

COMMUNITY LIVING disABILITY SERVICES

Subject: **Protection of Personal Information Policy and Guidelines**

ADULT DISABILITY SERVICES

PURPOSE

The purpose of this section is to provide a uniform process for meeting both departmental policy and legislative requirements for the protection of personal information about adults living with an intellectual disability. The safeguarding of personal information protects the privacy and legal rights of the individual and of the Department of Families.

LEGISLATIVE FRAMEWORK

As a “public body” defined by The Freedom of Information and the Protection of Privacy Act (FIPPA) Section 1, and The Personal Health Information Act (PHIA) Section 1(1), the department has a duty and obligation to:

- assist individuals in gaining access to their own personal information and other information held by the Department;
- correct personal information at the individual’s request if it is determined that there is an error or omission; and
- protect the privacy of individuals in the collection, use, disclosure, security, retention and destruction of their personal information.

As well, The Adults Living with an Intellectual Disability Act (ALIDA) requires that anyone engaged in the administration of ALIDA maintain confidentiality of information about adults with an intellectual disability (ALIDA, Section 160).

FIPPA is available on the Department of Finance website <https://www.gov.mb.ca/fippa/>. PHIA is available on the Department of Health website (<https://www.gov.mb.ca/health/phia/index.html>).

DEFINITIONS UNDER LEGISLATION

“**personal information**” - (FIPPA, Section 1 provides examples of personal information but is not an exhaustive list) means any “recorded information on an identifiable individual,” including:

- a) name,
- b) home address, or home telephone, facsimile or e-mail number,
- c) age, sex, sexual orientation, marital or family status,
- d) ancestry, race, colour, nationality, or national or ethnic origin,
- e) religion or creed, or religious belief, association or activity,
- f) **personal health information** about the individual,
- g) blood type, fingerprints or other hereditary characteristics,
- h) political belief, association or activity,
- i) education, employment or occupation, or educational, employment or occupational history,
- j) source of income or financial circumstances, activities or history,
- k) criminal history, including regulatory offences,
- l) personal views or opinions, except if they are about another person,
- m) the views or opinions expressed about the individual by another person, and
- n) an identifying number, symbol or other particular assigned to the individual.

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“personal health information” (FIPPA - Section 1, PHIA – Section 1(1)) - means recorded information about an identifiable individual that relates to:

- a) the individual's health, or health care history, including genetic information about the individual,
- b) the provision of health care to the individual, or
- c) payment for health care provided to the individual, **and includes:**
- d) the PHIN as defined in The Personal Health Information Act and any other identifying number, symbol or particular assigned to an individual, and
- e) any identifying information about the individual that is collected in the course of, and is incidental to, the provision of health care or payment for health care.

“health care” (PHIA, Section 1(1)) - means any care, service or procedure

- a) provided to diagnose, treat or maintain an individual's physical or mental condition,
 - b) provided to prevent disease or injury or promote health, or
 - c) that affects the structure or a function of the body,
- and includes the sale or dispensing of a drug, device, equipment or other item pursuant to a prescription.

“PHIN” (PHIA, Section 1(1)) - means the personal health identification number assigned to an individual by the minister to uniquely identify the individual for health care purposes.

WORKING DEFINITIONS

Personal information in most cases refers to written information recorded or contained in the file of a specific individual who is receiving or has received services from the Community Living disABILITY Services Program. Personal information that identifies the identity of a specific individual may also be recorded or stored in any other manner, form or medium. As such, personal information may not only be written, but also may also be photographed, or stored by graphic, electronic or mechanical means (e.g., audio or videotapes, computer disks or drive). Personal information does not refer to statistical information that does not identify specific individuals.

Collection of personal information refers to the retrieval of personal information directly from the individual or someone other than the individual the information is about. When providing personal information, the individual may answer questions verbally during an interview or complete an application, survey or questionnaire in writing. Others may also provide personal information on the individual verbally or in writing (e.g., report, letter).

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Use of personal information refers to the access and sharing of personal information within the Department of the Province of Manitoba (including contracted agencies) that collected the personal information.

Disclosure of personal information means revealing or sharing personal information with someone outside the department other than to the individual the information is about. The sharing of personal information between two different departments of the Province of Manitoba is considered “disclosure” under FIPPA.

Sharing of personal information refers to information being shared verbally, by allowing someone to view or hear it (e.g., audio or videotape), or sending information by mail, facsimile (FAX) or e-mail.

PROCESS

GENERAL POLICY

The following policy is written from the perspective that the individual is able to make their own decisions. However, the rights of the individual may be exercised by another person. Refer to FIPPA Section 79 and PHIA Section 60 for complete listings of when the rights of the individual may be exercised by another person.

