

MANITOBA OMBUDSMAN PRACTICE NOTE

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Manitoba Ombudsman
750 – 500 Portage Avenue
Winnipeg, Manitoba R3C 3X1
Phone: (204) 982-9130 Toll free 1-800-665-0531
Fax: (204) 942-7803
Web site: www.ombudsman.mb.ca

CONSIDERATIONS FOR APPLYING EXCEPTIONS WHEN REFUSING ACCESS UNDER *THE PERSONAL HEALTH INFORMATION ACT (PHIA)*

An individual has a right, on request, to examine and receive a copy of his or her own personal health information maintained by a trustee (subsection 5(1)). This right of access is subject to the limited and specific exceptions set out in subsection 11(1) in Part 2 of PHIA.

The exceptions set out in subsection 11(1) describe the limited circumstances under which a trustee may refuse access. It is important to read all parts of an exception in order to determine whether to rely on the exception to refuse access. In the event of a complaint to the Ombudsman about the decision to refuse access, a request by the Ombudsman for a review by the Information and Privacy Adjudicator or an appeal by the complainant to the Court of Queen's Bench, the onus is on a trustee to establish that the exception applies to the withheld personal health information.

The following are some considerations for applying an exception.

Exceptions apply to *information* in the record, which may be part or all of the personal health information in a particular record

In order to determine whether an exception applies, the personal health information must be reviewed on a line-by-line basis. For an exception to apply, the information must clearly fit within the wording of the exception. More than one exception may apply to the same personal health information.

Exceptions are discretionary

A trustee may refuse access to personal health information that falls under an exception. If personal health information is subject to an exception, a trustee should consider whether it is appropriate in the circumstances to give access to the information.

Excepted information can be severed

When exceptions apply to part of the personal health information in a record, a trustee must, to the extent possible, sever that personal health information and provide the individual with a copy of the remainder of the information (subsection 11(2)).