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Health Information Privacy and Management Act

Procedures for Managing Complaint Investigations

Explanatory note: All section, subsection, paragraph and subparagraph references below are to the *Health Information Privacy and Management Act* (HIPMA) unless otherwise stated.

AUTHORITY

Any Person Can Make a Complaint

Section 99 allows any person to make a complaint to the Information and Privacy Commissioner (IPC) if the person reasonably believes that a custodian has failed to comply with HIPMA or its regulations. Section 101 of HIPMA allows the IPC to decline to act in certain circumstances.

IPC Powers to Investigate a Complaint

The IPC has broad powers of authority to investigate a complaint under HIPMA including that she may require any record be produced for the investigation and may examine any information in a record including personal information, personal health information and privileged information. These powers are set out in paragraph 104(1)(c) and subsections 104(2) to (5).

A custodian may require the custodian to examine the original record at their office if making a copy is not reasonably possible. This requirement is contained in subsection 104 (5)

At the conclusion of an investigation, the IPC is required to return any records produced by the custodian. This requirement is contained in subsection 104 (6).

PROCEDURES

1. The IPC must give notice of the complaint.

Upon receipt of a complaint, the IPC will provide the custodian the complaint is about with a summary of the complaint and of the procedure used by the IPC to investigate the complaint.¹

2. The IPC must attempt to settle any complaint received.

The IPC must try and settle a complaint informally and in doing so must take any steps she considers reasonably appropriate in the circumstances.²

The IPC has two procedures for trying to settle a complaint. They are early case resolution and mediation.

Early Case Resolution (ECR) Procedure

The procedure for managing a complaint through ECR follows.

Contact – An Investigator from the ECR Team contacts the custodian and informs them about the complaint. The Custodian will be asked for the name of a contact person who will be responsible for working with the Investigator to settle the complaint. The contact person identified must have authority to settle the complaint.

ECR - The Investigator and the contact person enter into discussions about the complaint in an attempt to reach a settlement. An Investigator only has 30 days to try and settle a complaint informally, or up to 60 days longer if authorized by the IPC.

Settlement - If settlement is reached within the time allotted, the Investigator sets out the terms in a letter and provides it to the parties with a request to confirm agreement. If agreed to, the Investigator sends a letter to the parties confirming agreement.

Follow-up - The Investigator will follow up as necessary to ensure settlement terms are met.

Non-settlement - If settlement does not occur within the time allotted, the Investigator will forward the complaint and any facts agreed to by the parties to the IPC to for a decision about whether a formal hearing (called a Consideration) will be conducted.

Publication – A case summary may be published for complaints settled through ECR if it is determined there is educational value. Custodians and complainants are not named in case summaries. Statistics about ECRs will be published in the Annual Report of the IPC and examples may be cited.

ECRs must be resolved within 30 days, or 90 days if the IPC authorizes an extension.

¹ Section 100.

² Section 102.

Mediation Procedure

Generally, only complaints about access to or correction of personal health information will go through mediation although the IPC may decide to mediate any complaint received.

The procedure for managing a complaint through mediation follows.

Contact - An Investigator from the ECR Team contacts the custodian and informs them about the complaint. The Custodian will be asked for the name of a contact person who will be responsible for working with the Investigator to mediate the complaint. The contact identified must have authority to enter into an Agreement to Mediate and Memorandum of Understanding to settle the complaint.

Mediation – An Agreement to Mediate is sent to the parties involved in mediation. Once signed and returned, the Investigator will contact the parties and attempt to mediate a settlement. An Investigator only has 30 days to try and mediate a complaint informally, or up to 60 days longer if authorized by the IPC.

Settlement - If mediation is successful within the allotted time, any terms of settlement are documented by the Investigator in a Memorandum of Understanding (MOU) signed by the parties.

Parties informed - The Mediator provides settlement information in writing to the parties.

Follow-up - The Investigator follows up as necessary to ensure the terms of the MOU are met.

