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AUTHORIZATION FOR INDIRECT COLLECTION OF PERSONAL INFORMATION

MINISTRY OF HEALTH

Drew McArthur, A/Information and Privacy Commissioner

March 23, 2017

SUMMARY

Indirect collection for registration of third parties on a primary care waitlist

Under s. 42(1)(i) of the *Freedom of Information and Protection of Privacy Act* (FIPPA), the Commissioner authorizes the Ministry of Health to indirectly collect the name, date of birth, gender, contact information, and personal health number of a person from an individual who has a close relationship with, or a responsibility for the health and well-being of, that person for the purpose of registering that person on a primary care waitlist established and maintained by HealthLink BC.

Indirect collection to determine the need of third parties for immediate specialized services

The Commissioner authorizes the Ministry of Health to indirectly collect personal information about the health status of a person from an individual who has registered him or her on a primary care waitlist to determine whether the person is in need of immediate specialized services only when (a) the person has expressly authorized the indirect collection from that individual, or (b) that individual is a guardian of a child or representative of an adult and is authorized to act for the person pursuant to section 3 or 4 of the *Freedom of Information and Protection of Privacy Regulation*.

BACKGROUND

On February 21, 2017, the Office of the Information and Privacy Commissioner received a request from the Ministry of Health (the Ministry) for authorization to indirectly collect personal information from individuals about third parties (such as children, other family members, and vulnerable adults) for the following purposes:

- to register those third parties on primary care waitlists established and maintained by HealthLink BC; and
- to determine whether those third parties have an immediate need for specialized services.

The Ministry advised that the scope of its request is for authorization of indirect collection of personal information for anyone wanting to place a third party on the waitlist.

Primary care waitlists

Primary care waitlists are lists of residents of British Columbia who are seeking a primary care provider, such as a family physician or nurse practitioner. An individual on a primary care waitlist is linked to a primary care provider once that primary care provider has the capacity to deliver health services to that individual. If and when an individual is linked to a primary care provider, the individual's waitlist information is disclosed to that provider.

HealthLink BC is a service of the Ministry which provides residents of British Columbia with non-emergency health information. Residents may call 811 to speak with a HealthLink BC Health Services Navigator who collects the information to appropriately direct the call. Among other things, a caller may be referred to a registered nurse, dietitian, or pharmacist who will provide health care advice to the caller by telephone.

The Ministry wants to use HealthLink BC as the point of access for all individuals who wish to be registered on a primary care waitlist because the service is efficient and accessible. HealthLink BC would collect the following personal information about callers directly from them before they are registered on a primary care waitlist:

- name,
- date of birth,
- gender,
- email and mailing address,
- telephone number; and
- personal health number (PHN).

In the interest of providing a streamlined, convenient, and inclusive service, the Ministry wishes to have the authority to indirectly collect this same personal information about third parties from callers who wish to register those third parties on primary care

waitlists. The Ministry submits this would avoid delays or barriers to registering third parties on the primary care waitlist.

Immediate specialized services

Callers seeking registration on a primary care waitlist may be asked a number of specific questions regarding their health status and the medical services they received during the past year in order to determine whether they should be linked with immediate specialized services (such as a perinatal clinic) rather than wait for a primary care provider. This personal information may also be disclosed to a primary care provider to inform their decision as to whether to accept the caller as a patient given their preferred areas of practice.

The questions in relation to health status are as follows:

- a. Do you have any of the following diagnosed conditions:
 - Diabetes?
 - Lung problems?
 - Heart problems?
 - Stroke?
- b. Do you experience any of the following:
 - Difficulty managing personal care needs at home?
 - Have you fallen in the last 12 months or have difficulty with your balance or feeling like you may fall?
 - Difficulty eating?
- c. If 19 years of age or older: Are you concerned about your mental health or substance use?
- d. Do you have chronic kidney disease?
- e. Do you have any other chronic illness or condition? (If yes, list conditions.)
- f. Are you pregnant?
- g. Are you currently taking five or more prescription medications?
- h. How many times have you been:
 - To a walk-in clinic?
 - To an emergency room?
 - Admitted to hospital?

The Ministry advised that answers to these questions would be provided on a voluntary basis. Callers may choose not to respond because the information is not required in order to be registered on the primary care waitlist.

The Ministry wishes to indirectly collect this same personal information about third parties from callers who have called to register those third parties on a primary care waitlist.

DISCUSSION

Section 27 of FIPPA requires that a public body collect personal information directly from the individual the information is about, with specific exceptions. This requirement is based on privacy principles that individuals should have control of their personal information and that the collection of personal information should be transparent so that individuals can exercise their information rights. One of the exceptions to the requirement of direct collection is authorization from the Commissioner for the public body to collect personal information from sources other than the individual the information is about under s. 42(1)(i) of FIPPA.

In previous decisions where the exercise of the Commissioner's discretion under s. 42(1)(i) was at issue, the following questions have been considered:

1. Has a clear and sufficiently compelling public interest or objective been identified that cannot reasonably be accomplished through direct collection of personal information?
2. Is the requested departure from FIPPA's rule of direct collection clearly justified when judged against the nature of the personal information to be collected and the purpose for which (and to whom) it is to be disclosed or used?

I have considered these same questions in relation to this request.

