Services, Government of Yukon.

The Records are designed to facilitate the communication of essential information from the Hospital to public health nurses, and reflect present clinical best practices in Canada for the disclosure of information by hospitals to public health nurses.

All of the information contained in the Records is reasonably necessary to enable a public health nurse to provide effective at-home follow-up health care to a mother and newborn.[31]

[The Physician] *and* [the Health Centre Director] *each explained their considered opinion that:*

> *the disclosure of the information in the Records by a hospital (such as the Hospital) to the relevant public health nurse (such as the nurses at* [the Health Centre]*) is reasonably necessary to enable the public health nurses to provide effective, at- home follow-up health care to mothers and their newborns in Yukon;*
>
> *there is no other information that could be substituted for the information in the Records and that would effectively enable the relevant public health nurses to provide effective, at-home follow-up health care to mothers and their newborns in Yukon; and*
>
> *a change to the Records, to eliminate or substitute some of the information in the Records, without a compelling clinical justification, would impair the effective provision of health care to mothers and their newborns in Yukon.*[32]

[31] Custodian's initial submissions at paras. 42 (b) to (g) on p.13.

[32] Custodian's initial submissions at paras. 43 (a) to (c) on p.14.

[71] When I reviewed the Records, I noticed words in small-print at the bottom of each Record. These words appeared, in my view, to be instructions about where these records are to be stored and to whom copies are to be provided. Each Record and the words appearing at the bottom are as follows:

- on the British Columbia Newborn Record Part 1 are the words "White - Infant's Chart", "Yellow – Public Health Nurse" and "Pink – Physician/Midwife";
- on the British Columbia Newborn Record Part 2 are the words "White - Infant's Chart", "Yellow – Public Health Nurse" and "Pink – Physician/Midwife";
- on the British Columbia Community Liaison Record POSTPARTUM are the words "WHITE – Community Health" and "YELLOW – Mother's Chart";
- on the British Columbia Community Liaison Record NEWBORN are the words "WHITE – Community Health" and "YELLOW – Mother's Chart"; and
- on the British Columbia Labour and Birth Summary Record are the words "WHITE – MOTHER'S CHART", "YELLOW – INFANT'S CHART" AND "PINK – PHYSICIAN/MIDWIFE".

[72] Given that these forms were created by Perinatal Services BC for use by health care providers in British Columbia, I requested information from them about how these forms are used in British Columbia, including where they are stored and to whom they are copied.

[73] The responses received from Perinatal Services BC that are relevant to my determination about whether the Custodian disclosed personal health information contained in the Records to the extent necessary to provide the health care is as follows.

> *Perinatal Services BC has the provincial mandate to develop a suite of standard perinatal forms used by most health care providers across British Columbia. These forms:*
>
> - *represent best practice in perinatal care;*
> - *act as a document tool to record patient care; and*
> - *are the source of data for the BC Perinatal Data Registry.*
>
> *The PSBC* [Perinatal Services BC] *forms are used for all hospitals and home births in BC…*

> *In British Columbia, the PHN* [public health nurse] *does not receive the NB* [Newborn Record] *routinely even though the form indicates a copy is for this purpose. The Liaison form is the usual document for communication between acute care/hospital and the community/public health nurse. The NB record could be seen as providing added information as the liaison form does not cover all aspects of the NB in hospital stay. Policy around individual community follow up in postpartum period would dictate what information the PHN requires and what is shared. Only information important to the continuation of care should be shared.*
>
> *…the Labour and Birth Summary is not shared with the PHN. The BC liaison record is the tool used to communicate pertinent information that will help the PHN prioritize who she/he should be contacting first. The information helps them decide what should be focused on when talking to the parent. There may be a significant patient safety issues that the PHN should be following up on in a timely manner such as difficulty with feeding a newborn or a wound that needs monitoring. Without this knowledge, delay in care and diagnosis could occur. It is very important to provide post hospital care since most new parents only receive a phone call as follow up and may not have a nurse actually examine the baby. Identification of in hospital issues may initiate a home visit.*
>
> *The BC Liaison record is the primary communication tool used province-wide that is used to maintain the continuity of care across the acute to community care continuum. Information that is shared on these forms is crucial for public health nurses to triage their clients and organize care in a way that best meets the needs of the client.*[33]

[74] As part of my communication with Perinatal Services BC, I confirmed that public health nurses provide at-home, follow-up care to mothers and their newborns in British Columbia. These nurses work in community or public health units in British Columbia.

