



Health and Social Services

**HEALTH AND SOCIAL SERVICES
CORPORATE POLICIES**

POLICY IM-004

TITLE: Access to Personal Information and Personal Health Information

CATEGORY: Information Management

EFFECTIVE: August 31, 2016

1.0 Scope

Definitions of key terms are set out in section 1.5 of this policy.

1.1 Authority

Yukon's *Health Information Privacy and Management Act* (HIPMA) (s.24) and the *Access to Information and Protection of Privacy Act* (s.5) governs access to information in Yukon.

1.2 Application

This policy and associated documents apply to all Health and Social Services employees.

1.3 Purpose

This policy sets out the criteria and process for responding to requests for personal information/personal health information held by Health and Social Services. It applies to individuals requesting their own information and to people authorized to act on behalf of such individuals (e.g. parents, legal guardians, substitute decision-makers, or attorneys acting under a power of attorney). It also applies to requests by individuals to have their information disclosed to a third party.

This policy will provide Health and Social Services personnel with a common and consistent approach to providing individuals access to their personal information/personal health information. This will allow Health and Social Services to respond to requests for information in a coordinated and consistent manner, and identify the roles and responsibilities of department staff.

1.4 Background

With limited and specific exceptions, an individual has a right of access to a record containing their personal information/personal health information that is the custody or control of Health and Social Services.

The request should be made in writing and contain sufficient detail to enable Health and Social Services to identify the personal information/personal health information requested.

1.5 Definitions

Access means providing a copy of information relating to an individual to that individual or a person acting on their behalf, or, at the direction or with the consent of the individual, transferring their personal health information to another custodian or to a person in another jurisdiction who performs substantially similar functions to a health care provider (*Health Information Privacy and Management Act Regulations s.23 (a)(i)(ii)*)

Adult means any person 19 years of age or older (*Age of Majority Act s.1*)

Personal information means information about an identifiable individual including name, address, telephone number, health care history (physical or mental disability); educational, financial, criminal or employment history; blood type (for a full definition see Yukon's *Access to Information and Protection of Privacy Act s.3*)

Health information means identifying information of an individual, in a recorded or unrecorded form e.g. individual's health; provision of health care; payments for health care; donation of body parts, tissue or substance of an individual, or testing. (*HIPMA, s. 2(1)*)

Personal health information (PHI) of an Individual means health information of an individual and prescribed registration information and provider registry information in respect of an individual (*HIPMA, s. 2(1)*).

2.0 Policy Statement

1. General

Under Yukon law (*Health Information Privacy and Management Act; Access to Information and Protection of Privacy Act*), individuals have a right to obtain access to their personal information/personal health information contained in records in the custody or control of Health and Social Services. Individuals who lack capacity are often unable to independently exercise their right to access their own records. Individuals who have the legal authority to act on the individual's behalf may access the records for that individual (e.g. parent, legal guardian, a person, such

as lawyer or substitute decision-maker acting on the individual's behalf and authorized in writing).

Requests for personal information/personal health information may be made to front-line staff or to the department's Access to Information (ATI) Coordinator.

Adults

In Yukon, a person of any age can consent to receiving service as long as they are capable of understanding and appreciating the consequences of that decision. Generally, people who are capable of consenting to receiving service are also capable of consenting to disclosures of their personal information/personal health information to third parties.

Due to the complexity of legal authorities, third party requests for information for adults who are not capable should be discussed with your supervisor or the department's Access to Information (ATI) Coordinator.

Children

Youth under 19 years of age can consent to third parties' accessing their records if they are capable of understanding and appreciating the consequences of that decision. Generally, youth who are capable of consenting to receiving service are also capable of consenting to disclosures of their personal information/personal health information to third parties.

All determinations of capacity for youth must be made on a case-by-case basis.

Due to the complexity of legal authorities, third party requests for information for children who are not capable should be discussed with your supervisor or the department's Access to Information (ATI) Coordinator.

2. Routine Requests

Requests for routine information are best defined as requests by an individual for access to their own information. These requests may also be made by another individual acting on their behalf when individuals cannot exercise this right themselves. For example:

- immunization records
- lab reports
- a completed form used to assess eligibility for benefits

Other factors to consider:

- records can easily be located
- low number of records requested e.g. 10 or less

- providing the information will not impact the operations of your program area
- able to provide information within 30-days from date of request
- the following can easily be determined
 - capability to consent
 - identity
 - authority to access

If there are questions about capacity, the authority of the person requesting access, or if the record contains information that could cause serious harm to the health or safety of any individuals or contains information about another individual, use the non-routine process set out below.

3. **Non-Routine Requests**

Requests for non-routine information are best defined as requests by an individual or by another individual acting on their behalf for disclosure of the individual's information to a third party and the following **cannot** be easily determined:

- capacity to consent
- identity cannot be easily verified
- authority to access is not clear
- files large in size (e.g. over 50 pages)
- providing the information will impact the operations of your program area

In the case of an individual seeking access to their own information, the non-routine process should be used if there are questions about capacity, the authority of the person requesting to act on the individual's behalf or if the record contains information about another individual.

All non-routine requests should be directed to the department's ATI Coordinator.

3.0 **Steps for Routine Requests**

1. **Validate the Request**

- Verify that the request falls under the criteria for routine requests.
- Verify the identity of the requestor through proof of identity.

Accepted means of identity verification for requests made in **person**:

- viewing photo identify only, **do not photocopy**
- match demographic of individual e.g. date of birth, mailing address; contact number

Accepted means of identity verification for requests made **via fax**:

- verify senders identity by calling contact number

Accepted means of identity verification for requests made **via email**:

- only in certain circumstances will the department release personal information/personal health information. Before releasing information consult with the department's Privacy Officer

The request should be in writing and contain sufficient information to identify the personal information/personal health information being requested.

Requests for personal information/personal health information are not accepted over the phone.

2. Confirm Authority to Access their own Information

- If the request is from an **adult** for their own records, presume capacity unless there is evidence to the contrary.
- Requests from a **child/youth** should be assessed on a case by case basis.
- If the request is from a **parent of the child**, verify the parent's legal authority to act on the child's behalf. If you are unsure of the parent's legal authority, consult with your supervisor or the department's ATI Coordinator before providing the information.
- If the request is from a **foster parent** of a child in the care of Health and Social Services (Family and Children's Services or Regional Services), ensure there a written consent on file from the child's social worker setting out relevant authorities.

If the authority of the requestor is not clear, route the request through the non-routine process or contact the department's ATI Coordinator.

3. Prepare a Response

- Provide a copy of the information to the requestor.
 - **In person:** document as set out below
 - **Mail:** registered mail only.
 - **Fax or Email:** Obtain written permission from the requestor to use these methods of communication. (This method is not recommended. Refer to policies, guidelines or standards related to the use of fax or email that apply to your program area.)

4. Document

- File the paper on the appropriate client's record and make note of the request, name of requestor, verification of identity, authority of

requestor (if relevant), capacity to consent (if relevant), information provided, how the information was released and to whom.

4.0 Steps for Non-Routine Requests

1. Verify Request

- Confirm the information being requested fall outside the Routine Request process as defined in the policy

2. Refer to Appropriate Process

- Provide the requestor with a copy of the department's "Request for Access to Personal Information/Personal Health Information Records" form
- The form should be forwarded immediately to the department's ATI Coordinator.

VERSION: 1

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APPROVED BY: 

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RELATED REFERENCES: *Health Information Privacy and Management Act*

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