For adults living with an intellectual disability, the persons commonly involved include the individual’s Substitute Decision Maker (SDM)/committee or the individual’s support network. The individual’s SDM or committee must be involved with the process if the SDM or committee has appropriate powers relating to the information in question or to the provision of consent. A support network member may also be involved with assisting the individual with making decisions where appropriate. Refer to Sections C144 and C77 of this manual respectively for further information

1. Under FIPPA Section 36(1) and PHIA Section 13(1), information may be collected on an individual if it relates directly to and is necessary for an existing program/function or activity of the Department (i.e., Community Living disABILITY Services Program). Under FIPPA, personal information may also be collected if:
 - it is authorized by an Act or Regulation of Manitoba or Canada (e.g., ALIDA); or
 - it is collected for law enforcement or crime prevention purposes. Law enforcement includes any action taken to enforce an Act or Regulation (FIPPA, Section 1).

For example, Community Service Workers may collect personal information about an individual during intake, assessment, individual planning and the implementation and follow-up to the individual plan. As well, ALIDA authorizes the collection of personal information during the investigation of abuse/neglect allegations of an adult with an intellectual disability (refer to Section C99.1 of this manual, Protection Policy, Procedures and Guidelines).

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2. Personal information must be collected directly from the individual whenever possible (FIPPA, Section 37(1), PHIA, Section 14(1)). When this is not possible, another method of collection must be authorized under FIPPA or PHIA. Refer to Exceptions to Direct Collection of Personal Information, on page 6 of this section.

3. It is also good practice to inform the individual about their right of access to personal information about themselves (refer to Appendix A, C155.3A of this manual). Under FIPPA, Section 37(2) and PHIA, Section 15(1), where personal information is collected directly from the individual it is about, reasonable steps must be taken to inform the individual about the following: *
 - the purpose for which the information is collected;
 - the legal authority for the collection of personal information (e.g., Collection of Personal Information notice, Section C44B of this manual);
 - the officer or employee (i.e., title, business address and telephone number) who can answer the individual's questions about the collection of the information (refer to Section C44B of this manual).

* *Note: The above need not occur, where the individual has already been informed about the collection of the same or similar information for the same or related purpose (FIPPA, Section 37(3) and PHIA, Section 15(2)).*

4. Consent must be sought from the individual for the use or the disclosure of their information. This need not occur where the individual has already given consent for the use/disclosure directly related to the purpose the information was collected in the first place. Refer to FIPPA Sections 43 and 44(1) and PHIA Section 21. If the purpose is not the same and individual consent is not possible, the use/disclosure must be authorized under legislation. Refer to Exceptions to Consent for Use/Disclosure of Personal Information, on page 6 of this section.

5. Staff must only collect, use or disclose as much personal information (minimal amount) about an individual as is reasonably necessary to accomplish the purpose for which it is collected. Refer to FIPPA Sections 36(2) and 42(2) and PHIA Sections 13(2), 20(2) and 22(3). Any uncertainty about the amount of information collected, used or disclosed is to be clarified with an immediate supervisor.

6. The use and disclosure of personal information is restricted to those employees within the Department who need to know or need to access the information to perform their duties. That is, to carry out the purpose for which the information was collected. Refer to FIPPA Section 42(3) and PHIA Section 20(3).

Note: No action may be brought against the Department or staff for damages resulting from the disclosure or failure to disclose information when done in good faith (FIPPA Section 84). No action may be brought against the Department or staff where it is reasonably believed that the use or disclosure of personal health information is authorized under PHIA (Section 62).

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- 7. If personal information will be used to make a decision that directly affects the individual, staff must take reasonable steps to ensure that it is complete and accurate (FIPPA, Section 38). Under PHIA Section 16, staff must take reasonable steps to ensure that personal health information is accurate, up to date, complete and not misleading before using or disclosing it.
- 8. The Department is required to establish reasonable security arrangements against the unauthorized access, use, disclosure, retention or destruction of an individual’s information (FIPPA Sections 40(1), 40(2) and 41, PHIA Sections 17(1) to 17(4)). However, PHIA requires more stringent security safeguards (refer to PHIA Sections 18 and 19 and Personal Health Information Regulation 245/97). For more information, refer to Security of Personal Information Guidelines, page 8.

Note: It is an offence to disclose personal information in contravention of FIPPA or obtain personal health information in contravention of PHIA. It is also an offence to destroy or erase the individual’s information to evade a request for access to records Refer to FIPPA Section 85 and PHIA Section 63.

- 9. Departmental staff may also be required to provide information or records to the **Ombudsman** of Manitoba (or delegate). The Ombudsman may monitor and ensure compliance with FIPPA and PHIA or conduct investigations in response to complaints under these Acts. Refer to Appendix B, Complaints to the Ombudsman.

Note: It is an offence to make a false statement to, mislead, attempt to mislead or obstruct the Ombudsman (or delegate). Refer to FIPPA Section 85 and PHIA Section 63.

