



Yukon
Information
and Privacy
Commissioner

211 Hawkins Street, Suite 201
Whitehorse, Yukon Y1A 1X3
T: 867.667.8468
F: 867.667.8469
1-800-661-0408 ext. 8468
www.ombudsman.yk.ca

DISCLOSURE OF PERSONAL INFORMATION DURING AN EMERGENCY IN YUKON

Updated March 18, 2020

Update: On March 18, 2020, Yukon's Chief Medical Officer of Health declared a public health emergency under section 4.3 of the *Public Health and Safety Act*. This [declaration](#) comes with new public health measures aimed at protecting Yukoners and limiting the spread of COVID-19.

Canadian privacy laws all contain provisions that allow for the disclosure of personal information or personal health information in the event of an emergency.

The Yukon Information and Privacy Commissioner has oversight authority to monitor compliance with Yukon's two privacy laws, the *Access to Information and Protection of Privacy Act* (ATIPP Act) and the *Health Information Privacy and Management Act* (HIPMA).

ATIPP Act

The ATIPP Act authorizes a public body to disclose personal information about an individual with their consent.

36. A public body may disclose personal information only ...

(b) if the individual the information is about has consented, in the prescribed manner, to its disclosure;¹

However, the following provisions authorize public bodies to disclose personal information without an individual's consent including in the case of emergency:

28(1) Despite any other provision of this Act, a public body must disclose information to the public or an affected group of people if the public body has reasonable grounds to

¹ Subsection 2 (1) of the *Access to Information Regulation* requires that an individual's consent under paragraph 36 (b) of the ATIPP Act to be in writing and specify to whom the personal information may be disclosed and how it may be used. Subsection 2 (1) does not apply to the consent if the disclosure is necessary for the care or treatment of a patient of the public body.

believe that the information would reveal the existence of a serious environmental, health, or safety hazard to the public or group of people.

(2) Before disclosing information under subsection (1), the public body must, if practicable, notify (a) any third party to whom the information relates; and (b) the commissioner.

(3) If it is not practicable to comply with subsection (2), the public body must mail a notice of disclosure in the prescribed form (a) to the last known address of the third party; and (b) to the commissioner.

36. A public body may disclose personal information only ...

(d) for the purpose of complying with an enactment of, or with a treaty, arrangement or agreement made under an enactment of Canada or the Yukon;²

(e) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of information;³

(f) to an officer or employee of the public body or to a Minister, if the information is necessary for the performance of the duties of the officer, employee or Minister [my emphasis];

(n) if the public body determines that compelling circumstances exist that affect anyone's health or safety and if notice of disclosure is mailed to the last known address of the individual the information is about;

(o) so that the next of kin or a friend of an injured, ill, or deceased individual may be contacted; ...

See section 36 of the ATIPP Act for all provisions that authorize disclosure of personal information.

² For example, if the Chief Medical Officer of Health declares a public health emergency under the *Public Health and Safety Act*, they have authority under subsection 4.5 (1) to “require any person to whom notice of a public health emergency has been given or is deemed to have been given, to provide information, including personal information, to the chief medical officer of health to enable them to perform their duties and functions under this Act” [My emphasis]. Where a person receives such notice they are required by subsection 4.5 (2) to “comply promptly with the request.” Subsection 4.5 (3) requires the Chief Medical Officer of Health to collect only that information that they consider necessary to exercise their duties under the *Public Health and Safety Act* (subsection 4.5 (3)). **The authority of the Chief Medical Officer of Health is very broad under the *Public Health and Safety Act*. For any questions about this authority refer to this Act or contact the Office of the Chief Medical Officer of Health.** There is also broad authority under the *Civil Emergency Measures Act* for the management of a civil emergency.

³ *Ibid.*

HIPMA

HIPMA authorizes custodians to disclose personal health information with the consent of the individual the information is about. There are also many provisions that authorize a custodian to disclose personal health information without consent, including the following. Some of these provisions provide specific authority for custodians to disclose personal health information in the case of an emergency.

