

MANITOULIN HEALTH CENTRE	POLICY: BOARD-11-05	DEPARTMENT: Board
---------------------------------	-------------------------------	-----------------------------

SUBJECT MATTER: Freedom of Information and Protection of Privacy Act – Process for FOI Requests	
EFFECTIVE DATE: January 1, 2012	DATE REVIEWED:
PREVIOUS POLICY: None	DISTRIBUTION: 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 appropriate responses to Freedom of Information/access to information requests (FOI Requests).

What is an FOI Request?

FIPPA establishes a right for every person to access information held by hospitals, and provides a formal process for people to exercise that right by making an FOI request. An FOI request is a written request for a record in the custody or control of a hospital (provided that the record was in the custody or control of the hospital on or after January 1, 2007). An accompanying \$5.00 application fee shall be provided along with the written request.

An FOI request supplements, and does not replace, other methods that patients, employees, news media, and members of the public may currently use to obtain information from a hospital. Hospitals should maintain those other methods of access where it is appropriate to do so, and should not require that all requests for information be made through a formal FOI request.

There are two categories of FOI requests:

- **Request for one's own information:** A request for one's own personal information (except for a request for personal health information).
- **General records request:** All other requests, including requests for the personal information of other individuals.

MANITOULIN HEALTH CENTRE	POLICY: BOARD-11-05	DEPARTMENT: Board
---------------------------------	-------------------------------	-----------------------------

An FOI request can seek access to one or more records. A **record** is information that is recorded or is capable of being produced from machine readable records.

Example: A record includes information on paper (whether handwritten or printed), in an email or electronic file (whether on a desktop, laptop, or BlackBerry), or a photograph, audio or videotape, or other method of storing information.

Anyone can make an FOI request. The requester does not have to live in Ontario – or even Canada. The requester need not be a Canadian citizen.

General records request: Any person can request access to general records. A **person** includes individuals and organizations, such as corporations, partnerships, and sole proprietorships.

Request for one’s own information: Only an individual (or his or her personal representative) can make a personal information request for access to his or her own personal information, or a duly appointed or authorized Personal Representative.

Personal Representatives

Although personal information requests are generally made by an individual to access his or her own personal information, there may be situations where the requester is acting on behalf of another individual.

FIPPA permits certain representatives to exercise any right or power under the Act on behalf of another person. This is similar (although not identical) to the role of a substitute decision-maker under PHIPA. A substitute decision-maker under PHIPA may or may not qualify as a personal representative under FIPPA, and vice-versa.

The types of representatives specified by FIPPA are:

- The personal representative of a deceased individual (but only in relation to the administration of the deceased individual’s estate). The personal representative would be the executor named in a will, or, if there is no will, the administrator appointed by a court; FIPPA permits the disclosure of personal information to close relatives for compassionate reasons. Although this is not the same as a right to obtain access to personal information, it can allow for the disclosure of personal information to a close relative who is not a personal representative.
- A court-appointed guardian for an individual (for someone incapable of managing his or her own affairs), the individual’s attorney under a power of attorney, or the Public Guardian and Trustee under the *Mental Health Act* or the *Substitute Decisions Act*.

MANITOULIN HEALTH CENTRE	POLICY: BOARD-11-05	DEPARTMENT: Board
---------------------------------	-------------------------------	-----------------------------

- The person having lawful custody of a child under the age of 16, if the request is in relation to that child's personal information.
- A person with the written consent of the individual, as long as the written consent has been verified (e.g., a lawyer acting with a client's written consent could make an FOI request for the personal information of that client).

Before releasing any personal information to a representative, the hospital needs to verify *both* the identity of the representative and the basis on which he or she is acting.

Form of the Request

Any request for information that involves *all* the following elements must be treated as an FOI request in accordance with FIPPA:

- it is a request for access to information;
- it is made in writing (a simple letter will suffice);
- it is made to the hospital;
- it provides sufficient detail to enable an experienced employee of the hospital to identify the record(s) requested; and
- it is accompanied by the \$5 application fee (i.e., a cheque payable to the hospital).

Receiving an FOI Request

All requests for FOI releases of information shall be forwarded immediately to the FOI/PHIPA Officer (The Manager of Health Records) or the CEO (same day, or next regular weekday shift).

The request will be handled forthwith in a manner that is compliant with the Act. *(For further information on the actual process utilized by the FOI/PHIPA Officer and CEO, see the OHA FIPA Toolkit).*

In general, requests will be responded to within a total of 30 days. Frivolous or vexatious requests do not have to be processed. If the request affects another party, the hospital must provide written notice of this fact to the affected party.

Affected parties have 20 days to bring issues forward. Following this, a decision on the request will be determined within 10 days from the expiration of the 20 day period.

MANITOULIN HEALTH CENTRE	POLICY: BOARD-11-05	DEPARTMENT: Board
---------------------------------	-------------------------------	-----------------------------


Fees

FIPPA is based on a user-pay principle. The requester must bear the reasonable costs that the hospital incurs in processing the information request. There are structured fees established within the Act which the hospital can charge.

Severing a Record

Records which contain portions of information which are confidential can be severed. That is, the portion which is confidential shall be obliterated in a manner that renders that specific portion illegible, while leaving the remaining material available to be viewed.

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