

ACCESS FACT SHEET

Accessing Your Deceased Relative's Personal Information

There may be times when you will want to obtain information about a deceased relative. You may want this information to manage their estate, make informed decisions about your health care, or simply to cope with the grieving process.

Generally, two types of law can apply in these situations: Ontario's public sector access and privacy laws and Ontario's health privacy law.

This fact sheet provides answers to common questions about your right to get personal information about a deceased relative from a government organization or personal health information from a health information custodian (custodian). It also explains some of your other rights to obtain information about a deceased relative.

ACCESSING PERSONAL INFORMATION FROM GOVERNMENT ORGANIZATIONS

What personal information do government organizations hold?

Government organizations collect personal information as part of their role in providing services to the public. For example, you give personal information to a government organization when you fill out an application for a program or service or apply for a driver's licence. Ontario's access



and privacy laws regulate the collection, use and disclosure of personal information by government organizations.

Personal information means recorded information about an identifiable individual. It does not include information about an individual who has been deceased for more than 30 years.

Can I access my relative's personal information from a government organization?

Ontario's public sector access and privacy laws give individuals the right to request information about themselves from government organizations. When an individual has died, their "personal representative" may request access to the deceased individual's personal information, on their behalf, to manage the affairs of their estate. The personal representative is understood to be the same as the "estate trustee."

"Estate trustee" is not a defined term under Ontario's access and privacy laws, but is defined under the Courts of Justice Act as "an executor, administrator, or administrator with the will annexed."

The term "executor" generally means a person named by the deceased individual to carry out their will. The term "administrator" generally means a person appointed by the court to manage the affairs of the deceased individual's estate where there is no will. The term "administrator with the will annexed" generally means someone appointed by the court to carry out the directions in a will when the will does not name an executor or the named executor refuses, is incompetent, or has died.

A person who manages the affairs of a deceased individual's estate may be, for example, someone who was appointed by the court where there is no estate trustee. They may also be a person who is not appointed but, for valid reasons, has assumed responsibility for managing the affairs of the estate.

What if I am not the personal representative?

If you are not a personal representative seeking information to manage the affairs of the estate, you can still request access to your relative's information.

Under the law, a government organization can provide you access to your deceased relative's personal information if it is satisfied that you are a spouse or close relative and there are compassionate reasons for the disclosure.

In some circumstances, the government organization may ask you to submit your access request in writing. The government organization must tell the personal representative about your request and give them the

opportunity to comment on whether the information should be disclosed. In this circumstance, it will help if you can provide the government organization with all the information you have about the personal representative and how to contact them. Requesting access to information does not guarantee that you will receive all the information or records you have requested.

Note that government organizations do not have to provide access to information about medical assistance in dying if it identifies a patient, or a person or health care facility that provides this assistance. However, they are not prohibited from providing you such information and may do so at their discretion.

Requests for information under Ontario's public sector access and privacy laws may be made using the request form, available at www.ipc.on.ca/guidance-documents/forms.

If a government organization refuses to provide my deceased relative's personal information, what can I do?

If a government organization refuses to provide you access to personal information, you may appeal the decision to the IPC using the appeal form available at: www.ipc.on.ca/guidance-documents/forms.

ACCESSING PERSONAL HEALTH INFORMATION OF YOUR DECEASED RELATIVE

What is personal health information and who holds it?

Custodians are health care practitioners or organizations that have custody or control of personal health information. They include doctors, nurses, physiotherapists, optometrists, hospitals, pharmacies, laboratories, long-term care and retirement homes, ambulance services, and medical officers of health. Custodians collect, use, and disclose your personal health information when you receive health care services. Ontario's health privacy law regulates the collection, use, and disclosure of personal health information by custodians.

Personal health information includes information that:

- relates to physical or mental health, including family health history
- relates to health care that has been provided, including the identity of a health care provider
- relates to payments or eligibility for health care or coverage for health care
- relates to the donation of a body part or bodily substance, or tests or examinations of a donated body part or bodily substance

Ontario's health privacy law applies to a document containing personal health information until 120 years after the document was created, or 50 years after an individual has died.

Can I access my deceased relative's personal health information?

Generally, Ontario's health privacy law gives every individual the right to access records containing their personal health information. If you are the substitute decision-maker for your deceased relative, you can request access to their health records on their behalf.

You can request access by submitting the form, *Request to Access Personal Health Information (PHIPA)*, to the custodian. The form is available on the IPC website at www.ipc.on.ca/forms.

Who is the substitute decision-maker for a deceased individual?

A substitute decision-maker is a person who, under Ontario's health privacy law, can make decisions about an individual's personal health information on their behalf. When an individual dies, the estate trustee, or the person who manages the affairs of the deceased person's estate, becomes their substitute decision-maker. They are often a member of the family.

What if I am not the substitute decision-maker? Can I still obtain my deceased relative's health information?

If you are not your deceased relative's substitute decision-maker, a custodian can disclose the information to you with the *express* consent of the substitute decision-maker.

What if the substitute decision-maker won't give consent?

Under Ontario's health privacy law, a custodian can disclose personal health information to you, without the substitute decision-maker's consent, in the following circumstances:

- to identify the deceased
- to inform you, if it is reasonable to do so, that your relative has died or is suspected of having died, and the circumstances of their death, where appropriate
- if you are the spouse, partner, sibling or child of the deceased, and you need the information to make decisions about your health care or your children's health care

A custodian may also disclose your deceased relative's personal health information to you where it is necessary to reduce a significant risk of serious bodily harm or for a legal proceeding.

What can I do if a custodian refuses to provide me with the personal health information?

If a custodian refuses to provide your relative's personal health information to you, you can make a complaint to the IPC.

The *Access/Correction Complaint Form* and *Collection, Use Disclosure Complaint Form* are available at www.ipc.on.ca/forms.

WHERE CAN I FIND THE RESULTS OF A DEATH INVESTIGATION?

The results of a death investigation conducted by a coroner can be shared with immediate family members or a personal representative, upon written request. Families may write to the Regional Supervising Coroner Office or complete and submit a **request form**. You can find the address and form by visiting www.ontario.ca/safety online, **ServiceOntario**, or by emailing OCC.Inquiries@ontario.ca.

WHERE CAN I GET THE DEATH CERTIFICATE OR A MEDICAL CERTIFICATE OF DEATH?

Only the Office of the Registrar General of Ontario can issue a copy of a death certificate or the medical certificate of death.

For more information, visit **ServiceOntario** or call 416-325-8305 or toll free 1-800-461-2156 (Ontario only).

If you have any further questions about getting personal information or personal health information about a deceased relative, or Ontario's access and privacy laws, contact us at info@ipc.on.ca or 1-800-387-0073.