58. A custodian may disclose an individual's personal health information without the individual's consent

(a) to a person who provides health care⁴ to the individual, or whom the custodian reasonably believes will do so, to the extent necessary to provide the health care, unless the individual has expressly refused or withdrawn their consent to the disclosure;

(h) for any purpose other than providing health care to the individual, if the custodian reasonably believes that the disclosure will prevent or reduce a risk of serious harm to the health or safety of any other individual, or will enable the assessment of whether such a risk exists;

(l) to the Minister⁵, the Department⁶, the Yukon Hospital Corporation or a prescribed branch, operation or program of a public body, for the purpose of the planning and management of the health system;⁷

(o) subject to the requirements and restrictions, if any, that are prescribed, if an enactment of Yukon or Canada, or a treaty, agreement or arrangement entered into under such an enactment, permits or requires the disclosure;⁸

(cc) to the chief medical officer of health under the Public Health and Safety Act, or to a public health authority that is established under the laws of another jurisdiction, if the disclosure is made to permit the chief medical officer or the authority to discharge

⁴ "Health care" is defined in HIPMA as "any activity (other than an activity that is prescribed not to be health care) that is or includes (a) any service (including any observation, examination, assessment, care, or procedure) that is provided (i) to diagnose, treat or maintain an individual's physical or mental condition, (ii) to prevent disease or injury or to promote health..."

⁵ Minister of Health

⁶ Department of Health and Social Services

⁷ "Planning and management of the health system" is defined in HIPMA to include "(a) the collection, analysis or compilation of information with respect to (i) the administration, management, evaluation or monitoring of the health system, (ii) the allocation of resources to the health system, or (iii) planning for the health system, and (b) **public health surveillance.**" "**Public health surveillance**" means, per the *Public Health and Safety Act*, "the systematic collection, analysis, interpretation and dissemination of health-related data for the purposes of identifying and addressing the public health needs, risks to health and resource requirements of people in the Yukon." My emphasis.

⁸ For example, there is broad authority under *Civil Emergency Measures Act* for management of a civil emergency.

*a duty, function or power under that Act or a substantially similar duty, function or power;*⁹

One or more of these provisions may be relied on by a custodian in the case of an emergency when disclosing personal health information without consent. Of note is that custodians must still apply the limitation principles to the disclosure. This means that they must not disclose personal health information if other information will suffice, or if personal health information is necessary, they must limit the amount of personal health information that is disclosed to the minimum amount needed for the purpose of disclosure.

See sections 57 and 58 of HIPMA for all provisions authorizing disclosure of personal health information.

Yukon organizations to which the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) applies must comply with its provisions. For further information about compliance with PIPEDA, contact the Office of the Privacy Commissioner of Canada. Their contact information is available on their website at www.priv.gc.ca.

Please contact the Office of the Yukon Information and Privacy Commissioner by phone at 867-667-8468 or toll-free in Yukon at 1-800-661-0408 (ext. 8468) or by email at info@ombudsman.yk.ca if you have any questions about this guidance or if you require additional information about compliance obligations under Yukon's privacy laws.

Note that email is not a secure form of transmission. As such, it is recommended that sensitive personal information or personal health information not be included in email communication with our office.

This document was updated in March 2020 to assist public bodies and custodians understand their authority to disclose personal information or personal health information under the ATIPP Act and HIPMA in the event of an emergency. This document is not intended as, nor is it a substitute for, legal advice. For the exact wording and interpretation of the ATIPP Act and HIPMA, please read the Acts and regulations in their entirety. This document is not binding on Yukon's Information and Privacy Commissioner.

⁹ For example, if the Chief Medical Officer of Health declares a public health emergency under the *Public Health and Safety Act*, they have authority under subsection 4.5 (1) to “require any person to whom notice of a public health emergency has been given or is deemed to have been given, to provide information, including personal information, to the chief medical officer of health to enable them to perform their duties and functions under this Act” [My emphasis]. Where a person receives such notice they are required by subsection 4.5 (2) to “comply promptly with the request.” Subsection 4.5 (3) requires the Chief Medical Officer of Health to collect only that information that they consider necessary to exercise their duties under the *Public Health and Safety Act* (subsection 4.5 (3)). **The authority of the Chief Medical Officer of Health is very broad under the *Public Health and Safety Act*. For any questions about this authority refer to this Act or contact the Office of the Chief Medical Officer of Health.**