

# **A Review of The Personal Health Information Act**

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**Report on Statutory Review**

**April 2019**





**MINISTER  
OF HEALTH, SENIORS AND ACTIVE LIVING**

Room 302  
Legislative Building  
Winnipeg, Manitoba CANADA  
R3C 0V8

The Honourable Myrna Driedger  
Speaker of the Legislative Assembly  
Province of Manitoba  
Room 244 Legislative Building  
Winnipeg, MB R3C 0V8

Madam Speaker:

In accordance with section 67 of The Personal Health Information Act, I am pleased to present this report on the recent review of the operation of the act.

At this time, I want to thank all those private citizens and organizations that took the time to consider this important legislation and to provide thoughtful feedback. This feedback is an important contribution to review processes of my department and Sport, Culture and Heritage.

We are committed to ensuring that this legislation continues to meet the needs of Manitobans and our health system.

Respectfully submitted,

"Original signed by"

Honourable Cameron Friesen  
Minister of Health, Seniors and  
Active Living

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## **BACKGROUND**

The Personal Health Information Act (PHIA) was enacted in 1997 to ensure individual access to, and privacy of, personal health information maintained by health professionals, health care facilities and public bodies, which includes government departments and agencies, educational bodies, health care bodies, and local public bodies, and health services agencies.

PHIA requires the minister responsible to undertake a comprehensive review of the act, which involves public representations. The review of PHIA was coordinated with the review of The Freedom of Information and Protection of Privacy Act (FIPPA), the companion legislation that provides the right of access to records held by public bodies and regulates how public bodies collect, use and disclose personal information. The Minister of Health, Seniors and Active Living is responsible for the PHIA review and the Minister of Sport, Culture and Heritage is responsible for the FIPPA review.

The previous PHIA review began in 2004 and resulted in changes to the act, which came into force in 2010 and 2011.

## **REVIEW AND CONSULTATION PROCESS**

A discussion paper titled “*A Review of The Personal Health Information Act: Tell Us What You Think*” (the “discussion paper”) was developed to facilitate the public consultation process. The discussion paper outlined a number of issues raised since the last review in 2004 and included questions relating to these issues. The discussion paper invited review participants to comment on any issue in the paper of interest or concern to them, or any other issue that fit within the scope of PHIA.

The discussion paper was available on the PHIA review webpage on the Manitoba Health, Seniors and Active Living website for comment from March 31, 2017 to June 30, 2017. A media release was issued on March 29, 2017, inviting Manitobans to take part in the review. In addition, invitation letters were sent directly to more than 70 stakeholder organizations, including the Manitoba Ombudsman, regional health authorities, health-care facilities, health profession regulatory bodies, local public bodies, community organizations and many others who expressed interest in the review.

A total of 63 submissions were received from members of the public and stakeholder organizations. A more detailed list of review participants is included at the end of this report for reference. All written submissions remain available in the Legislative Library at 200 Vaughan Street in Winnipeg. Some written submissions were anonymized to protect the identities and personal information of individuals who provided personal opinions.

Following the public consultations, a PHIA review working committee was established consisting of representatives from Manitoba Health, Seniors and Active Living, Manitoba Families, the Winnipeg Regional Health Authority, Southern Health-Santé Sud, and the Northern Regional Health Authority. The committee reviewed the submissions received from stakeholders and the public and, based on the feedback provided on each issue, determined which issues should move forward to working groups for further review.

Five working groups were established for this purpose, consisting of subject matter experts from Manitoba Health, Seniors and Active Living and a range of stakeholder organizations, including: Manitoba Families, the Winnipeg Regional Health Authority, Prairie Mountain Health, Northern Regional Health Authority, Southern Health- Santé Sud, the College of Pharmacists of Manitoba and the College of Physiotherapists of Manitoba.

Additional consultations over and above the public consultations and work of the PHIA review working committee and working groups were also held with the Legal Services Branch of Manitoba Justice and the Manitoba Ombudsman.

## **PARTICIPANTS IN THE REVIEW**

Private Citizens: Twenty-three private citizens provided written submissions.

Organizations: The following 40 organizations provided written submissions:

1. Active Living Coalition for Older Adults in Manitoba
2. Canadian Blood Services
3. Canadian Institute for Health Information
4. Canadian Paraplegic Association (Manitoba)
5. Canadian Medical Protective Association
6. CancerCare Manitoba
7. City of Winnipeg
8. College of Licensed Practical Nurses of Manitoba
9. College of Occupational Therapists of Manitoba
10. College of Pharmacists of Manitoba
11. College of Physiotherapists of Manitoba
12. Diagnostic Services Manitoba
13. Economic Development Winnipeg – SMART City Working Group
14. Manitoba Alliance of Health Regulatory Colleges
15. Manitoba Bar Association
16. Manitoba Chiropractors Association
17. Manitoba Civil Service Commission
18. Manitoba Education and Training
19. Manitoba Families – Manitoba Housing & Renewal Corporation
20. Manitoba Finance – Business Transformation & Technology
21. Manitoba Health, Seniors and Active Living – Information Management and Analytics Branch
22. Manitoba Health, Seniors and Active Living – Primary Health Care Branch
23. Manitoba Institute for Patient Safety
24. Manitoba Nurses Union
25. Manitoba Ombudsman
26. Manitoba Public Insurance Corporation
27. Manitoba Sport, Culture and Heritage – Archives of Manitoba
28. MED2020 Health Care Software Inc.
29. National Association for Information Destruction
30. Northern Health Region
31. Prairie Mountain Health
32. Psychological Association of Manitoba
33. Public Guardian and Trustee of Manitoba
34. Rehabilitation Centre for Children – Outreach Therapies Department
35. Research Manitoba – Research Improvements Through Harmonization in Manitoba (RITHIM) Working Group
36. Southern Health – Santé Sud
37. University of Manitoba – Manitoba Centre for Health Policy
38. University of Winnipeg
39. University of Winnipeg – Department of History
40. Winnipeg Regional Health Authority

## **WHAT WE HEARD**

The greatest number of responses in the public and stakeholder consultations centered on the following issues raised in the discussion paper:

### **A) Disclosure to Prevent a Serious and Immediate Threat**

PHIA currently authorizes a trustee to disclose personal health information without the consent of the person the information is about if the trustee reasonably believes the disclosure is necessary to prevent or lessen a serious and immediate threat to the health or safety of that individual, another individual, public health or public safety. The discussion paper noted the question had been raised as to whether or not the requirement for a threat to be “serious and immediate” is too restrictive. Most of the feedback received on this issue agreed that that this wording is too restrictive, particularly the requirement for the threat to be “immediate”.

### **B) Mandatory Reporting of Privacy Breaches**

Currently, there is no legislated requirement in Manitoba for a trustee to provide notification to an individual or the Manitoba Ombudsman when the individual’s personal health information is stolen, lost, used or disclosed without authority. A number of provinces have included such notification requirements in their privacy legislation. Most of the feedback received on this issue supported addressing this issue in the act.

### **C) Disregarding an Access Request or Considering One Abandoned**

PHIA does not permit a trustee to disregard a request for a person for access to his or her personal health information. In addition, PHIA does not permit a trustee to consider a request for access to personal health information to be abandoned. Most of the feedback received supported addressing these issues in the act consistent with FIPPA.

### **D) Power of Attorney**

An individual authorized to act under a power of attorney is not authorized under PHIA to access the personal health information of the individual to whom the power of attorney relates, even if the information is required to exercise the powers and carry out the duties conferred by the power of attorney. The feedback received supported addressing this issue in the act.

### **E) Fees for Access to Personal Health Information**

PHIA allows trustees to charge a reasonable fee for permitting a person to examine the person’s personal health information maintained by the trustee and providing a copy of the information. PHIA does not address the issue of waiving fees as the privacy legislation of some other jurisdictions does.

The feedback received on the issue of setting maximum fees under PHIA was mixed. Some organizations and private citizens supported maximum fees being set out under PHIA for transparency and to prevent fees from acting as a barrier to access, while others felt this should be left to the discretion of the trustee. Most of the feedback received supported leaving the issue of waiving access fees to the discretion of the trustee.

#### F) Exempting Psychological Tests from the Right of Access

A case referred to the Information and Privacy Adjudicator by the Manitoba Ombudsman in November 2014 dealt with a trustee's refusal to provide access to certain psychological tests that were administered to the complainant in her health record. A core argument was made for refusing to provide access under PHIA to both the test results and the test questions themselves. If information about the techniques and the specific questions used on the psychological tests were to become widely known (ex: posted on the Internet), then the use and validity of the tests could be compromised, rendering the tests ineffective for anyone who had seen them. The feedback received generally supported exempting these tests from the right of access under PHIA. However, some private citizens felt that individuals have a right to access this information.

#### G) Using Personal Health Information for Training or Employment-Related Purposes

The feedback received supported clarifying in PHIA the circumstances in which personal health information can be used for training purposes. In addition, the feedback received generally supported adding clarity to the act that trustees cannot use the personal health information of employees collected for non-employment purposes without the express consent of the employee.

The Ombudsman also submitted a number of recommendations on how to improve access to information and protection of privacy rights under PHIA and FIPPA. In Manitoba, the responsibility for the oversight of FIPPA and PHIA resides with the Manitoba Ombudsman. The Manitoba Ombudsman's Access and Privacy Division investigates complaints and reviews compliance under FIPPA and PHIA. Among the recommendations were ways to clarify and strengthen the powers and duties of the Ombudsman in relation to the disclosure of information, conducting audits and other matters.