



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

Guidance for custodians under the *Health Information Privacy and Management Act* during the COVID-19 pandemic

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Emergency measures due to COVID-19

A number of measures have been put into effect to minimize the spread of COVID-19 in Yukon. In March and April of 2020, Yukon's Chief Medical Officer of Health required the closure of certain businesses and for others recommended that, wherever possible, work continue remotely. To adhere to these measures, some custodians may have suspended their operations or are operating remotely. Some may have reduced their service hours.

Despite these challenging circumstances, the *Health Information Privacy and Management Act* (HIPMA) remains in force and custodians are required to meet their obligations thereunder.

Privacy management

Custodians who are no longer working within their businesses must ensure that any personal health information that is stored physically within the business is properly secured. They must also ensure that personal health information collected, used, disclosed or managed remotely is done so in a secure manner. This includes any remote access to and transmission of personal health information, no matter the form.

The Information and Privacy Commissioner (IPC) for Yukon has issued guidance and information sheets to mitigate the risks of a privacy breach when working remotely. These include:

- [guidance](#) to assist public bodies and custodians in understanding their authority to disclose personal information and personal health information during an emergency;
- [guidance](#) to ensure that employees of public bodies and custodians who are working from home properly secure personal information and personal health information; and
- [information](#) on the risks to privacy associated with the use of unsecure video and chat applications when used to conduct business involving the exchange of personal information and personal health information.

Access to information and requests for correction

There are a number of challenges associated with the fact that many health care providers in Yukon, who are also custodians of personal health information, may not currently be operating at all or are not working from their regular places of business where health records are stored. One such challenge may be to meet the timelines contained in HIPMA for responding to an access to information request (ATI request) or to respond to a request for correction.

ATI requests: What HIPMA requires

Subsection 25 (1) of HIPMA creates a right of access by an individual to their own personal health information. A custodian who receives a completed ATI request is required by subsection 26 (1) to respond to the request within 30 days of receiving it. A custodian may extend the 30-day deadline for response by up to 60 days if:

- (a) completing the required work within the initial 30-day period would unreasonably interfere with the operations of the custodian; or
- (b) the custodian reasonably believes that consultations are advisable before determining whether or how to comply with the request.

If the deadline for response is not met, subsection 26 (5) deems the ATI request to have been refused.

Correction requests: What HIPMA requires

Subsection 28 (1) of HIPMA provides individuals with the right to request a correction of their own personal health information if they believe there is an error or omission. Specifically, an individual may ask the custodian to annotate their health record to reflect a correction of the error or omission.

Subsection 28 (2) requires a custodian to respond to the correction request within 30 days of its receipt. Subsection 28 (3) authorizes a custodian to extend the time to respond by up to 15 days, if the correction request “unreasonably interfere[s] with the operations of a custodian”.

Upon receiving a request for correction, the custodian must annotate the record as requested, or decline to annotate the record and notify the individual about their decision. If the record is in the custody or control of another custodian, the custodian must provide this information to the applicant.

If a custodian declines to annotate the record or fails to respond to the correction request in accordance with the timelines, subject to the exceptions in subsection 28 (7), it must, in accordance with subsection 28 (6):

- (a) permit the individual to provide the custodian with a concise statement of disagreement stating the correction requested and the reason for the correction; and
- (b) add the statement of disagreement to the record, and to any other record of the individual’s personal health information which deals with substantially the same subject matter, in a manner that reasonably ensures that the statement of disagreement will be read with and form part of the record.

Challenges in meeting HIPMA timelines due to COVID-19

The IPC is responsible to oversee compliance by custodians with HIPMA. HIPMA does not have any provisions that would authorize a custodian to extend the timelines to respond to an ATI request or a correction request in unusual and urgent circumstances such as those occurring in Yukon as a result of COVID-19. The IPC does not have this authority either.

If an ATI request is not responded to in time, the request is deemed refused and the applicant can make a complaint to the IPC about the refusal. If a correction request is not responded to in time, the custodian must carry out the steps identified in subsection 28 (6) of HIPMA (see above). An applicant may make a complaint to the IPC if the custodian fails to do so.

