

<b>MANITOULIN HEALTH CENTRE</b>	<b>POLICY:</b> BOARD-11-07	<b>DEPARTMENT:</b> Board
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<b>SUBJECT MATTER:</b> Freedom of Information and Protection of Privacy Act – Protection of Privacy	
<b>EFFECTIVE DATE:</b> January 1, 2012	<b>DATE REVIEWED:</b>
<b>PREVIOUS POLICY:</b> None	<b>DISTRIBUTION:</b> All Departments Board of Directors

## STATEMENT OF POLICY

Manitoulin Health Centre recognizes that an appropriate balance must be determined between the right of public access to non-personal health information collected and held by our organization and the right of privacy that is due to patients, staff and other individuals.

This policy focuses the organizations obligations concerning the Protection of Privacy elements, as defined within the Act.

### Assumptions

- 1) An individual has the right to control their personal information; and
- 2) Rules governing the collection, use, disclosure, retention, security, and disposal of personal information are necessary to protect privacy.

It is important to distinguish between Personal Information and Personal Health Information. In general, Personal Information is a broad category of information, which can take many forms (name, date of birth, sex, race, religion, education and employment history, address, identifying numbers or symbols, etc) while Personal Health Information relates to that information which is governed under the Personal Health Information and Protection Act – PHIPA (health services applied to an individual, their current detailed physical or emotional state, historical health episodes, care plan, the health coverage number, etc)

For the purposes of FIPPA, the following three elements must be present for the Act to apply:

- 1) The information must be **recorded** in some format;
- 2) The information must be about an **individual**;
- 3) The individual who is the subject of the information must be **identifiable**.

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### **Professional Business Information**

Certain information about an individual is excluded from the above definition and may be disclosed under FIPPA. This includes the name, title, contact information or professional designation of an individual in a business or professional context. For example, the following are not considered as personal information:

*The name and title of a hospital executive, the name and professional designation of professionals, and the names of hospital employees on a hospital committee.*

### **Identifiable to an Individual**

Personal information, except where specifically allowed under the Act, must not be disclosed. If information is identifiable to the level of an individual, or if it is reasonable to assume that the release of information, because of the nature of the specific circumstances, could be traced back to an individual, it must be treated as Personal in nature and not released.

The above does not apply if an individual has been dead of more than 30 years, is a reference to an employee in a record generated in the normal course of business, or is an individual's name alone (on its own with no other information included).

### **Hospital Collection of Personal Information**

Hospitals may only collect, store and utilize Personal Information when they have both the need and the authority of law to do so. The core activities of hospitals and their right to authority for information are contained within the *Public Hospitals Act*; the information may be collected if it is necessary for the proper administration of any activity so defined. Hospital staff may only collect Personal Information if it is required in the reasonable performance of their duties.

Personal Information shall be collected directly from the individual, unless indirect collection is permitted as per specific criteria under FIPPA (see the OHA Toolkit for specific circumstances).

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**Notice of Collection**

When Personal Information is collected by or on behalf of the hospital, either directly or indirectly, notice to the individual about collection must be given, unless a specific exemption applies. The content of the notice must state:

- 1) The specific legal authority (Act or Regulation) for the collection (*The Public Health Act, etc.*)
- 2) The principal purpose or purposes for the information's use;
- 3) The title, business address, and telephone number of an official at the hospital who can answer questions about the collection.
- 4) Notice must be provided each time the Personal Information is collected.

Note – The hospital may notify an individual of specific collections that will occur in the future, if these collections can be predicted with certainty.

Various mechanisms can be utilized to provide notice. Disclosure Statements may be utilized which are printed and posted, or imbedded on forms. Verbal disclosure can occur, but in many cases such disclosure would be impractical.

