

# School Boards and Student Health Information

Laura Crestohl

Senior Health Policy Advisor

Office of the Information and Privacy Commissioner of Ontario



Information and Privacy  
Commissioner of Ontario

Commissaire à l'information et à la  
protection de la vie privée de l'Ontario

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# *Personal Health Information Protection Act (PHIPA)*

- Applies to the collection, use and disclosure of health information by health information custodians, including when students receive health care in school
- Health care includes any health-related observation, examination, assessment, care, service or procedure provided to students to:
  - diagnose, treat or maintain their physical or mental wellbeing
  - prevent disease or injury
  - promote health
- Examples include:
  - providing care to a student who is not feeling well
  - providing psychological counselling or conducting an assessment
  - assessing a student for a condition such as a speech disorder

# Health Information Custodians

- Most individuals and organizations involved in the delivery of health care in Ontario are health information custodians, including:
  - health care practitioners
    - such as physicians, nurses, psychologists, speech-language pathologists, dental hygienists and social workers providing health care
  - a person who operates a group practice of health care practitioners
  - a community health or mental health centre, program or service whose primary purpose is the provision of health care

# Health Information Custodians in Schools

*Who is the health information custodian when a health care practitioner provides health care to a student in school?*

- It depends on the way the relationship between the school board and the health care practitioner is structured.

# Health Information Custodians in Schools

1. A school board may be the custodian if the school board is:

- operating a group practice of practitioners, or
- operating a centre, program or service for community or mental health whose primary purpose is providing health care

In this case, the individual health care practitioners would be agents of the custodian school board

2. A health care practitioner may be the custodian:

- a) The custodian may be an individual health care practitioner employed by the school board
- b) The custodian may be a practitioner or another person who operates a group practice of practitioners who provides the services to the school board (as employees or otherwise)

# Health Information Custodians in Schools

- While different arrangements are possible, the school board should provide clarity on who is the custodian responsible for student health information.
- Employment contracts or other agreements should set out who is the custodian responsible for carrying out the duties and responsibilities required by *PHIPA*.
- Students and parents should be given a notice that clearly identifies who the custodian is and identifies a contact person, as required by *PHIPA*.

# Health Information Custodians in Schools

- Custodians are only allowed to collect, use or disclose a student's health information if:
  - they have consent from the student (or someone who may consent on the student's behalf such as a parent), and it is necessary for a lawful purpose, or
  - it is permitted or required by *PHIPA*
- Custodians must take **reasonable steps** to keep health information secure.
- If health information is **stolen, lost, or used or disclosed without authority**, the custodian must notify the student or the person who may consent on their behalf, and in some cases must also notify the IPC.

# Access

- Generally, students have a right to access their health records that are held by a custodian.
- A student, or the person who may act on their behalf, can exercise this right by making a written request to the custodian that has their health record.
- Upon receiving a request, a custodian must
  - make the record available to the student and provide a copy, if requested
  - give written notice if the record does not exist, cannot be found, or if the right of access does not apply
  - if *PHIPA* permits the custodian to refuse the request, give written notice of the refusal, the reason and information about making a complaint to the IPC



# Health Care Practitioners Acting for an Institution

- If the custodian is the school board, then it is responsible for responding to an access request under *PHIPA*.
- If the custodian is one or more of the health care practitioners employed by or acting for the school board, then a student's right of access under *PHIPA* would not apply if the student has the right to access the record under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*.
  - In that case, the health care practitioner can disclose the record to the institution to enable the processing of the *MFIPPA* request .

# Transfer to a successor

- Custodians can only transfer student health records to a successor if the custodian makes reasonable efforts to give notice to the student or to someone who can consent on their behalf before transferring the records, or if this is not possible, as soon as is possible after the transfer.
- If the custodian of student health information is a health care practitioner working for the school board, a change in school board staff would require notification to the student or someone who can consent on their behalf that their health record is being transferred.

# HICs working for Non-HICs

- What is a Health Information Custodian?
- Examples of Custodians Working for Non-Custodians
- Agents of Custodians
- Responsibilities of Custodians
- Disclosure of Personal Health Information by Custodians
- Health Information Records Kept In Other Places
- Custodians Acting as Agents of *FIPPA* or *MFIPPA* Institutions



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## Fact Sheet

### Health Information Custodians Working for Non-Health Information Custodians

The *Personal Health Information Protection Act, 2004 (PHIPA)* sets out rules for the collection, use and disclosure of personal health information by health information custodians (custodians).

