

Responding to a Request for Access to Personal Health Information

When a health information custodian receives a request for access to personal health information under the *Personal Health Information Protection Act, 2004* (the Act), the custodian is required to respond within 30 days (subject to the ability to extend the time for response for another 30 days provided the requirements in section 54(3) and (4) of the Act are satisfied).

The response must indicate whether access to all or part of the personal health information will be granted. When access is being given, the custodian must make the record available for examination or, upon request, provide a copy of the record to the individual and, if reasonably practical, an explanation of any term, code or abbreviation used in the record. When access is denied, the response must be in writing and should provide the requester with an explanation of why some or all of the personal health information has been denied.

If a thorough explanation is provided, the chances of a complaint being filed with the Information and Privacy Commissioner/Ontario (the IPC) may be greatly reduced. A complaint can be a time-consuming process for a health information custodian, involving intake, mediation and/or a review. It is therefore in the health information custodian's best interest to ensure the response letter is drafted with care and in accordance with legislative requirements.

Where the requester proceeds with a complaint, a proper written response is essential to the efficient processing of the complaint. If the original response is incomplete, the health information custodian will be required to take time to produce a proper written response. Drafting a complete response at the outset not only saves the health information

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custodian time at the start of the complaint process, but speeds up the process for all parties involved.

To assist you in preparing a response that meets the legislative requirements, please follow these two key steps:

1. REVIEWING THE RECORD(S)

The personal health information requested may involve several records. Each record must be carefully reviewed to determine whether:

- (a) access will be granted or denied to the whole record; or
- (b) access will be granted to the record with a part or parts severed.

During this review, reasons for denying access to a record or any part of it must be clearly established. These explanations can then be conveyed to the requester in the written response.

2. RESPONDING AND DRAFTING PROCEDURE

The following is a description of the components of a proper response.

- (a) When access is being given, indicate that you will make the record available to the individual for examination or, upon request, provide a copy of the record to the individual and if reasonably practical, an explanation of any term, code or abbreviation used in the record;
- (b) Where the record does not exist, provide a written response including a statement that, after a reasonable search, you have concluded that the record does not exist or cannot be found; and/or
- (c) Where the record exists and access is being refused in whole or in part, provide a written response referring to the specific “provision(s)” of the *Act* under which access is refused, unless this reveals information the requester is not entitled to (see 54(1.1)); and/or
- (d) Where refusing to confirm or deny the existence of records subject to sections 52 (1) (c), (d) or (e) of the *Act*, provide a written response indicating that you are refusing to confirm or deny the existence of the record; and/or
- (e) Include a paragraph informing the requester that he/she can file a complaint regarding the response to the IPC within six months. Include the mailing address for the IPC. Let the requester know that a complaint should be accompanied by:
 - a copy of the original request for personal health information;
 - the file number assigned by the health information custodian to the request (if available); and
 - a copy of the response.

During this review, reasons for denying access to a record or any part of it must be clearly established. These explanations can then be conveyed to the requester in the written response.

A sample response letter refusing access to records is attached, along with a response letter checklist. The following additional steps may be taken for exceptional situations where a large number of records are being denied, except where refusing to confirm or deny the existence of records subject to 52 (1) (c), (d) or (e) of the Act:

- Include an index of records with the response.

The IPC has found that providing a list of records satisfies some complainants who decide not to proceed further with a complaint. Such individuals initiate their requests for the sole purpose of finding out whether a specific record is or is not contained in the personal health information they wish to access;

- Assign a document number to each record and provide a general description of each record. The description should provide enough detail so that the requester has an understanding of the type of personal health information contained in it;
- For each record, indicate whether access has been refused or granted for the whole record or whether access has been granted with a part or parts severed;

Where one record has several parts severed, the index may list each page separately. If there is more than one severance on a page of the record, each severance should be dealt with separately;

- For each record or part of a record that is refused, the specific provision of the Act under which access is refused.

To assist the requester, attach copies of the sections of the Act that are cited;

- For each record or part of a record that is refused, explain why the provision applies to the record. This explanation, along with the general description of the record, should enable the requester to understand why the personal health information will not be disclosed.

More Information

The specific statutory obligations of health information custodians in this regard are more specifically set out in sections 54 and 55 of the *Personal Health Information Protection Act, 2004*.

An Access/Correction request form and an Access/Correction complaint form are available on the IPC's website at www.ipc.on.ca.



Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario



CHECKLIST FOR RESPONDING TO A REQUEST FOR ACCESS TO RECORDS CONTAINING PERSONAL HEALTH INFORMATION

Where access is being given:

- Make the record available to the individual for examination or, upon request, provide a copy of the record to the individual, and if reasonably practical, an explanation of any term, code or abbreviation used in the record; and
- Provide the requester with information about the fees and the waiving of fees in connection with the request.

