

MANITOBA OMBUDSMAN PRACTICE NOTE

Practice Notes are prepared by Manitoba Ombudsman to assist persons using the legislation. They are intended as advice only and are not a substitute for the legislation.

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PRIVACY CONSIDERATIONS FOR FAXING PERSONAL AND PERSONAL HEALTH INFORMATION

The Freedom of Information and Protection of Privacy Act (FIPPA) and The Personal Health Information Act (PHIA) set out rules to protect individuals against the unauthorized use and disclosure of recorded personal and personal health information. Public sector bodies and trustees are required to make reasonable security arrangements and implement safeguards to ensure confidentiality and protect personal and personal health information (section 41 of FIPPA; section 18 and 19 of PHIA as well as section 2 and 3 of PHIA regulation). These rules apply when personal and personal health information is shared by facsimile (fax).

When personal and personal health information is faxed to unintended recipients, there is an unauthorized disclosure resulting in a breach of privacy of the individuals whom the information concerned.

A misdirected fax of sensitive information concerning an individual's health status, diagnosis or care needs, financial situation or employment information constitutes a breach of privacy under FIPPA or PHIA. A breach of privacy cannot be undone and can have significant consequences for the individual as well as the public sector body or trustee. The individual may be exposed to harm, including damage to reputation, loss of business or employment opportunities, physical harm, fraud and identity theft. A privacy breach can also harm the public sector body or trustee. These harms may include damage to reputation, loss of public trust, as well as financial and other resource costs incurred when dealing with the breach and notifying the affected parties.

POTENTIAL RISKS ASSOCIATED WITH FAXING

- Sending the document to the wrong number and it is received by an unintended recipient.
- Fax is sent to the correct number but viewed by an unintended recipient. This usually occurs when the faxed information is left unattended, or the fax machine is located in an area where multiple people have access to it.
- Fax number of the intended recipient has changed or the intended recipient is no longer employed with the public sector body/trustee.

TIPS TO CONSIDER WHEN FAXING PERSONAL AND PERSONAL HEALTH INFORMATION

- Determine if there is an immediate time requirement that necessitates sending the information by fax.
- Wherever practical, remove all personal identifiers and confidential information before faxing the information.
- Always use a fax cover sheet, clearly identifying the sender, the contact information for the sender, the intended recipient, the recipient's fax number and the total number of pages sent. The fax cover sheet should contain a confidentiality clause specifying the material is confidential and intended only for the recipient. The confidentiality clause should request that the sender be notified immediately if the fax was received by someone in error.
- Confirm the fax number of intended recipient prior to sending the fax.
- View the display window to verify the fax number has been keyed in correctly.
- Contact the recipient to advise a fax will be sent or to confirm receipt of a sent fax.
- Obtain or print a fax confirmation report once the fax has been sent to ensure the total number of pages was sent to the intended recipient's fax number.
- Whenever practical, pre-program commonly used fax numbers. Pre-programmed numbers should be checked regularly to ensure the numbers are accurate and up-to-date, as fax numbers can be reassigned after a specified period of time has lapsed from the date the fax number has been relinquished.
- Retrieve sent materials/records/documents from the fax machine as soon as possible after sending. If faxing personal or personal health information, stay by the machine to ensure all materials were transmitted correctly.
- Ensure fax machine is located in a place that would prevent unauthorized persons from viewing the faxed information.
- Where possible, designate one person to be responsible for sending and receiving personal and/or personal health information by fax.

If immediate time requirements necessitate faxing sensitive personal or personal health information, a public sector body or trustee should consider using unique identifiers or codes to protect the identity of the individual the information is about. Where possible, a public sector body or trustee using a fax modem (a fax generated or received by computer) should adopt privacy enhancing technologies such as passwords or encryption.

Public sector bodies and trustees should have a workplace policy on faxing personal and personal health information that specifies the type of information that can be faxed and sets out steps to mitigate the risk of faxing to an unintended recipient. It is important that all employees are trained and made aware of this policy.