



Prince Edward Island Île-du-Prince-Édouard

Legislative Assembly

Assemblée législative

Information and
Privacy Commissioner
PO Box 2000, Charlottetown PE
Canada C1A 7N8

Commissaire à l'information et
à la protection de la vie privée
C.P. 2000, Charlottetown PE
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March 15, 2014

Nichola Hewitt, Legislative Specialist
Department of Health and Wellness
Health Policy and Planning
P.O. Box 2000
Charlottetown, PE
C1A 7N8

Dear Ms. Hewitt,

Re: Open Letter about the Consultation Paper on the Draft *Health Information Act*

Pursuant to clause 50(1)(d) of the *Freedom of Information and Protection of Privacy Act*, the Commissioner may comment on the implications for freedom of information or for protection of personal privacy of proposed legislative schemes or programs of public bodies.

In late August of 2013, I was asked to comment on a draft of a proposed *Health Information Act* for the Province of Prince Edward Island. Understanding that this draft was a work-in-progress, my mark-up comments were brief and were not a deep analysis. Aside from editing observations, my input was often in the form of a question, generally meant to direct the legislative writers' minds to access and privacy issues and its impact on subject matter that may not have been considered. From reading the draft *Health Information Act* publicly presented for consultation, I am pleased to see that some of my suggestions were considered and adopted.

With a population of a little more than 145,000, Prince Edward Island faces many challenges for privacy protection, including anonymity. Presently, access to and the collection, use, disclosure and protection of personal information is regulated by the *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01 (the "*FOIPP Act*"), and applies to public bodies within the provincial government. Health care, however, spans between the public and private sectors, and not all custodians of our personal health information fall within our *FOIPP Act*'s jurisdiction. The fact that many of the citizens of Prince Edward Island must use the health care facilities and services of other provinces poses an even greater challenge for the privacy protection of our personal health information. Although we were the first province to implement the online drug information system and electronic health records clinical information system, we are the last province to develop health information legislation. It is important to have legislation specific to protecting our personal health information, including information about our health,

diagnosis, treatment and care. We need confidence that those we are entrusting with our health information are regulated in its protection.

There are many provisions within the draft *Health Information Act* that I am pleased to see. The draft legislation provides for independent oversight by the Office of the Information and Privacy Commissioner and gives the Commissioner order-making powers. Breach reporting is legally required, and a notice of a breach will automatically be treated as a request for review by the Commissioner. There is a provision that clearly prohibits the sale of personal health information. The offence provisions within the draft legislation are strong, including the possibility of a prison sentence. A privacy impact assessment is a tool to identify potential privacy issues which may arise out of a program before the program is implemented. Presently it is only a recommended practice, but the draft *Health Information Act* mandates the practice, and this reflects the province's commitment to taking a pro-active step to privacy protection.

I am impressed with the inclusion of strong provisions that mandate collection, use and disclosure of personal health information be limited to the minimum amount of information necessary to accomplish the purpose for which is it collected, used or disclosed.

I have some comments on the implications of this legislation that I am submitting in more detail under separate cover which may assist in a resulting personal health information legislation that meet the expectations of the citizens of Prince Edward Island. Some of my remarks are technically grammatical, while others are broader policy-based.

The office of the Information and Privacy Commissioner views the duty to assist as an important component to access and privacy functioning. This is usually framed as a duty for the custodian to respond openly, accurately and completely. The draft includes several exceptions to access ones own personal health information. While these exceptions may represent legitimate purposes and interests, the draft does not propose that these be interpreted as "limited and specific" exceptions.

I am looking forward to further discussions, understanding that it is the province's intention to introduce this bill during this spring's sitting of the Legislative Assembly, and that this law will have a significant impact on our office. It is my hope that this legislation will foster a uniformity in the handling practices of our personal health information by all provincial custodians and a genuine respect of our right to privacy protection.

Sincerely,



Maria C. MacDonald

Information and Privacy Commissioner

enclosure

cc: Peter Allison, Legislative Counsel