The IPC recognizes that custodians whose operations have changed as a result of implementing COVID-19 emergency management measures may have difficulty in meeting the timelines for responding to ATI requests and correction requests. If complaints are received by the IPC related to a failure in meeting timelines, the IPC will work with custodians and applicants to establish a reasonable time frame for responding. In determining what constitutes ‘reasonable’, the IPC will consider the operational limitations of the custodian in the context of COVID-19 and the specific circumstances associated with the applicant’s request.

How to facilitate compliance with requirements to process ATI and correction requests

There are a number of things a custodian can do to support compliance with the requirements in HIPMA to the degree possible during these challenging times.

For a custodian whose business is closed or who is operating remotely, they should establish a plan to respond to ATI requests and correction requests. The plan should include the following:

- Signage should be posted in a location that it is likely to be seen by applicants, which informs them about who to contact to make an ATI request or correction request. The relevant phone number and other contact information for this designated contact person should be included. Voicemail messages and websites should also contain this information.
- There should be a process established for receiving ATI requests and correction requests.
 - If requests are received electronically, the technology used must be secure. If requests are received some other way, such as in person or by phone, a process for recording information about the request, including the date it was received, must be established.
- There should be a process established to deal with an ATI request or correction request involving electronic and paper records.
 - If the custodian's designated contact must attend the business premises to process the ATI request or correction request, they will need to know who to contact for assistance as necessary. If more than one person must attend the office to process the request, the need to ensure appropriate physical distancing must be considered.
 - If the custodian's designated contact can respond to an ATI request or correction request remotely, security measures must be in place to ensure the personal health information is secure.
 - If the response is provided electronically from an electronic system, there must be a secure method of transmitting the information to the applicant.
 - If the response is provided in paper form, the personal health information must be secured from unauthorized access or disclosure, including by others residing in the designated contact's home. If the designated contact is delivering paper records to an applicant, they will require supplies to package the personal health information and to ensure a secure method of delivery is used.

- The custodian's designated contact must maintain a copy of the response letter with the date of delivery and should retain a copy of any correspondence with the applicant about processing the ATI request or correction request. This information must be securely stored.

Any custodian who for operational reasons may be unable to meet the timelines for responding to an ATI request or correction request should establish a plan to communicate with the applicant about the challenges associated with meeting the timelines.

- Applicants should be informed at the outset if the custodian is experiencing operational impacts that may affect their ability to meet the timeline for response. The custodian should be prepared to explain the nature of the impacts to the applicant.
- If, while processing the request, the custodian's designated contact determines they will be unable to meet the timeline for response, including an extended one, they should contact the applicant immediately to convey the situation and work with the applicant to identify a reasonable time frame for response.
- The custodian's designated contact should provide updates to the applicant on the status of processing a request that will be delayed. All communications with the applicant should be documented and retained securely.
- The custodian's designated contact should inform the applicant that if the timeline for providing a response is not met, they may make a complaint to the IPC.
- For ATI requests:
 - While HIPMA permits a custodian to charge a reasonable fee for providing access to personal health information, the custodian's designated contact should consider waiving part or all of the fee so it is not a barrier for an applicant to obtain their personal health information. This would also be a matter of fairness to the applicant where the ATI request is not processed within the timelines specified in HIPMA.
 - Where a delay in responding to the ATI request will occur, the custodian's designated contact should provide personal health information requested by the applicant in batches, wherever possible, rather than waiting until all of information requested is ready to release to the applicant. Also, if an applicant is requesting a copy of all their personal health information, the custodian's designated contact should consider whether to prioritize providing copies of more current personal health information, even if it will take longer to compile less current information.

- In the event that numerous ATI requests or correction requests are received by the custodian, thereby impacting its ability to respond in time, the custodian should consider establishing criteria to prioritize requests for processing. This criteria should be documented and retained as the IPC may ask to review it, should the IPC receive any complaints about the criteria, or about a delay in responding to a request.

More information

Any questions about facilitating compliance with HIPMA can be directed to a custodian's privacy contact or to the IPC.

The IPC can be reached 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.

The purpose of this document is to assist custodians subject to the *Health information Privacy and Management Act* in meeting their obligations under the Act.

This document is not intended as, nor is it a substitute for, legal advice. This document is not binding on Yukon's Information and Privacy Commissioner.