[75] The evidence provided by the Custodian is that all the personal health information in the Records is reasonably necessary to provide effective at-home, follow-up health care to mothers and their newborns in Yukon, that no other information can be substituted for this information, and that eliminating or substituting some of the information would impair the effective provision of health care to mothers and their newborns in Yukon. The evidence provided by Perinatal Services BC is that only the relevant personal health information in

[33] Letter from Perinatal Services BC, November 10, 2017.

Parts 1 and 2 of the Newborn Record is shared with public health nurses, if necessary, for follow-up health care; the Labour and Birth Summary Record is never shared; and the Postpartum and Newborn Community Liaison Records are routinely shared.

[76] Given that the Custodian appears to disclose more Records and personal health information therein for the purposes of at-home, follow-up health care for mothers and newborns than recommended by Perinatal Services BC, the entity that developed the best practice on which they rely, I asked the Custodian to provide an explanation. Specifically, I asked for a response to the following three questions.

1. *Has the Custodian conferred with Perinatal Services BC about the practices in British Columbia concerning disclosure of completed Forms between health care providers involved in the delivery of a newborn and public health nurses who provide postpartum follow-up care at home? If yes, what is the Custodian's understanding about these practices?*

2. *Does the Custodian's practices involving disclosure of the British Columbia Newborn Record Parts 1 and 2 and British Columbia Labour and Birth Summary Record to public health nurses responsible for postpartum at-home, follow-up health care differ from those used in British Columbia. If yes, what is the Custodian's reasons for the difference?*

3. *These forms were created by Perinatal Services BC under the auspices of British Columbia's Freedom of Information and Protection of Privacy Act. It is assumed, therefore, that the authority to disclose the personal health information in the forms was considered in the context of that legislation. Has the Custodian considered the authority to disseminate these forms under HIPMA? If yes, explain the process undertaken?*

[77] The response from the Custodian to these questions follows.

> [The Custodian] *is in the process of conferring with Perinatal Services BC and other persons about the practices in British Columbia regarding disclosure of completed Forms by health care providers involved in the delivery of a newborn to public health nurses who provide postpartum follow-up care at home.* [The Custodian] *does not yet have a full understanding of those practices, and at this time is not able to comment on the accuracy or completeness of the information set out in the…letter from…Perinatal Services BC.*

> [The Custodian's] *practices regarding the disclosure of the Forms to public health nurses responsible for postpartum at-home, follow-up health care in Yukon, and the rationale for those practices, are described in* [the Custodian's] *previous written submissions and the affidavits filed by* [the Custodian] *regarding this matter. At this time,* [the Custodian] *does not have a full understanding of the practices used in British Columbia, or the rationale for those practices. As indicated,* [the Custodian] *is currently conferring with Perinatal Services BC and other persons regarding the practices in British Columbia.*
>
> *If the practices in British Columbia are different from the practices followed by* [the Custodian], *then there might be important reasons that justify those differences*. [The Custodian] *does not wish to speculate regarding those matters.*
>
> [The Custodian] *does not wish to speculate or make assumptions about Perinatal Services BC's consideration of legal matters when preparing their Forms. As set out in [the Custodian's] previous written submissions, [the Custodian] believes that is* [sic] *has authority under HIPMA section 58(a) to disclose the Forms to public health nurses who provide follow-up at-home health care to mothers and their newborns in Yukon.*[34]

[78] The evidence provided by Perinatal Services BC and the response provided by the Custodian to this evidence suggest to me that the Custodian may have disclosed more of the Complainant's and her child's personal health information than was necessary to the Health Care Centre. Without evidence to explain this difference, and because the burden of proof is on the Custodian to prove it disclosed the Complainant's and her child's personal health information to the extent necessary to provide them with at-home, follow-up health care, I am unable to find that it met its burden of proof.

[79] My finding in respect of this part of subsection 58 (a) is that the Custodian failed to meet its burden of proving that the Custodian disclosed the Complainant's and her child's personal health information to the Health Centre to the extent necessary to provide them with at-home, follow-up health care.

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[34] Custodian response to request for submissions on Letter from Perinatal Services BC, December 8, 2017.

d. Did the Complainant expressly refuse or withdraw her consent to the disclosure of the Records?

