

Frivolous or Vexatious

For your privacy questions,
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The *Personal Health Information Act (PHIA)* is Nova Scotia's health privacy law that governs how regulated health care professionals and organizations collect, use, disclose and maintain personal health information. *PHIA* comes into force on June 1, 2013.

PHIA recognizes the right of each individual to: request to access or view their personal health information; request a correction of their personal health information; and request a record of user activity (for custodians that maintain personal health information on electronic information systems).

Under *PHIA* a custodian may refuse to grant a request if it is determined that the request is **frivolous or vexatious** or it is part of a pattern of conduct that amounts to an abuse of the right of a request for access, correction or for a record of user activity. The onus rests on the custodian to justify the refusal to the individual.

What is frivolous and vexatious?

The following are definitions used by another jurisdiction in a decision regarding frivolous and vexatious. (Order M-618 [1995], Ontario Information and Privacy Commissioner <http://www.ipc.on.ca/images/Findings/M-618.pdf>)

““Frivolous” is typically associated with matters that are trivial or without merit. Information that may be trivial from one person's perspective, however, may be of importance from another's.”

““Vexatious” is usually taken to mean with intent to annoy, harass, embarrass, or cause discomfort.”

How can I determine if a request is frivolous or vexatious?

To help identify a frivolous or vexatious request, a custodian may consider the following:

- **Is the request excessive?** It may be easier to identify such requests when there has been frequent prior contact with an individual or the request forms part of a pattern. For instance, when the same individual submits repetitive requests in a short time frame which appear to be made in bad faith, lack purpose, or are similar to requests which have already been answered, it may be dismissed as frivolous or vexatious. A difficult request relating to a genuine concern should not be dismissed.
- **Is the request harassing the custodian or causing distress to staff?** If a request contains abusive or offensive language or is written in a threatening tone, it is not automatically vexatious. The language may be indicative of a vexatious request, but it does not forfeit the individual's rights if there is a clear and valid request for information.
- **Could the request as written cause disruption?** Would complying with the request hinder or obstruct the range of effectiveness of the custodian's activities? If the nature and scope of the request is excessively broad and varied or unusually detailed, a custodian should attempt to clarify the request, as the individual may not have sufficient knowledge to submit a more appropriate request. However, if the purpose is not to obtain access to his or her own personal health information but rather to disrupt or burden the custodian's operations, this may support a finding of frivolous or vexatious.

It should be noted that an individual may request that the Review Officer under *PHIA* review a decision of a custodian made in relation to the privacy of the individual's personal health information or a request from the individual for access or correction to their personal health information. In those cases, the Review Officer may decide not to review the subject-matter of the review if the Review Officer is satisfied that the request is frivolous or vexatious, or part of a pattern of conduct that amounts to an abuse of the right of review.

For more information, contact:

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