*For exemption information concerning collection notification, see the OHA Toolkit.*

**Use of Personal Information**

A hospital shall only use the collected information for:

- 1) the intended purpose for which it was collected, received or obtained and in accordance with the consent of the individual; or
- 2) fundraising

**Disclosure of Personal Information**

Disclosure to other persons or providers of care shall not occur unless the disclosure is:

- permitted in accordance with the provisions of FIPPA;
- for the purpose(s) for which the information was obtained or compiled;
- consistent with the original purpose(s) for which it was collected;

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- required by an officer, employee, or agent of the hospital to perform his or her duties;
- one that the individual has consented to;
- for the purpose of fundraising activities;
- required by law;
- aiding in law enforcement;
- a compelling circumstance affecting the health and safety of an individual;
- a compassionate circumstance;
- to a member of the bargaining agent, who has been authorized by the employee; or
- to various government bodies.

### **Retention of Personal Information**

Hospitals must retain Personal Information in a secure manner, minimizing the possibility for unauthorized disclosure, for a period of at least one year, or for a longer period if stipulated by law.

When outdated information is refreshed or updated, the original outdated information must be retained in a format which is retrievable for a period of one year.

There are specific exemptions to this rule. The information may be disposed of earlier if the individual consents to the destruction. If Personal Information is contained within a telecommunication logger tape, the expected retention period is reduced to 45 days.

### **Personal Information Banks**

A Personal Information Bank is a collection of personal information organized and retrievable by an individual's name or other unique identifier. Banks can take the form of electronic and or paper files. The key principles involved stipulate organization of the information into a retrievable format.

### **Disposal of Personal Information**

Hospitals must ensure that personal information is disposed of when it is no longer required and when the applicable retention period has expired. The disposal of personal information must occur in a secure and thorough manner so as to prevent reconstruction, unauthorized access, or disclosure of the personal information. Particular care must be taken when disposing of electronic media.

A Record of Disposal must be maintained. The record shall include the date of the destruction and what has been destroyed.

### **Accuracy and Correction of Personal Information**

A hospital must take reasonable steps to ensure that personal information in its custody or under its control is accurate and up-to-date.

FIPPA gives individuals the right to access their personal information. Accompanying the right of access is the right to request that any inaccuracies in that person's personal information be corrected.

FIPPA places some obligation on the requester to provide as much direction to the hospital as possible to assist the hospital in finding the requested records.

Under FIPPA, the right of correction applies only if *all* the following elements are present:

- the information at issue must be **personal information**;
- the information must be **inexact, incomplete, or ambiguous**; and
- the information must be factual and **not an opinion** – unless the correction concerns whether the opinion was recorded correctly. If an individual disputes an opinion that involves personal information, the hospital is not required to change that opinion.

If the hospital *does not make the correction*, the individual must be informed:

- of the **reason(s)** as to why the correction was not made;
- that he or she has the right to **appeal** the decision to the IPC within 30 days of the hospital making its decision;
- that he or she has the right to require that a **statement of disagreement** be attached to the information; and
- that he or she has the right to require that the hospital notify persons or organizations of the statement of disagreement, provided that they received the personal information from the hospital within the 12 month period before the date of the request for correction.

A **statement of disagreement** is a statement by the individual explaining the correction requested.

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If the hospital makes the correction, the individual must be informed:


- of the fact that the correction was made, with a copy of the corrected record provided to the individual; and
- that he or she has the right to require that the hospital notify persons or organizations of the correction, provided that they received the personal information from the hospital within the 12 month period before the date of the correction.

### Privacy Breach

A Privacy Breach requires immediate action. A breach must be reported to the FOI/PHIPPA Officer and CEO, who shall coordinate the breach activities, which include:

- Notify the Information Privacy Commissioner's Office (IPC);
- Take steps to contain the breach;
- Notify the individual(s) who's information was breached;
- Conduct a full investigation, in consultation with the IPC staff into the root causes for the breach;
- Take the agreed upon corrective action steps
- Any other steps required by the IPC

References – OHA Freedom of Information Toolkit: A Guide to Implementing the Freedom of Information and Protection of Privacy Act, 2011

	Board of Directors
	November 25, 2011
	
	Georgie Hari, Chair