[80] Subsection 58 (a) allows the Custodian to disclose personal health information without an individual's consent for the purposes described above "unless the individual has expressly refused or withdrawn their consent to the disclosure." The following HIPMA provisions are relevant to interpreting the meaning of the underlined terms.

[81] The meaning of "consent" in HIPMA, where the context permits, includes the power to give, refuse and withdraw consent.

Withdrawing Consent

[82] Section 42 states as follows:

> *42(1) An individual may withdraw their consent to a custodian's collection, use or disclosure of the individual's personal health information by notifying the custodian who has the custody or control of the personal health information.*
>
> (*2) An individual's withdrawal of consent under subsection (1)*
>
> *(a) must meet the prescribed requirements, if any;*

[83] I already found that the Complainant did not consent to the disclosure of her and her child's personal health information to the Health Centre. As such, she could not withdraw consent she did not give.

Refusing Consent

[84] Subsection 58 (a) requires that an individual's refusal to consent be express. The meaning of express consent is set out in section 35. It states as follows.

> *35(1) Express consent need not be in writing, but where express consent is required under this Act and has been given, the custodian who receives it must record it.*
>
> *(2) Express consent and a record of express consent must satisfy the prescribed requirements, if any*.[35]

[35]The *Health Information General Regulation* does not prescribe any requirements for express consent.

[85] Subsection 35 (1) clarifies that an express refusal to consent may be made orally or in writing. Given this, for the Complainant to have met the express refusal of consent requirement in subsection 58 (a), she would have had to express orally or in writing that she refused consent to the Custodian disclosing the Records to the Health Centre.

[86] The ability to refuse consent is part of an individual's rights under HIPMA to control their own personal health information. There is no temporal application associated with the right to refuse consent identified in HIPMA. This fact together with the legislative scheme and purposes of HIPMA described above support that in order for an individual to fully exercise control over their personal health information under HIPMA, the right to refuse consent for any collection, use and disclosure of personal health information by a custodian must include the ability to refuse consent both reactively upon being asked for consent *and* proactively upon learning in some other way about the custodian's intent on collecting, using or disclosing personal health information with which the individual does not agree.

[87] Based on the evidence of the Complainant, it is clear that she was unaware that her and her child's personal health information would or may be disclosed to the Health Centre for the purposes of receiving at-home, follow-up health care. This conclusion is supported by the evidence of the Custodian's agents who indicate in their respective Affidavits that the Complainant was simply told she would be contacted by a public health nurse[36] or that a public health nurse will visit her at home following her discharge[37].

[88] Had the Complainant been made aware by the Custodian's agents that the Records would be disclosed, she could have expressed her desire to the contrary by proactively refusing her consent for their disclosure. She could not do so because she was never informed that the Records would be disclosed and that she had the ability to refuse.

[89] What occurred in this case demonstrates that there is a need for custodians who plan on disclosing an individual's personal health information without their consent to provide enough information to the individual about the disclosure so they may exercise their right of refusal.

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[36] Affidavit of [Nurse], at para. 10 on p.2.

[37] Affidavit of [Physician], at para 13 on p.2.

[90] In the case before me, there were several opportunities for the Custodian's agents to inform the Complainant that the Records would or may be disclosed when they discussed the at-home, follow-up health care with her. Had any of them done so she could have expressed her desire that the Records not be disclosed and refused her consent to the same. She was, however, never afforded this opportunity. Consequently, her and her child's personal health information was disclosed contrary to her wishes.

[91] My finding about whether the Complainant withdrew or refused consent to disclosure of the Records is that she did not.

Did the Custodian exercise its discretion for the disclosure?

[92] In the submissions from the Custodian, it stated that the Records were disclosed as a result of HSS *mandating* that, once completed, the British Columbia Newborn Records Part 1 and Part 2, the British Columbia Community Liaison Record POSTPARTUM, the British Columbia Community Liaison Record NEWBORN, and the British Columbia Labour and Birth Summary Record are to be disclosed to public health nurses working in health centres across the Territory for the purpose of providing post-partum at-home, follow-up health care to new mothers and newborns. This evidence supports that the Custodian did not exercise its discretion about whether to disclose the Records; rather, it did so according to the mandated procedure. Given this, my finding is that the Custodian failed to exercise its discretion as required.