Where access is not being given, prepare a written response:

- Where the records do not exist, include a statement that, after a reasonable search, you concluded that the record does not exist or cannot be found;
- Where the record exists and access is being refused in whole or in part, state the specific provision(s) of the *Act* under which access is refused, other than 52 (1) (c), (d) or (e) of the *Act*, and the reason the provision(s) applies;
- Where refusing to confirm or deny the existence of any record(s) subject to sections 52 (1) (c), (d) or (e) of the *Act*, indicate that you are refusing to confirm or deny the existence of the record; and
- Include a paragraph informing the requester that he/she can file a complaint regarding the response to the IPC within six months. Include the mailing address for the IPC. Let the requester know that a complaint should be accompanied by:
 - a copy of the original request for personal health information;
 - the file number assigned by the health information custodian to the request (if available); and
 - a copy of the response.

The following additional steps may be taken for exceptional situations where a large number of records are being denied, except where refusing to confirm or deny the existence of records subject to 52 (1) (c), (d) or (e) of the *Act*:

- Include an index of records with the response. The IPC has found that providing a list of records satisfies some complainants who decide not to proceed further with a complaint. Such individuals initiate their requests for the sole purpose of finding out whether a specific record is or is not contained in the personal health information they wish to access;

- Assign a document number to each record and provide a general description of each record. The description should provide enough detail so that the requester has an understanding of the type of personal health information contained in it;
- For each record, indicate whether access has been refused or granted for the whole record or whether access has been granted with a part or parts severed;
- Where one record has several parts severed, the index may list each page separately. If there is more than one severance on a page of the record, each severance should be dealt with separately;
- For each record or part of a record that is refused, the specific provision of the *Act* under which access is refused;
- To assist the requester, attach copies of the sections of the *Act* that are cited; and
- For each record or part of a record that is refused, explain why the provision applies to the record. This explanation, along with the general description of the record, should enable the requester to understand why the personal health information cannot be disclosed.

Feel free to copy this list for your day-to-day reference.



SAMPLE RESPONSE LETTER

Final Response: Partial Access Granted (No Fees Involved)

July 25, 2005

PERSONAL & CONFIDENTIAL

Ms. Jane Public
123 Your Street
Your Town, Ontario
X1Y 2Z3

Dear Ms. Public,

Re: Request No. 95-001

Thank you for your letter which was received by our office on June 25, 2005.

The following is a response to your request for personal health information made under the *Personal Health Information Protection Act, 2004* (the *Act*).

You requested a copy of your records relating to your discharge from Your Town Hospital on March 1, 2005. You also requested a copy of a letter that you believe was sent from Dr. Jones, of Your Town Hospital, to your family physician on March 1, 2005, indicating that you should not have been discharged from the hospital. Access to a number of these records is being granted in full, while exemptions are being claimed for others.

I am enclosing copies of records to which you have been granted access. Where only partial access has been granted, we have severed (not released) the exempted portions. I have also enclosed passages from the *Act* to explain why those exemptions have been applied.

A legal opinion has been denied in full since the information in the record is subject to a legal privilege that restricts its disclosure pursuant to section 52(1)(a) of the *Act*.

After a reasonable search, I have concluded that a letter from Dr. Jones to your family physician as you described, does not exist.

Section 54 of the *Act* authorizes charging fees in connection with requests for access to personal health information. In this case, fees could be charged for photocopying. However, due

to the limited number of pages, the fee is being waived as authorized by section 54(12) of the Act.

You may make a complaint about this response within six months of receiving this letter by writing to the Registrar at the Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8; telephone: 416-326-3333 or toll free 1-800-387-0073.

If you decide to make a complaint, please provide the Commissioner's office with the following:

- a copy of the original request for information you sent;
- the file number listed at the beginning of this letter;
- a copy of this response letter; and
- the reasons why you believe the records exist (if the response was that no records exist).

Yours truly,

Dr. Smith
Chief Privacy Officer
Your Town Hospital

Encl.



SAMPLE INDEX OF RECORDS – MAY BE USED FOR LARGE NUMBER OF RECORDS

DOC NO.	GENERAL DESCRIPTION	PAGE / PARA NO.	RELEASE YES/NO	SECTION(S) APPLIED	GENERAL COMMENTS
1	Legal opinion dated July 1, 2005 from Jim Connors, legal counsel to Dr. Smith, regarding injury while in hospital. (2 pages)	All	N	52 1(a)	the information in the record is subject to a legal privilege that restricts its disclosure
2	Discharge Summary (5 pages)	All	Y		
3	Notes to chart by Dr. Jones (3 pages)	All	Y		