

# PRIVACY COMPLAINTS UNDER *PHIA*

*Note: This chapter refers to the “custodian” throughout the commentary. However, a custodian is required to designate a contact person for PHIA, who is responsible to “receive and process complaints under this Act”( section 67(e))*

## PRIVACY PROVISIONS OF *PHIA*

An individual may make a complaint about any aspect of the custodian’s conduct in relation to the privacy provisions of *PHIA*. Under section 92(1)(a) of *PHIA*, the “privacy provisions” of the Act are sections 11-70. These sections include:

- consent (sections 11 - 20);
- substitute decision-maker (sections 21-23);
- collection, use and disclosure - general (sections 24-29);
- collection (sections 30- 32);
- use (sections 33-35);
- disclosure (sections 36 - 46);
- retention, destruction, disposal and de-identification (sections 47 - 51);
- research (sections 52-60);
- practices to protect personal health information (sections 61 - 68); and
- reporting of a privacy breach (sections 69 - 70).

## REQUIREMENT FOR A PRIVACY COMPLAINT POLICY

Pursuant to section 62(2), every custodian is required to implement, maintain and comply with a complaints policy which outlines the process under which an individual may make a complaint. This requirement is part of the custodian’s responsibilities to protect the personal health information of the individuals it serves.



### ***Personal Health Information Act Regulation***

**8 (1)** A complaints policy implemented by a custodian under subsection 62(2) of the Act must include the following:

- (a) a requirement that an individual submit a complaint to the custodian in writing; and
- (b) a statement of the time period following receipt of a written complaint during which the custodian must process, investigate and make a decision on the complaint and reply to the complainant.

**(2)** Subject to subsection (3), the time period referred to in clause (1)(b) must be no longer than 60 days.

**(3)** A custodian who receives a complaint may, by written notice to the complainant before the end of the time period specified in the custodian's complaints policy, extend the time period

- (a) by no more than 30 days; or
- (b) with the Review Officer's permission, by a period longer than 30 days, if either of the following apply:
  - i. replying to the complaint within the 30-day extension period would unreasonably interfere with the activities of the custodian,
  - ii. the time required to undertake the consultations necessary to reply to the request within the 30-day extension period would make it not reasonably practical to reply within that time.

[www.novascotia.ca/DHW/PHIA](http://www.novascotia.ca/DHW/PHIA) for the official text of the regulation

## **BEST PRACTICES FOR A PRIVACY COMPLAINT POLICY**

A complaint policy should include:

- the name and full contact information for the contact person(s) responsible for receiving and processing complaints under the Act;
- the process for an individual to make a complaint to the custodian. This may include whether a prescribed form will be required;

- any timelines that the custodian will follow in processing and responding to a complaint;
- any timelines that the individual must follow as part of the complaints process;
- a form for an individual to use to make a complaint<sup>1</sup>;
- an outline of the process for investigating the complaint. This may include meeting with the individual making the complaint, and speaking with individuals within the custodian's organization who may be able to provide additional information related to the complaint;
- the method of communicating the resolution to the individual (e.g. by letter, by phone, by e-mail); and
- information about the individual's rights in terms of a review of the complaint by the Review Officer.

Under section 92(4) of the *Act*, an individual must complete the internal complaint process of a custodian before the individual can initiate a review with the Review Officer. In other words, a custodian must make a decision in order for the Review Officer to consider initiating a review.

The following points may be helpful to consider when developing the policy:

**a) Informal resolution of complaints is encouraged**

Complaints can often be resolved informally by meeting or speaking with the individual to understand his/her concerns. A custodian may provide as much information as possible to the individual to help them understand how the custodian determined why the relevant action was taken.

For example, if a custodian has collected personal health information that the individual thinks is not relevant to their health care, the custodian should explain the reasons supporting the collection.