[93] I will add here that the Custodian is required to follow the rules in HIPMA for any collection, use and disclosure of personal health information. It cannot, therefore, agree to a process that may cause it to be in non-compliance with HIPMA. HSS is also a custodian under HIPMA and it too must only collect personal health information where authorized. Given this, the Custodian and HSS should evaluate any agreements or processes established where there is an expectation that personal health information be provided to one by the other to ensure the requirements of HIPMA are met.

Finding - Subsection 58 (a)

[94] My finding on whether the Custodian was authorized by subsection 58 (a) to disclose the Complainant's and her child's personal health information to the Health Centre is that it was not authorized because it failed to meet its burden of proving it met all the requirements of subsection 58 (a). In addition, I find that it failed to exercise its discretion for the disclosure as required.

Finding - Other Authority for Disclosure

[95] Given that it could not rely on subsection 58 (a), I examined the other disclosure provisions in HIPMA to determine if there is another provision that would authorize the disclosure and find there are none.

Issue Two: If the disclosure of the Complainant and her child's personal health information is authorized, did the* [Custodian] *comply with sections 15 and 16 of HIPMA?

[96] As I found the disclosure was unauthorized, I am unable to consider whether the disclosure met the requirements of sections 15 and 16.

VIII FINDINGS

Issue One

[97] On whether the Custodian's disclosure of the Complainant's and her child's personal health information in the Records to the Health Centre is authorized under HIPMA, I find that it was not.

Issue Two

[98] I did not consider Issue Two.

IX RECOMMENDATIONS

[99] Subsection 109 (1) identifies that the IPC has broad authority under HIPMA to make recommendations. It states as follows.

> *109 (1) After completing the consideration of a complaint under this Act, the commissioner must prepare a report that sets out the commissioner's findings, any appropriate recommendations and reasons for those findings and recommendations.*

[100] My recommendations in respect of Issue One are as follows.

a. I recommend that within 45 days of receiving this Consideration Report, the Custodian take reasonable steps to have the Records containing the personal health information of the Complainant and her child that was disclosed to the Health Centre returned or destroyed, and communicate the steps taken in this regard to the Complainant and the IPC.

b. I recommend the Custodian continue its consultation with Perinatal Services BC to determine whether it needs to modify its practice of disclosing completed copies of the British Columbia Newborn Records Part 1 and Part 2, British Columbia Community Liaison Records POSTPARTUM and NEWBORN, and British Columbia Labour and Birth Summary Record to public health nurses in community health centres in Yukon for mothers and newborns who are receiving at-home, follow-up health care, and communicate its decision to the IPC.

c. In the future, where the Custodian does not seek consent from individuals to disclose personal health information for the purpose of providing them post-partum at-home, follow-up health care, I recommend the Custodian adopt the practice of informing these individuals about the disclosure of their personal health information and their right to refuse consent for the disclosure so that they may exercise control over that information.

d. I recommend the Custodian review its practice of disclosing a mother's and her newborn's personal health information for a purpose mandated by HSS to ensure this practice does not cause it to violate HIPMA.

X PUBLIC BODY'S DECISION AFTER REVIEW

[101] Subsection 112 (1) requires that within 30 days after receiving this Consideration Report, the Custodian must:

> *(a) decide whether to follow any or all of the recommendations of the commissioner; and*
>
> *(b) give written notice of their decision to the commissioner.*

[102] Subsection 112 (2) states that "[i]f [the Custodian] does not give written notice within the time required by subsection (1), [the Custodian] is deemed to have decided not to follow any of the recommendations of the commissioner."

XI APPLICANT'S RIGHT OF APPEAL

[103] The Complainant's right of appeal is set out in section 114. It states as follows.

> *114 Where a report includes a recommendation, and* [the Custodian] *decides, or is deemed to have decided, not to follow the recommendation, or having given notice of its decision to follow the recommendation has not done so within a reasonable time, the complainant may, within six months after the issuance of the report, initiate an appeal in the court.*

Diane McLeod-McKay, B.A., J.D.
Yukon Information and Privacy Commissioner

Distribution List:

- Custodian
- Complainant

Postscript

What occurred in this case demonstrates that seeking consent for collection, use and disclosure of personal health information is the best policy. There was no evidence before me in this case that the Custodian sought consent. Had it done so, the Complainant could have exercised her right of refusal for the disclosure of her and her child's personal health information. As indicated, she was never afforded this opportunity and this information was disclosed contrary to her wishes for health care she never intended on receiving nor received.