Indirect collection for registration of third parties on a primary care waitlist

With respect to the purpose of registering third parties on a primary care waitlist, I find that facilitating access to primary care by permitting individuals to contact a convenient and streamlined centralized service to register third parties such as children, family members, and vulnerable adults on a primary care waitlist is a clear and sufficiently compelling public interest or objective. I accept the Ministry's submission that in areas where the demand for primary care exceeds the supply, registration on a primary care waitlist enhances accessibility to primary health care and it is in the public interest that the registration process be convenient, inclusive, and streamlined.

As to whether the objective of providing a convenient, inclusive, and streamlined centralized service for the registration of individuals on primary care waitlists cannot reasonably be accomplished through direct collection of personal information, I find that the additional time, effort, and cost that would be involved in the Ministry only collecting name, date of birth, gender, contact information and a PHN directly from individuals would undermine the objective of providing a convenient, inclusive, and streamlined centralized service. Of greater concern is that it would also likely result in delays or barriers to registration, particularly with respect to vulnerable adults.

With respect to the second question, I find that the indirect collection of name, date of birth, gender, contact information, and a PHN for the purpose of registering third parties

on a primary care waitlist is clearly justified. It is not sensitive personal information and appears to be the minimum amount of personal information necessary to accomplish the objective of establishing waitlists that enhance accessibility to primary care.

Given that indirect collection impacts the information and privacy rights of an individual, this authorization must be circumscribed as much as possible in order to minimize those impacts. I therefore find that the Ministry should only collect personal information about a third party from a caller who has a close relationship with, or a responsibility for the health and well-being of, third parties. The Ministry should confirm such a relationship with the caller before asking the caller to disclose the personal information of third parties. Close relationships may include a spouse, child, parent, sibling, grandparent, grandchild, and close friend. Persons with a responsibility for the health and well-being of a third party may include caregivers at a health care facility, guardians, case managers, and social workers. The nature of the relationship of the caller to the third party should be noted by HealthLink BC on the registration in the event that the third party raises a concern with respect to the collection. HealthLink BC should not collect personal information about a third party from a caller who is not in a close relationship with, or does not have a responsibility for the health and well-being of, that third party.

Indirect collection to determine the need of third parties for immediate specialized services

With respect to the indirect collection of answers to specific questions about the health status of individuals and previous medical services they have received, the Ministry advised that the personal information is being collected on a voluntary basis and is not essential for registration on primary care waitlists. The public interest or objective is determining a need for immediate specialized services in the short-term, or to inform primary care providers as to whether individuals have medical conditions within their preferred areas of practice. This public interest or objective is, in my view, sufficiently clear and compelling. It is critically important that individuals have access to appropriate and timely health care.

However, I find that this objective could reasonably be accomplished, in most cases, through direct collection of personal information. Following the initial registration, clinicians could follow up with third parties directly to collect personal information regarding their health status. In the alternative, the callers and/or third parties could simply be informed by HealthLink BC of the availability of health services at a clinic in relation to certain types of medical conditions and how they can be referred to those clinics if they have those medical conditions. Callers and/or third parties could also be advised of the availability of primary care providers with a focus in certain areas of practice and could be asked to consider whether the third party had a preference for a primary care provider who practised in a particular area.

I also find that the indirect collection is not clearly justified when judged against the nature of the personal information to be collected and the purpose for which (and to whom) it is to be disclosed or used.

Personal information about an individual's health status is highly sensitive personal information. The answers to the questions that would be collected by the Ministry would be comprehensive information about an individual's medical conditions that would normally be collected by a health care professional in a clinical setting.

The purpose for the collection of this sensitive personal health information is to determine an individual's need for specialized services that could be provided at a clinic rather than by a primary care provider (such as a perinatal clinic). This personal information would be stored in a database which would be accessed by authorized users such as administrative staff, medical office assistants, and nurse-practitioners. It may also be disclosed to primary care physicians to inform their decision as to whether they wish to accept the individual as a patient given their preferred areas of practice. Primary care physicians may be an employee of a health authority or a private practice physician. This further disclosure of sensitive personal information militates against authorization for indirect collection in these circumstances.

I therefore find that the Ministry must collect personal information about the health status of a third party directly from the third party unless he or she has authorized indirect collection from the caller. This authorization could be given either verbally or in writing to the Health Services Navigator at HealthLink BC. I note that, in addition, indirect collection could be authorized pursuant to section 3 or 4 of the Freedom of Information and Protection of Privacy Regulation when the caller is acting as a guardian of a child or a representative of an adult.

AUTHORIZATION

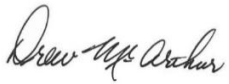
For the reasons noted above, under s. 42(1)(i) of FIPPA, I authorize the Ministry to indirectly collect the following personal information about third parties from individuals who have called HealthLink BC for the purposes of registering those third parties on primary care waitlists:

- name,
- date of birth,
- gender,
- email and mailing address,
- telephone number, and
- personal health number (PHN).

I authorize the Ministry of Health to indirectly collect personal information about the health status of a person from an individual who is registering him or her on a primary care waitlist only if (a) the person has expressly authorized the indirect collection from that individual, or (b) that individual is a guardian of a child or a representative of an

adult and is authorized to act for the person pursuant to section 3 or 4 of the Freedom of Information and Protection of Privacy Regulation.

March 23, 2017

A handwritten signature in cursive script that reads "Drew McArthur".

Drew McArthur

A/Information and Privacy Commissioner
for British Columbia