While these rules are generally the same for all custodians, special considerations may apply in the case of custodians working for non-custodians.

#### What is a Health Information Custodian?

As defined in *PHIPA*, health information custodians include health care practitioners (see below), hospitals, psychiatric facilities, pharmacies, laboratories, nursing homes and long-term care facilities, homes for the aged and homes for special care, community care access corporations, ambulance services, boards of health, the Minister of Health and Long-Term Care and the Canadian Blood Services.

*PHIPA* defines a health care practitioner as: a person who is a member within the meaning of the *Regulated Health Professions Act, 1991* who provides health care; a person registered as a drugless practitioner under the *Drugless Practitioners Act* who provides health care; a person who is a member of the Ontario College of Social Workers and Social Service Workers who

provides health care; and any other person whose primary function is to provide health care for payment. Examples of health care practitioners include: doctors, nurses, audiologists and speech-language pathologists, chiropractors, chiroprapists, dental professionals, dieticians, medical radiation technologists, medical laboratory technologists, massage therapists, midwives, optometrists, occupational therapists, opticians, pharmacists, physiotherapists, psychologists and respiratory therapists.

*PHIPA* defines health care as any observation, examination, assessment, care, service or procedure that is done for a health-related purpose and that is carried out or provided:

- to diagnose, treat or maintain an individual's physical or mental condition;
- to prevent disease or injury or to promote health; or
- as part of palliative care.

Persons who do not provide health care are not health care practitioners.

#### Examples of Custodians Working for Non-Custodians

There are many examples of custodians working for non-custodians, including:



# Applying *PHIPA* and *FIPPA/MFIPPA* to PHI

- General rule
- Exceptions to general rule
- Provisions in *PHIPA* specific to health information custodians that are institutions
- Access Rights under *FIPPA* or *MFIPPA*
- Access Rights to One's Own Personal Health Information under *PHIPA*



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## Fact Sheet

### *Applying PHIPA and FIPPA/MFIPPA to Personal Health Information*

The purpose of this Fact Sheet is to provide organizations that are defined as both health information custodians under the *Personal Health Information Protection Act (PHIPA)* and institutions under public sector privacy and access to information legislation, namely the provincial *Freedom of Information and Protection of Privacy Act (FIPPA)* or its municipal counterpart the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*, with guidance about the application of these statutes to personal health information.

Organizations that are both health information custodians and institutions include hospitals (as of January 1, 2012), the Ontario Agency for Health Protection and Promotion, the Ministry of Health and Long-Term Care, the Ministry of Health Promotion, medical officers of health and municipally operated long-term care homes and ambulance services.

This Fact Sheet does not specifically address health information custodians working for institutions that are not health information custodians. For guidance on this issue, please refer to *Fact Sheet 11: Health Information Custodians Working for Non-Health Information Custodians*.

#### General Rule

Subject to certain exceptions, health information custodians that are also institutions or acting as part of an institution within the meaning of public sector privacy and access to information legislation are governed by *PHIPA*, not *FIPPA* or *MFIPPA*, with respect to personal health information in their custody or under their control.

Personal health information is defined in *PHIPA* as identifying information about an individual that:

- relates to the physical or mental health of the individual;
- relates to the provision of health care to the individual;
- is a plan of service under the *Home Care and Community Services Act, 1994*;
- relates to payments or eligibility for health care or eligibility for coverage for health care;
- relates to the donation of any body part or bodily substance of the individual or that is derived from the testing or examination of any such body part or bodily substance;



# HOW TO CONTACT US

## Information and Privacy Commissioner of Ontario

2 Bloor Street East, Suite 1400

Toronto, Ontario, Canada M4W 1A8

Phone: (416) 326-3333 / 1-800-387-0073

TDD/TTY: 416-325-7539

Web: [www.ipc.on.ca](http://www.ipc.on.ca)

E-mail: [info@ipc.on.ca](mailto:info@ipc.on.ca)

Media: [media@ipc.on.ca](mailto:media@ipc.on.ca) / 416-326-3965