

# MANITOBA OMBUDSMAN PRACTICE NOTE

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## RESPONDING TO A COMPLAINT ABOUT COLLECTION OF PERSONAL HEALTH INFORMATION UNDER *THE PERSONAL HEALTH INFORMATION ACT (PHIA)*

Under PHIA (subsection 39(2)), an individual has a right to make a privacy complaint to the Ombudsman alleging that a trustee has collected his or her personal health information contrary to PHIA. This Practice Note has been prepared to assist trustees in responding to this type of complaint.

When Manitoba Ombudsman investigates a complaint concerning collection, information would be requested from the trustee about the individual's allegation. There is certain information that would be relevant to any complaint about a collection, which is outlined below. There could be other information relevant to a particular complaint that may also be requested from a trustee.

Each provision that authorizes the collection of personal health information has certain requirements that must be met. It is important that a trustee addresses each component of these requirements.

If representations are too general or if the necessary connections between the collection, the authorizing provision and the personal health information are not clearly made, the representations will not establish that the provision applies.

For a complaint about collection, a trustee would be asked by our office to:

1. confirm whether personal health information was collected
2. provide a copy of the personal health information that was collected
3. explain how the information was collected (the means or method, such as by the trustee documenting the personal health information received by telephone or receiving it in a letter)
4. indicate from whom the information was collected
5. indicate when the information was collected (the date or time frame)
6. indicate the lawful purpose and describe its connection with a function or activity of the trustee for which the information was collected (subsection 13(1))

7. explain why the collection of the information was necessary for that purpose (subsection 13(1))
8. explain how the amount of information was limited to what was necessary to accomplish that purpose (subsection 13(2))
9. explain what information was provided to the individual to notify of the purpose for which the information was collected (section 15)

If the collection was from a source other than the individual (indirect collection), a trustee would provide additional information to:

10. explain why the information was collected from a source other than the individual
11. indicate the provision under subsection 14(2) which authorizes the collection from a source other than the individual