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File No. 560397/000007

April 13, 2018

Delivered by Email: Breanna.Taylor@ombudsman.yk.ca

Delivered by Hand:

Office of the Yukon Information and Privacy Commissioner
Suite 201 - 211 Hawkins Street
Whitehorse, Yukon Y1A 1X3

Attention: Registrar

Dear Sirs / Mesdames:

Re:*Health Information Privacy and Management Act*
Complaint File HIP17-081

This is the response of the Yukon Hospital Corporation (“YHC”) to the Consideration Report dated March 16, 2018 in File HIP17-081 (the “**Consideration Report**”).

Objections to the Consideration Report

1. Burden of Proof on Necessity

YHC wishes to formally record its objection to the finding made by the Information and Privacy Commissioner (the “**Commissioner**”) in paragraphs 78 and 79 of the Consideration Report that the evidence adduced by the YHC did not meet its burden of proof that disclosure of the Complainant’s and her newborn’s personal health information (the “**Records**”) to the [REDACTED] Health Centre was necessary to provide them with at-home, follow up health care.

Notwithstanding the Commissioner’s decision to obtain additional information from Perinatal Services BC, the only evidence in the consideration is that at the time the Records were sent on or about [REDACTED] 2016 to [REDACTED] Health Centre, the personal health information in the Records was considered necessary to provide health care to the Complainant and her newborn, as per the sworn statements of [REDACTED]

The information provided in the letter dated November 10, 2017 from the Interim Director of Perinatal Services BC provides an incomplete and insufficient basis to suggest that any of the personal health information in the Records was not necessary in [REDACTED] 2016. The response of YHC dated December 8, 2017 does not detract from the evidence of [REDACTED]

2. Refusal or Withdrawal of Consent

YHC formally objects to the findings made by the Commissioner in paragraphs 87 to 89 of the Consideration Report (relating to the question of a refusal or withdrawal of consent) and the resulting recommendation number 3, because YHC was not given any notice of those issues or any opportunity to provide evidence or make submissions on them. The findings and the related recommendation should be struck and a revised Consideration Report should be issued.

YHC has taken the principled position throughout this consideration that consent was not required for its disclosure of the Records. The issue of consent is distinct from the question of knowledge, awareness or notice as discussed by the Commissioner in paragraphs 86 to 89 of the Consideration Report. The issues of awareness, knowledge or notice, as distinct from consent, were not issues identified in the Notice of Written Consideration dated August 25, 2017, or at any time thereafter.

It was procedurally unfair for the Commissioner to consider those distinct issues that were not brought to YHC's attention. If the Commissioner wanted to address new and distinct issues in the consideration, she had a duty to give the parties notice of these issues and an opportunity to be heard by seeking supplemental evidence and submissions from them. Had those distinct issues been identified, YHC would have submitted the following evidence in the consideration:

1. Consent for Admission to Hospital and/or Investigation/Treatment dated [REDACTED] 2016, and signed by the Complainant (see attached); and
2. YHC Privacy Notice posted at all material times at the Admissions and Registration Desk, as well as at the main Nursing Station and in the Patient Lounge on the Maternity unit (see attached).

Based on the evidence available to YHC and under sections 39, 40 and 41 of the *Health Information Privacy Management Act* ("HIPMA"), YHC was entitled to make certain assumptions in the circumstances regarding the state of the Complainant's knowledge. YHC did not make submissions on these sections because the Commissioner failed to identify this issue in the course of the consideration.

Recommendations

Pursuant to section 112(1) of HIPMA, the following are YHC's decisions regarding the recommendations in the Consideration Report.

1. Recommendation No. 1

YHC will submit a request to the Department of Health and Social Services that the Department securely dispose of the Records as soon as the Records are no longer reasonably required for the purposes of providing health care to the Complainant and her newborn.

2. Recommendation No. 2

YHC is committed to a process of continual improvement and achieving clinical best practices. The YHC will be conferring with Perinatal Services BC and other persons about the practices in British Columbia through the Department of Health and Social Services regarding the disclosure of personal health information to public health nurses who provide postpartum follow-up health care to mothers and newborns.

3. Recommendation No. 3

YHC objects to the inclusion of this recommendation in the Consideration Report because YHC was not given an opportunity to provide evidence or make submissions on the relevant issues.

In any event, as the Commissioner is aware, at all material times YHC has had a Privacy Notice in place throughout its hospitals to inform individuals about the disclosure of their personal health information and their right to withhold or withdraw consent to collect, use and sharing of their personal health information.

4. Recommendation No. 4

As previously indicated, after the process of conferring with Perinatal Services BC through the Department of Health and Social Services is complete, YHC will be reviewing its practices with a view to determining whether there is any justification for changing those practices.

Yours truly,

BORDEN LADNER GERVAIS LLP


Allison K. Foord

AKF/lp
Enclosures

cc: Yukon Hospital Corporation