



March 30, 2009

Stuart Whitley
Deputy Minister
Health and Social Services
Government of Yukon H-1

Dear Mr. Whitley:

Re: Yukon HealthLine (811) Project – Outstanding Issues

Over the past year, my office has had several meetings and e-mail exchanges with your Department regarding various joint service delivery e-health projects, including Yukon HealthLine.

Joanne Fairlie, former Assistant Deputy Minister, and Lynda Ehrlich, Senior Policy Analyst, have been our main contacts in your Department to date, but due to various personnel changes and workload issues our communications have more recently lapsed. Previously, I brought several concerns regarding access and privacy issues of the HealthLine project to the attention of the Department of Health & Social Services. I do not know whether those issues have yet been addressed by your Department or how. Therefore I am seeking information and clarification of the following outstanding matters.

Legislative Authority to Collect, Use and Disclose Personal Health Information

The *Access to Information and Protection of Privacy Act* (ATIPP Act) only permits the collection of personal information from an individual who has explicitly consented, if it is authorized by an Act, or if authorized specifically by the Information and Privacy Commissioner. The fundamental question which must be addressed when any public body proposes a program involving information sharing with another jurisdiction is what provisions have been made for compliance with the collection provisions, as well as the use and disclosure provisions of the ATIPP Act.

I appreciate that information sharing initiatives may be required by new programs designed to provide better services to Yukoners. However, my mandate is to ensure that the provisions of the ATIPP Act are considered and addressed in the development of a new program and that, ultimately, the program complies with the ATIPP Act.

As soon as I was informed of this project, I questioned how the Yukon HealthLine would comply with the ATIPP Act with respect to the collection, use and disclosure of personal information. The response by your Department was to resolve the issue of non-compliance by giving custody and control of Yukoners' personal information to HealthLine Services BC (HLSBC), a British Columbia public body. As a result, the personal information HLSBC collects from Yukon callers to the 811 HealthLine is in the custody of a British Columbia public body. The personal information collected by 811 HealthLine is therefore governed by the British Columbia's *Freedom of Information and Protection of Privacy Act* and the oversight body is the BC Information and Privacy Commissioner. In my view, future decisions by the Department to deliberately abdicate its responsibility to manage Yukoners' personal health information should not be made lightly, even if it is done in order to provide new or enhanced health care services.

I understand that this arrangement was to be expressly set out in the Service Agreement between Yukon and British Columbia for the operation of the 811 HealthLine. I have asked for a copy of that agreement but have not yet received it.

I understand that it is the intention of the Yukon government to receive/collect Yukoners' personal health information back from HLSBC, a practice known as "warm transfers". Following several conversations about this type of information sharing, I asked what the authority the Department is relying on for HLSBC to make warm transfers back to Yukon public bodies. I have not yet received a reply.

HealthLine Service Agreement, Business Plan, and BC/Yukon PIA

Before this service was launched, I was assured by Department officials that I would be provided with copies of the HealthLine Service Agreement, Business Plan and BC/Yukon Privacy Impact Assessment (PIA). It is necessary for me to review these documents to determine if the provisions for custody, control and the protection of the Yukoners' personal information is reasonable and adequate. I understood from correspondence from Joanne Fairlie that the Service Agreement, Business Plan and BC/Yukon Privacy Impact Assessment (PIA) would be completed in the fall 2008.

As the Yukon HealthLine started operating in June of 2008, I trust that the Department has documented and finalized the HealthLine Service Agreement. Please provide me with a copy of the HealthLine Service Agreement and the HealthLine Business Plan.

The ATIPP Act does not require a Privacy Impact Assessment to be completed. However, when introducing an innovative IT-data sharing initiative involving personal health information, it is appropriate and responsible for the Department of Health & Social Services to conduct a privacy impact assessment to ensure that proper consideration has been given to universal privacy principles and to acknowledge and accept any risks that are identified and unresolved. Please provide me with the BC/Yukon Privacy Impact Assessment for the Yukon HealthLine.

HealthLine Should Not Collect the Health Care Card Number of Yukon Callers

I understand that a caller to the 811 HealthLine is asked for his or her Yukon health care number because it serves as “an additional, unique identifier” (letter from Joanne Fairlie dated June 16, 2008).

The least amount of personal information should be collected in order to satisfy a legitimate activity of the collecting entity. It is my understanding that the health care numbers are not required to provide service to the HealthLine caller, nor is the billing for Yukon HealthLine dependent on individual health care numbers being recorded or submitted. As such, the collection by HLSBC of the Yukon health care card number of Yukon callers is unnecessary and should cease.

I do not have jurisdiction to investigate the concern about the improper collection of a Yukoners’ health care card numbers by HLSBC. However, I will forward my concern to the BC Information and Privacy Commissioner, unless the Department of Health & Social Services can confirm that this practice is discontinued. Can you confirm that HLSBC will stop collecting the Yukon health care card number from Yukon callers?

Public Information

During previous discussions with your Department, I suggested that public information, including brochures about the Yukon HealthLine, provide contact information for the HLSBC Information Officer and the British Columbia Office of the Information and Privacy Commissioner (OIPC) as the places to go with questions or concerns.

Ms Fairlie advised me that the Yukon is not providing that contact information for because HLSBC does not give that information to BC users of their service. I urge the reconsideration of this decision for two reasons:

- The Yukon Health Line is an anomaly, in that it looks and acts like a Yukon service but is provided by a British Columbia agency. Unless properly informed, a Yukon citizen using the 811 HealthLine would not know to contact HLSBC or the British Columbia OIPC with questions or concerns.
- Public information and brochures should be accurate and guide citizens to the appropriate place if they have questions or concerns. Although well-meaning, the Yukon Department of Health and Social Services has no role to play in assisting Yukoners to access information or complain about a privacy breach or other privacy concerns regarding information that is collected and held by a British Columbia public body. In my view, fair information practices and respect for universal privacy principles requires the Department to provide accurate contact information for the public body that has custody and control of Yukoners’ personal information and the appropriate oversight body.

I recommend that public information such as websites and brochures provide contact numbers for the HLSBC Privacy Officer and the British Columbia OIPC. I note that the back page of the brochure is blank so a brief explanation that the program is operated in British Columbia and the appropriate contact information could easily be added to existing and new printings of the brochure. Please advise me if your Department will be adding this contact information to the public information and brochures for the Yukon HealthLine.

Summary

In conclusion, I am requesting the following in relation to the Yukon HealthLine project:

Documents

1. the Service Agreement between Yukon and British Columbia for the operation of the 811 Health Line;
2. the HealthLine Business Plan; and
3. the BC/Yukon Privacy Impact Assessment for the Yukon HealthLine.

Information

4. What is the legislative authority that the Department is relying on for HLSBC to make warm transfers back to Yukon public bodies?
5. Can you confirm that HLSBC will stop collecting the Yukon health care card number from Yukon callers?
6. Will your Department will be adding contact information for the HLSBC Privacy Office and the BC Office of the Information and Privacy Commissioner to the public information and brochures for the Yukon HealthLine?

I am aware that your Department will be leading the development of personal health information legislation, but as the Yukon HealthLine is already operating within the current legislative scheme, I look forward to receiving the information and documents requested here in order to more fully report on this program to the legislature and the public through my Annual Report.

Thank you for your attention to this matter. I look forward to your reply.

Yours truly,

Tracy-Anne McPhee
Information and Privacy Commissioner

TAM/cb