

MANITOBA OMBUDSMAN PRACTICE NOTE

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SUPPLYING REASONS TO AN INDIVIDUAL WHEN NOT PROVIDING ACCESS UNDER *THE PERSONAL HEALTH INFORMATION ACT (PHIA)*

A trustee is required to respond to the individual in writing when the trustee does not provide the individual with access to his or her requested personal health information.

PHIA sets out that the trustee shall inform the individual in writing if the information does not exist or cannot be found (clause 7(1)(b)). Although PHIA does not set out the contents for this response, the duty to assist provision of the Act requires a trustee to respond "...openly...and completely" (subsection 6(2)). A response could include an explanation of the searches conducted to attempt to locate the requested information (such as how and where the searches were made) and/or an explanation of why the information does not exist.

PHIA also addresses the situation where the requested information exists and can be found but where the trustee refuses the individual's request (clause 7(1)(c)). In this situation, PHIA requires the trustee to inform the individual in writing that:

- 1) the request is refused
- 2) in whole or in part
- 3) for a specified reason described in section 11, and
- 4) the individual has the right to make a complaint to the Ombudsman about the refusal under Part 5 of PHIA.

From the individual's point of view, providing a specified reason for refusing the request is probably the most important part of the response.

Our office is of the view that informing an individual that a request has been refused "for a specified reason described in section 11" requires that the particular clause or subclause being relied upon be quoted in the written response to the request. Further, where that provision describes more than one situation, it is our opinion that PHIA requires that the particular situation relied upon by the trustee be clearly set out in the written response.

For example, clause 11(1)(e) states that a trustee is not required to permit an individual to examine or copy his or her personal information if "the information was compiled principally in anticipation of, or for use in, a civil, criminal or quasi-judicial proceeding." After the trustee fully quotes clause 11(1)(e) in the written response, an example of the specified reason would be:

...The information you requested to examine was compiled principally in anticipation of a civil proceeding. Therefore, clause 11(1)(e) of PHIA does not require the Clinic to permit you to examine the requested information....

In another situation where clause 11(1)(e) is quoted, the specified reason could be:

...The information you wanted a copy of was compiled principally for use in a criminal proceeding. Therefore, clause 11(1)(e) of PHIA does not require the Department to permit you to have a copy of the requested information....

Some of the provisions in subsection 11(1) state in explicit terms the reason for refusing access. Clause 11(1)(b) is an example of such a provision. Where it applies, clause 11(1)(b) could simply be quoted as the specified reason for refusing the request, together with indication that this applies to the information in question. For example:

Clause 11(1)(b) of PHIA states:

Reasons for refusing access

11(1) *A trustee is not required to permit an individual to examine or copy his or her personal health information...if*

(b) disclosure of the information would reveal personal health information about another person who has not consented to the disclosure;

Disclosure of two and half pages of the information you requested would reveal the personal health information about another person. Enquiries were made with that person about release of their information but consent was not provided. Severance of that person's personal health information contained on two pages could not reasonably be conducted and so I am unable to provide you with a copy of those pages.

However, personal health information about another third party could be reasonably severed and so I am enclosing a copy of half a page of the information you requested.

As is raised in the example above, PHIA requires that a trustee who refuses to permit personal health information to be examined or copied shall, to the extent possible, sever the personal health information that cannot be examined or copied and permit the individual to examine and receive a copy of the remainder of the information (subsection 11(2)).

If an individual can clearly understand why the trustee did not permit him or her to examine or receive a copy of requested information, the individual may be less inclined to make a complaint about this to the Ombudsman. Even if a complaint is made, a specified – that is, a full and explicit – reason described in subsection 11(1) of PHIA can help define and focus the issues for investigation.