



F10-01-MS

Health Authority Denies Having Custody of Care Facility Records

FIPPA specifically provides, in section 3, that it applies to all records in the custody of or under the control of a public body. What sounds, in theory, like something that would be easy to determine is often much more elusive in practice.

Faced with a request for various records of a long-term care facility managed by a non-profit society, a health authority responded that the records were in the custody and control of the long-term care facility, not the health authority, and were therefore subject to the *Personal Information Protection Act* rather than FIPPA. The applicant complained to us.

We began our investigation by looking for factors that would indicate whether the health authority or the non-profit society had custody and/or control of the records, which consisted of contracts, board meeting minutes of the non-profit society and other documents.

One factor that suggested that the records were subject to PIPA was the management of the facility by a non-profit organization was a legal entity distinct from the health authority. On the other hand, the non-profit provided contracted services on behalf of the health authority and in this case had entered into a contractual arrangement whereby the health authority had the power to direct the non-profit society in regard to asset transfer and the transfer of “ongoing obligations.” In addition, several executives of the health authority sat on the board of the non-profit society.

We advised the non-profit and the health authority of our initial conclusion that the requested records were likely subject to FIPPA. After considering our comments, the health authority and the non-profit agreed to provide the applicant with the requested records rather than requesting an inquiry.