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EXCEPTIONS TO DIRECT COLLECTION OF PERSONAL INFORMATION

Personal information may only be collected from a source other than the individual it is about under specific circumstances. Refer to FIPPA Section 37(1) and PHIA Section 14(2). File documentation should explain why information is collected from another source where appropriate. For the Community Living disABILITY Services Program, the following are the most common circumstances when it is permissible to collect personal information about the individual from another source:

- The individual or a person representing their rights (e.g., SDM or committee with the appropriate powers) authorizes the collection (FIPPA and PHIA). Note: Consent should be sought if collection involves video taping, audio taping, photographing or viewing (i.e., one way mirror).
- The personal information is required to determine and verify the individual’s eligibility for a program, benefit or service (FIPPA).
- Collecting information directly from the individual could reasonably result in inaccurate information or could reasonably be expected to cause harm to the individual or another person (FIPPA and PHIA).
- The collection of information is in the interest of the individual but time and circumstances do not permit collection directly from the individual (FIPPA and PHIA).
- The collection is authorized or required by court order or by an Act or Regulation of Manitoba or Canada (FIPPA and PHIA).
- The personal information is required to inform the Public Guardian and Trustee or the Commissioner for Adults Living with an Intellectual Disability about clients or potential clients (FIPPA).
- The personal information is collected for law enforcement or crime prevention (FIPPA). Law enforcement includes any action taken to enforce an Act or Regulation (Section 1).
- The personal information is collected for auditing, monitoring or evaluating the activities of the Department (FIPPA).

EXCEPTIONS TO CONSENT FOR USE/DISCLOSURE OF PERSONAL INFORMATION

The individual’s direct consent for the use or disclosure of personal information is not required under specific circumstances. Refer to FIPPA Sections 43 and 44(1), PHIA Sections 21 to 23(2) and to ALIDA, Section 160 for complete lists of exceptions. However, wherever possible, consent should be sought. The following are the common circumstances in the Community Living disABILITY Services Program when direct consent does not have to be sought from the individual or a person authorized to consent on the individual’s behalf (e.g., SDM, committee).

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- The personal information is used or disclosed for the purpose it was collected in the first place or for a consistent purpose (FIPPA). “Consistent purpose” (FIPPA Section 45) means that it has a reasonable and direct connection to the purpose for which the information was collected in the first place and is necessary to perform the statutory duties (e.g., ALIDA), operate the program or carry out the activities of the Department (i.e., Community Living disABILITY Services Program).
- The personal health information is used for the purpose it was collected in the first place or is directly related to that purpose (PHIA).
- The use/disclosure of personal information is necessary to determine or verify the individual’s eligibility for a program, service or benefit (FIPPA).
- The disclosure is in the best interests of the individual in the opinion of the person requested to disclose the information (ALIDA).
- The use/disclosure is necessary to protect the mental or physical health or safety of any individual or group of individuals (FIPPA and PHIA).
- The disclosure of personal health information is necessary to provide health care to the individual, unless the individual has instructed that disclosure not be made (PHIA).
- Disclosure is necessary to contact a relative or friend of an individual who is injured, incapacitated, or ill, or any person it is reasonable to inform about the circumstances of an individual’s death (FIPPA and PHIA).

With respect to legislation/legal matters

- An Act or Regulation of Manitoba or Canada authorizes, requires or mandates compliance for the use/disclosure of personal information (FIPPA and PHIA).
- Disclosure is required to comply with a subpoena, warrant or order issued or made by a court, person or body with the jurisdiction to compel the production of information (FIPPA and PHIA).
- The use/disclosure is necessary for law enforcement or crime prevention (FIPPA). Law enforcement includes policing, investigations, inspections, and proceedings that are conducted for enforcing an Act or Regulation.

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With respect to the Department

- The use/disclosure of personal information to the minister or an officer of the Legislature if it is necessary to carry out their responsibilities or duties (FIPPA).
- The use/disclosure of personal information is necessary for managing or administering the personnel of the Department (FIPPA).
- The use/disclosure of personal information is necessary to provide legal or technological services to the Department. (Note: FIPPA Section 44(2) and PHIA Sections 25(3) require that a written agreement be made with an outside source of technological services for the protection of personal information/personal health information.)
- The use/disclosure of personal information is necessary for audit by the Provincial Auditor or any other person or body, or the Government of Canada to monitor, evaluate or audit cost-shared programs (FIPPA).

SECURITY OF PERSONAL INFORMATION GUIDELINES

The following guidelines have been adopted to ensure the security of personal information. These guidelines also apply to all confidential records maintained by the Department:

- Staff and volunteer orientation to ensure understanding of and compliance with the Protection of Personal Information Policy and Guidelines (page 8 of this section).
- The collection, use and disclosure of personal information in a secure manner within and outside of the Department that collected the information (page 9 of this section).
- The secure storage, transfer and destruction of records containing personal information (page 10 of this section).
- Provisions for a record of security breaches and corrective procedures to address security breaches (page 11 of this section).