**EXAMPLE**

The Manor Nursing Home collects personal health information for every resident, including contact information on each resident's next-of-kin. They collect this information in order to

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<sup>1</sup> PHIA regulations require that complaint be in writing. See [www.novascotia.ca/DHW/PHIA](http://www.novascotia.ca/DHW/PHIA) for current regulations.

contact a member of his family should his care team need information or support from the family related to his care.

Kevin doesn't see why the nursing home needs to collect this information, and complains to the Administrator.

The Administrator should explain to Kevin the purpose for collecting the information. However, they should also inform him that the information doesn't have to be collected, but he should also understand that information from his family may support the care he receives.

If the custodian believes a resolution has been reached, it may be helpful to confirm with the individual whether they are satisfied with the explanation of the issue.

An informal resolution to a complaint should always be documented by the custodian. Documentation should include the following:

- date(s) of any discussions or meetings with the individual;
- who participated in the discussion or meetings; and
- outcomes of the discussions or meetings.

Custodians may state in their complaints policy that a documented informal resolution is a decision, and represents the completion of the custodian's internal complaint process. This would allow an individual to proceed directly to a review by the Review Officer, as the individual would have met the requirement in section 92(4).

The individual should be advised that they have the right to request a review by the Review Officer once they have completed the custodian's internal complaint process. All discussions related to this direction should be documented by the custodian.

#### **b) Complete information is critical to fully investigating a complaint**

An individual making a complaint should be encouraged to provide as much **relevant** information as possible to the custodian. This may include:

- names of all individuals within the custodian's organization who may have information related to the complaint;
- all dates relevant to the complaint;

- copies of all documents or materials relevant to the complaint, including any previous correspondence between the individual and the custodian, and any background materials relevant to the complaint;
- any attempts the individual has made to resolve the complaint;
- any harm or embarrassment that has been caused to the individual as a result of the custodian's actions; and
- the outcome the individual is seeking from the custodian in relation to the complaint.

**c) The individual may be asked to provide written consent to allow the custodian to fully investigate the complaint**

In order for a custodian to fully understand the background to and potential causes of the individual's complaint, the custodian must be able to discuss the complaint with anyone who can provide information **relevant to the complaint**. The individual making the complaint must be made aware if the custodian intends to do this.

Where possible and appropriate, the custodian should provide the following information to the individual:

- the name and title of the person(s) who will be consulted;
- the information about the complaint that the custodian will provide to the person(s); and
- why the person is being consulted.

The individual must be assured that only information relevant to the complaint will be discussed and documented. If the individual has any concerns about specific information being discussed, or with the custodian having discussions with specific person(s), these concerns should be discussed with, and documented by the custodian. However, the individual should be advised that a full investigation may not be possible if all **relevant** information is not available to the custodian.

**EXAMPLE**

Dominique is a patient of Rachael, a dentist in a medium-sized practice. Dominique has a complaint about the treatment she received from Kelly, her dental hygienist.

Dominique reviews her dentist's complaint policy, and makes a complaint, in writing, as required by the dentist's policy. She also writes that she does not want her dentist to discuss the complaint with the hygienist's colleagues in the practice.

Rachael's dentist would have to determine whether it is necessary to discuss the complaint with Kelly's colleagues, or whether the information provided on the complaint form is sufficient to make a fair decision. If it is, no discussion with Kelly's colleagues is required.

If information known to the colleagues is necessary to help Rachael understand the complaint, Rachael should advise Dominique that the information from the colleagues is necessary to gain a full understanding of the alleged conduct of the hygienist.

It is possible that the information may be gathered from another source, and Dominique should be asked whether she can offer any alternate sources of information. If she can't, she should be advised that a full investigation may not be possible, and be provided with the reasons why the limited information may not be sufficient.

**d) Information related to a complaint should be kept as separate record**

In order to ensure that an individual's complaint does not negatively impact their care and treatment by the custodian, all documents related to the complaint should be kept in a record separate from the individual's personal health information record.

See Template 9-1: *Privacy Complaint Form*.