



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
for British Columbia

Protecting privacy. Promoting transparency.

## **The Times Colonist**

May 26, 2016

### **Re: May 22 Editorial: Clarify Privacy Rules**

I welcome the opportunity to comment on the TC editorial of May 22, 2016 titled 'Clarify rules around privacy'. I think this is a very important conversation to have and there is a need to clarify what the 'rules' permit. While I cannot comment on the cases referenced, I can deal with the principles involved, the various complex situations caregivers face, and appropriate approaches.

When a person dies, families want to know what happened. When a person's health or safety is at risk, families want to be informed.

The *Freedom of Information and Protection of Privacy Act*, ("FIPPA") which applies to all public bodies in British Columbia, has a dual purpose – compel public bodies to provide official information in certain circumstances, and protect the personal privacy of individuals.

There are also a number of other laws passed by the Legislature over the decades - other than FIPPA - which impact the rights of family members to access information about their loved ones while protecting the rights of persons who don't want this information shared. My Office has long called for new stand-alone health information law to replace the patchwork of laws and rules in British Columbia, and the editorial assists in focusing on this as being part of the solution.

As the editorial references – the various circumstances facing health professionals in these situations vary greatly:

1. In emergency situations where a person's health or safety is at risk, FIPPA allows public bodies to disclose personal information without consent to address the risk of harm. For example, if a public body learns that a person is a risk to harm themselves or others, that information can be disclosed to family or others who can intervene (e.g. a counsellor warning a family member that a person is at risk of suicide). Decisions made in urgent health and safety situations must be made quickly, but also carefully. The decision to disclose rests with a responsible person within the public body -- be it a

doctor at a hospital, a psychologist, mental health worker, a nurse, a social worker, school counsellor or the head of an institution.

2. In non-emergency situations, privacy law allows a public body to contact the next of kin in the event a person is injured or ill. Public bodies can alert families to the fact that a person has been hospitalized, share information that a person is about to be discharged, or share information about how to care for that person at home.
3. If a person is experiencing mental health issues, is a minor, or a child in provincial care, there are other laws that govern how that information is shared. In my opinion, they generally support a common sense approach for sharing information about patients and those in care in the public interest.

Some people ask why public bodies can't just open their books to families seeking information about a deceased relative on compassionate grounds. Any disclosure of personal information about an individual – living or dead – must be authorized by law. For example, FIPPA authorizes disclosure of information to the next of kin or legal representative who is acting on behalf of the deceased.

Professionals have a responsibility to respect privacy, and the situations they face are often difficult to deal with – for example, when a patient has asked for confidentiality about their care and status, when he or she is estranged from certain family members, or, when the patient is protecting themselves from an abusive or unwanted relationship.

In most cases, disclosure of sensitive personal information to a broad public audience, even when there is a tragic death is not appropriate – a principle I think most people agree with. There may be some rare situations where there is a compelling public interest in some of the information being more widely known. In these cases, public bodies must carefully reflect on what they can disclose in the public interest, without sacrificing the privacy interests of those concerned. My Office has provided some guideposts and interpretation for public interest disclosure decisions and is available to advise on a case by case basis. The decision to disclose personal information in the public interest rests with the head of the public body or institution involved.

Your editorial has focused on the important public issue of how society and the Legislative Assembly – which passes the laws which bind public bodies including my Office – should balance privacy rights of individuals and of the deceased against the 'right to know' of family members and of the broader public.

I trust these comments assist in giving a perspective on this important public conversation.

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