Orientation to the Protection of Personal Information Policy and Guidelines

The following policy has been adopted for all staff (casual, term or contract) and volunteers who have access to personal information:

- New staff and volunteers are to be formally oriented to the Protection of Personal Information and Guidelines and the consequences of breaching these before their contact with personal information.
- All staff and volunteers are to receive a copy of the Protection of Personal Information Policy

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and Guidelines.

- Staff and volunteers may be required to sign:
 - an Oath of Office to acknowledge that they are bound by The Protection of Personal Information Policy and Guidelines; and
 - a Pledge of Confidentiality with respect to personal health information
- Staff who have access to electronic networks must comply with the Employee Network Usage Policy.

Guidelines on Secure Collection, Use and Disclosure of Personal Information

- Conversations pertaining to confidential information are to take place in private and away from public access. Dictation and transcription is also to occur away from public scrutiny. As well, confidential information is not to be discussed by staff within earshot of the public such as in bars, restaurants and coffee rooms.
- Under no circumstances is a file to be removed from the office and released to an external source. Information may be written, photocopied, or verbally released following the policy on the collection, use and disclosure of personal information (pages 3 to 8).
- Confidential information being sent by mail or courier to government offices is to be placed in a sealed envelope, marked confidential, and include a covering memo that has contact information in full and a message regarding privacy legislation to inform the recipient of their obligation to maintain confidentiality.
- Mail labelled as confidential is to be forwarded to the addressee unopened.
- Confidential information is not to be shared by telephone or personal contact unless positive identification of the recipient is established. If a positive identification of the person requesting information cannot be established, a written request must be received from the agency/person before release of any information.
- The communication of confidential information by fax is to be limited to authorized personnel. Incoming fax communiqués of such information are to be placed in a sealed envelope marked confidential, and delivered to the addressee.
- Where records are used for instructional purposes, information, which may lead to identification of the individual, is to be deleted.

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Secure Storage, Transfer and Destruction of Records**Secure Storage**

- Records containing confidential information are not to be left out in the open or unattended so that personal information is accessible to unauthorized persons.
- Records containing confidential information are to be kept under lock and key when the office is not in use, including evenings, weekends and holidays.
- Where central filing systems are operational, a standardized procedure for removing records and documenting the flow of records is to be established and implemented on a program by program basis.
- Access to central filing systems is to be limited to authorized personnel. Central filing cabinets are to be opened and closed by designated personnel, at standard times throughout working hours, in line with office operations.
- Reasonable precautions must be taken to protect confidential information from fire, theft, vandalism, deterioration, accidental destruction or loss and other hazards.
- To prevent unauthorized access, confidential information stored on a computer system or a computer network must be protected by a series of passwords known only to staff who need to access the information to carry out their work responsibilities. As well, a record must be kept of every addition to, deletion from or modification of personal information.
- Confidential information must not be transmitted by or exposed to electronic networks unless appropriately secured. Any questions regarding electronic network transmission or appropriate security should be directed to management.

Transfer and Destruction

- Any record that has been removed from the building where it is stored and is to be transported must be kept from public view and under lock and key if left unattended. Only the minimum information necessary should be removed from the building.
- Records are not to be taken out of the building where storage occurs unless the records are being transported to another work location or to the Provincial Archives. Partial data may be removed temporarily to fulfil working needs.

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- Records containing confidential information are only to be transferred by authorized government personnel, by courier, or by registered mail. The information is to be packaged and sealed in an envelope and marked “confidential.” Confidential information being sent by mail or courier to government offices must include a covering memo that has contact information in full and a message regarding privacy legislation to inform the recipient of their obligation to maintain confidentiality. The sender must give special attention to addressing the envelope with accuracy.
- Records Authority Schedules are to be followed for the transfer of files to the Provincial Archives or for the secure storage of confidential information to be retained/destroyed. The regional Administrative Officer is aware of these procedures. Following the established procedures ensures that the individual has access to their personal information for a reasonable period of time (FIPPA Section 40(2)) after the closure of the file.
- The disposal/destruction of confidential information recorded in any other medium other than paper must be done in a manner that adequately protects the security of the information. A record must be kept of individual’s name or information destroyed, the time period it relates to, the method of destruction and the person responsible for supervising the destruction.

Security Breaches involving Confidential Information

Security breaches of confidential information must minimally include:

- A record of any successful or unsuccessful breach of confidentiality.
- A review of electronic records regularly to detect any security breaches.
- An audit conducted every two years on security safeguards.
- Steps to correct deficiencies as soon as practical when deficiencies in security safeguards are identified.

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