

Report of Investigation

Re: Complaint pursuant to *Access to Information and Protection of Privacy Act*

Our File#: ATP11-002AI

Public Body: Health and Social Services

Pursuant to section 42 of the *Access to Information and Protection of Privacy Act* (ATIPP Act) I am responsible for monitoring how the ATIPP Act is administered to ensure that its purposes are achieved. Section 42 allows me to investigate a complaint made by a member of the public about the administration of the Act.

This is a report of my findings, conclusions and one recommendation in relation to a complaint investigation. This investigation considered:

1. Whether the Department was collecting more information than was necessary for the purpose of determining the Complainant's eligibility for the Yukon Supplementary Allowance (YSA);
2. The Public Body's obligation when in receipt of unrelated, unnecessary or unsolicited personal information; and
3. The Public Body's obligation under section 7 of the Act to respond to an applicant openly, accurately and completely.

Complaint

The Complainant received a number of records in response to a request for access to records. Among the records released was a copy of a specialist medical report describing the Complainant's present and past medical issues. The report was provided to the Department by the Complainant's physician as an attachment to Form B – Yukon Supplementary Allowance Medical Report, completed by the physician for the purpose of establishing eligibility for the Yukon Supplementary Allowance (YSA). The report included the specialist's findings and treatment notes, some unrelated to the Complainant's application for YSA. The Complainant questioned the need for Health and Social Services to have this report for the purpose of making a decision about eligibility for YSA. In addition, the Complainant questioned the need for some of the information requested in Form B itself.

Issues

1. Whether the Department is collecting more information than is necessary for the purpose of determining eligibility for the Yukon Supplementary Allowance (YSA)?

Under section 29(1) (c) of the ATIPP Act a Public Body is authorized to collect personal information that "... *relates to and is necessary for carrying out a program or activity of the public body.*" This means that a Public Body must limit its collection of personal information to that which meets the test of "relates to and is necessary" for a particular purpose.

After being notified of the complaint, the Public Body considered whether it was collecting more personal information than it requires for the purpose of assessing eligibility for the YSA. The Public Body acknowledged that more personal information than was "related and necessary" was being collected for the purposes of assessment or determining an individual's eligibility for YSA.

The Department has been very helpful and diligent in responding to this investigation and has made changes to minimize the over collection of personal information of YSA applicants.

The Department revised Form A (Application for Yukon Supplementary Allowance) and Form B (Yukon Supplementary Allowance Medical Report) to limit the personal information collected to information necessary to verify eligibility for YSA and to ensure it was compliant with collection requirements of the ATIPP Act. As a result, I am not making a recommendation on this issue.

2. The Public Body's obligation when in receipt of unrelated, unnecessary or unsolicited personal information.

In this case the physician attached a specialist report to Form B that contained significantly more medical information than was "related or necessary" for determining eligibility for YSA. The Department indicated that physicians often include unsolicited and unnecessary information by attaching reports to Form B. This problem is currently being addressed by:

- Revisions to Form B completed by a physician to limit the required information to that which is relevant and necessary to determine eligibility for YSA;

- Including on the Form B itself a direction in the form of a Note to Physician writing a medical report "*to limit the information to only information relating to your patient's eligibility for Yukon Supplementary Allowance (YSA)*".
- Educating physicians regarding the Public Body's obligations under ATIPP not to collect more information than is related and necessary for the purpose of making a decision about eligibility for YSA;

I recognize that the Public Body is not solely responsible for the unauthorized collection of personal information in the YSA application process. Physicians have a responsibility to keep confidential a patient's personal information and to not blindly hand over a patient record just because it might be administratively convenient to do so. The medical profession must take some responsibility in that physicians may be sending the Public Body more information than is requested and/or required under the legislation.

Having said that, a public body cannot collect any and all personal information about an applicant or client. It can only gather what it has authority or consent to gather. Good information practices require that a public body not only limit the information specifically collected but must also deal with two related issues; who should determine "relevance and necessity" authorizing collection and how to deal with irrelevant, unnecessary or unsolicited personal information received by the Public Body.

In my view receipt of unsolicited personal information is a form of collection. Although the Public Body's revised YSA Form A and Form B are reasonably specific about the personal information being requested, a physician may send unsolicited information or more information than is relevant or necessary to make a decision.

The Public Body has carefully defined, in the revised forms, what information the physician is required to provide for the purposes of the program or activity (YSA). This will assist in limiting the collection of information. More importantly, this leaves the Public Body in a position to refuse to accept personal information that is clearly irrelevant and unnecessary to the decision being made about YSA.

As I understand it, the physician is required to send both completed Forms A and B to the Manager of Adult Services Unit marked Confidential. The Manager provides this information to the Committee that makes the decision about eligibility. The decision maker has the

right to make the initial determination about necessity for and relevance of the information the decision maker will use to make the decision. There obviously needs to be some latitude and flexibility in making the judgment about what is related and necessary to make a decision. But a decision maker is bound by the law under which the decision is to be made. This means there must still be reasonable safeguards in place to protect against the unauthorized collection of the applicant's personal information. The safeguards must include:

1. identifying who will make a decision about what personal information collected is related and necessary to make the decision; and
2. determining a process for dealing with unrelated, unnecessary and/or unsolicited personal information.

The Public Body has a policy which addresses the *Social Assistance Act* and Regulations requirements for eligibility for YSA and the application process. This policy could also address who has responsibility to ensure the personal information is collected in compliance with the ATIPP Act and how to deal with information collected that is not related or necessary to make a decision about eligibility for YSA.

Recommendation

The Public Body should develop a policy for collection of personal information related to eligibility for YSA to ensure that it is not over collecting personal information of clients. This policy should address:

- who has responsibility to ensure the information being provided, solicited or unsolicited, is authorized to be collected; and
- how the Department will deal with excessive collection of personal information in any case where it occurs.

The Department of Health and Social Services has endorsed this recommendation and begun work to draft a policy to assist staff working in YSA eligibility assessment to comply with the ATIPP Act.

3. Information to be provided in response to a request for access to records.

The final issue that arises from this investigation relates generally to the section 7 duty under the ATIPP Act for the records manager to

make every reasonable effort to respond to each applicant "... *openly, accurately and completely.*".

A Schedule of Records serves as the record of what was done to search for records and the location and description of responsive records. It informs the Applicant and allows them to assess the adequacy of the search.

In this case, the Schedule of Records was prepared identifying the responsive records located in the electronic Wingspan Case Management System (Wingspan) and in the Local Income System Application (LISA). It did not however identify, as responsive records, the hard copy originals of these records which were located in the Verification Area in the Black Street office.

It is my understanding that although the hard copy files were searched, the Schedule of Records did not indicate the location or identify as responsive any of the records located there because they were the originals of the records already identified in the Schedule of Records. A Schedule of Records should identify all of the responsive records in all locations or repositories. If duplicate records exist, that can be indicated on the Schedule of Records.

The easiest and most efficient way for the public body to provide the Records Manager with all of the information required in relation to each record is a Schedule of Records. I recommend the preparation of a comprehensive Schedule of Records in response to each request as a best practice. I have attached a copy of Best Practice #1: Contents of a Response that lists the information that should be contained in the Schedule of Records. No further recommendation is necessary to address this issue.

Tracy-Anne McPhee
Yukon Information and Privacy Commissioner

Investigation Report Issued: October 17, 2011