HIPMA is consent based legislation. The purpose for this is clear. Consent is the primary way that individuals are able to control their own personal health information. When custodians do not seek consent, individuals may lose their ability to exercise any control.

Unfortunately, in HIPMA there is authority for public body custodians to not only use and disclose personal health information for the provision of health care without consent but to also collect it without consent. Subsection 53 (c) authorizes a custodian who is a public body to collect personal health information without consent.[38] "Public body" is defined in section 2 of HIPMA as having "the same meaning as in the *Access to Information and Protection of Privacy Act*"(ATIPP Act). The result of this provision is that the two largest custodians in Yukon, YHC and HSS, are not required to obtain an individual's consent to collect their personal health information. HIPMA differs from other similar health information legislation in Canada that is based on the Model Code in this regard.

Not only is this authority contrary to the Model Code requirement for consent, it has significant consequences as it pertains to an individual's ability to exercise control over their personal health information. If these custodians elect to use this authority, individuals' ability to control their personal health information through the consent provisions is, essentially, removed. In my view, the broad authority of these custodians to collect, use and disclose personal health information without consent disadvantages Yukoners. When HIPMA is reviewed, I intend to recommend that this authority be removed. Details about this authority follows.

Consent and Control in HIPMA

In HIPMA, custodians may obtain consent in one of two ways, either expressly or impliedly. Custodians can meet the requirements of implied consent simply by posting a notice containing specific wording. As stated, for consent to be valid under HIPMA, it must be knowledgeable. Consent is knowledgeable only if the individual knows:

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[38] There are three ways a custodian can collect personal health information in HIPMA. They are set out in section 53 as follows.

Where collection is permitted

53 A custodian may collect an individual's personal health information only if
(a) the custodian has the individual's consent and the collection is reasonably necessary for a lawful purpose;
(b) the collection is authorized by law;[1] or
(c) the collection relates to and is necessary for carrying out a program or activity of a public body or a health care program or activity of a custodian that is a branch, operation or program of a Yukon First Nation.

a. the purpose of the collection, use or disclosure;

b. that they may give or withhold consent and having once given consent, may withdraw that consent; and

c. that without their consent the personal health information can be collected, used or disclosed only in accordance with HIPMA.

The reason that consent must be knowledgeable is obvious. It informs individuals about what a custodian may do concerning their personal health information; it informs them about how they exercise control over it; and it informs them that there are limits to this control as set out in HIPMA. The key is that individuals are informed.

When a custodian does not obtain consent from an individual to collect, use *or* disclose their personal health information, the individual is left uninformed about their choices.

Individuals who do not give their consent, express or implied to the collection of their personal health information are never informed about the purpose of the collection or that they can refuse consent. Without this information, they do not know they have any choice about what happens with their personal health information when engaging the services of these custodians.

Even if a public body custodian only obtained consent for the collection of personal health information from individuals and did not do so for its use or disclosure, while not perfect, individuals would at least be aware at the point of collection that they have some ability to control their own personal health information. This may then prompt them to ask questions about its subsequent use or disclosure.

As it stands, in HIPMA if a public body custodian does not obtain consent to collect personal health information by relying on subsection 53 (c) and also does not obtain consent for its use under paragraph 55 (1)(a) or disclosure under subsection 58 (a), the individual is left completely in the dark about their choices and their ability to exercise the control afforded to them by HIPMA over their personal health information.

As can be seen by comparing HIPMA with other health information privacy legislation in Canada that is based on the Model Code, HIPMA is different because it allows public body custodians to collect personal health information without consent.

Health Information Privacy Laws in other Jurisdictions

New Brunswick's *Personal Health Information Privacy and Access Act*, SNB2009, c P-7.05 (NB PHIPAA)

Individuals whose personal health information is collected by custodians subject to NB PHIPAA are informed about the collection of their personal health information in one of two ways. Either they are informed when they are asked for consent by a custodian or, where no consent is sought, they are informed by way of notice.