Non-settlement - If mediation is unsuccessful within the allotted time, the Investigator will forward the complaint and any facts agreed to by the parties to the IPC to for a decision about whether a formal hearing (called a Consideration) will be conducted.

Publication – A case summary may be published for complaints settled through mediation if it is determined there is educational value. Custodians and complainants are not named in case summaries. Statistics about mediations will be published in the Annual Report of the IPC and examples may be cited.

Mediations must be resolved within 30 days, or 90 days if the IPC authorizes an extension.

3. The IPC must consider the complaint if settlement fails.

If settlement cannot be reached using the above procedures, the IPC must consider a complaint by conducting a formal hearing (called a Consideration) unless she declines to do so based her authority in subsection 101(a).

Considerations are formal adjudicative hearings conducted by the IPC in which the IPC has the power to decide all questions of fact and law arising in the matter and has the powers of a Board of Inquiry under the *Public Inquiries Act*.

If the IPC declines to consider a complaint, the parties will be notified of the decision and reasons for the decision. If the IPC proceeds to consider a complaint, the procedure is as follows.

Consideration Procedure

Contact - The Registrar prepares a Notice of Consideration that is delivered to the parties along with instructions for preparing and responding to submissions. The Registrar works with the parties to finalize and circulate the submissions and any replies.

Evidence to IPC - Once the submissions and replies are received, the Registrar provides all the evidence relevant to the Consideration to the IPC.

Consideration - The IPC analyses the evidence and relevant law, and makes findings of fact and law arising in the course of her consideration of the complaint.³

Report – The IPC prepares a report containing findings and any recommendations to remedy a finding of non-compliance with HIPMA, and reasons for the findings and recommendations.⁴

Custodian’s response – The custodian must decide whether to follow any or all of the IPC’s recommendations and give written notice of their decision to the IPC within 30 days after receiving the report.⁵ A failure to give written notice within the time allotted results in a deemed refusal by the custodian to follow the recommendations.⁶

Follow-up – If recommendations are included in the report, the IPC will follow up to determine if the custodian has implemented the accepted recommendations.

Parties informed – The Registrar distributes the report to the parties involved in the Consideration and to any person about whom comments or recommendations are made in the report.⁷

The IPC may also give a copy of the report to a body responsible for registration, licensing, discipline of, or regulation of the quality or standards of health care provided by a custodian about whom the report contains comments or recommendations.⁸ The IPC may also give a copy of the report to any other person if the IPC is of the view that doing so will prevent or lessen a serious and immediate threat to the health or safety of any person.⁹

The IPC will notify the custodian and complainant if the report is distributed beyond the parties to the Consideration and identify to whom the report was distributed.¹⁰

³ Subsection 52 (1).

⁴ Subsection 109(1) and (2).

⁵ Subsection 112(1).

⁶ Subsection 112(2).

⁷ Subsection 109(3).

⁸ Subsection 109(4).

⁹ *Ibid.*

¹⁰ Subsection 109(5).

Publication - The IPC is required to publish a summary of the report on the IPC's website¹¹ and may also publish the entire Consideration report on the IPC's website¹² along with the summary. The IPC will identify whether the custodian accepted or refused to accept the recommendations. The IPC will also publish any reasons given by the custodian for refusal.

No report or report summary will be published until any applicable appeal period has expired or an appeal has been completed.¹³

A Consideration is an adjudicative process. Therefore, completion of a report may take a significant amount of time.

Questions about this document should be forwarded to:

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This document was prepared to assist custodians subject to HIPMA and the public understand how the Office of the Information and Privacy Commissioner manages complaints received. The document is for administrative purposes only and is not intended, nor is it a substitute for legal advice. For the exact wording and interpretation of HIPMA, please read the Act in its entirety. This document is not binding on the Information and Privacy Commissioner.

As this document is used for administrative purposes it is subject to change without notice. Please refer to the Office of the Information and Privacy Commissioner's website at www.ombudsman.yk.ca for the current version.

¹¹ Subsection 110(1).

¹² Subsection 109(6).

¹³ Subsection 111 (1).