The general rule in NB PHIPAA is that custodians are required to obtain consent to collect personal health information from an individual. Consent must be knowledgeable.[39] The knowledgeable requirement includes ensuring that they are informed that they can refuse or withdraw consent. The only other ways a custodian can collect personal health information are as follows:

a. the individual is incapable of giving consent and there is no substitute decision maker or they have been certified under the *Mental Health Act* or it is necessary to provide health care to the individual;

b. if [NB PHIPAA] requires or permits it; or

c. they are collecting for an integrated service, program or activity.[40]

For any collection of personal health information with or without consent, a custodian is required to "before it is collected or as soon as practicable afterwards to take reasonable steps to inform the individual of the purpose of collection…"[41] The exception to this rule is if the custodian, through its consent process or otherwise, has already informed the individual of the purpose. The process of being informed through consent or notice, as the case may be,

[39] NB PHIPAA subsection 17 (2). "Knowledgeable" in NB PHIPAA has the same requirements as HIPMA's "knowledgeable".

[40] "Integrated service, program or activity" is defined in New Brunswick's *Right to Information and Protection of Privacy Act* as "an authorized service, program or activity that provides support or assistance with respect to the mental, physical or social well-being of individuals through (a) a public body and one or more other public bodies working cooperatively, or (b) one public body working on behalf of one or more other public bodies".

[41] In NB PHIPAA, non-custodians must also provide the individual with the name of a contact person who can answer questions about the collection.

provides an individual with choices about collection. This may, in turn, signal to them that they also have choices for use and disclosure.

Newfoundland and Labrador's *Personal Health Information Act,* SNL 2008, c P-7.01 (NL PHIA)

In NL PHIA, individuals are informed about the collection of their personal health information through the consent requirements.

The general rule is that a custodian is required to obtain consent to collect personal health information from an individual. The exception is where the individual is incapable of providing consent and:

a. there is no representative or one available in a timely manner to give consent;

b. the individual is certified under the *Mental Health Act*;

c. the collection is necessary to provide health care to the individual.[42]

Consent must be knowledgeable.[43] The knowledgeable requirement includes ensuring that they are informed that they "may give or withhold consent". Under NL PHIA, individuals have the same authority as under NB PHIPAA to refuse to give consent, place conditions on it or withdraw it after it is given.[44]

Ontario's *Personal Health Information Protection Act*, 2004, SO 2004, c 3 Sch A (ON PHIPA)

In ON PHIPA, individuals are informed about the collection, use and disclosure of their personal health information through the consent requirements.

The general rule in ON PHIPA is that custodians are required to obtain consent for the collection, use or disclosure of personal health information.[45] Consent must be knowledgeable.[46] Consent is knowledgeable if the individual knows the purpose of collection,

[42] NL PHIA paragraph 29 (1)(a).

[43] NL PHIA section 23. "Knowledgeable" in NL PHIA has the same requirements as HIPMA's "knowledgeable".

[44] NL PHIA paragraph 23 (2)(b), subsection 27 (2), and section 28.

[45] ON PHIPA subsection 29 (a).

[46] ON PHIPA paragraph 18 (1)(b).

use or disclosure and that they may give or withhold consent.[47] Despite the general rule, custodians are authorized to collect personal health information if the information is reasonably necessary to provide health care to the individual and it is not reasonably possible to obtain consent in a timely manner.[48]

Authority of Public Bodies in HIPMA

The addition of subsection 53 (c) in HIPMA, which authorizes public body custodians to collect personal health information without consent and additionally to use and disclose it without consent to provide health care means that, other than what may be obvious to the individual at the point of collection, and during any interactions with health care providers while receiving care, the individual may never know why their personal health information is being collected and used, or to whom it will be disclosed.

Unlike NB PHIPAA, HIPMA does not contain any notice requirements outside the consent rules that require custodians to provide information to individuals about the purpose of collection and their rights.

Prior to HIPMA, these public bodies were required under the ATIPP Act to inform individuals about the purpose of collecting personal health information along with the contact information of an individual who could answer questions. The addition of subsection 53 (c) in HIPMA, without adding a notice requirement, has the effect of allowing public body custodians to collect personal health information without providing any information to individuals about the collection. This potentially removes the only means of informing individuals about their rights.

As a result of the foregoing, in my view subsection 53 (c) should be removed from HIPMA so an individual's ability to control their personal health information through the consent provisions is not compromised because of this subsection.

[47] ON PHIPA subsection 18 (5).

[48] ON PHIPA subsection 36 (2). Custodians are authorized to disclose personal health information for reasons other than providing health care in ON PHIPA in sections 38 to 44.