

## mcp newsletter

16-04

May 27<sup>th</sup>, 2016

**TO: All Physicians**

**RE: Request for access to information under Part II of the *Access to Information and Protection of Privacy Act (ATIPPA)* [Our File #: HCS/048/2016]**

On April 7<sup>th</sup>, 2016 the Department of Health and Community Services (the Department) received a request under the *Access to Information and Protection of Privacy Act (ATIPPA)* as follows:

*“All MCP billings listed by physician for either calendar year 2015 or fiscal year 2015-16 in electronic format (excel or csv preferred).”*

The record to be released includes MCP billings for over 1400 physicians who provided services in Newfoundland and Labrador throughout the 2015 calendar year. Specifically, the record will include specialty, physician name, and the total fee for service billing amounts for all physicians who had MCP billings for that given year. As a fictitious example:

Specialty Group	Surname	Given	Total
General Practice	Doe	Jane	\$300,555.00
Anaesthesia	Smith	John	\$454,555.00
Internal Medicine	Doe	Jane	\$562,555.00
Radiology	Smith	John	\$649,555.00

*Note: The above amounts indicate total billings and do not take into account the physician's overhead, such as office space, staff salaries, transcription services, equipment, etc...*

In accordance with Section 19 of ATIPPA, we are providing you with written notice (“third party notice”) of the Department’s intention to release the requested records. **Within 15 business days of the date of this letter** you may:

1. Notify the Department that you **consent** to the release of the records, which includes your personal and/or business information. To provide consent please email the Department ([HCSATIPP@gov.nl.ca](mailto:HCSATIPP@gov.nl.ca)) indicating you **consent** to the release.
2. Provide the Department with a **submission** under ATIPPA sections 39 or 40 demonstrating why the records should **NOT** be released. To provide information or a submission as indicated above, email the Department at [HCSATIPP@gov.nl.ca](mailto:HCSATIPP@gov.nl.ca). If the requirements of sections 39 or 40 are not met, the Department must release the record(s).

3. Regardless whether or not you provide a submission to the Department, you may also file a **complaint** with the Information and Privacy Commissioner regarding the Department's decision to release the responsive records OR **appeal** directly to the Supreme Court Trial Division. A complaint to the Privacy Commissioner or an appeal to the Trial Division must be made in writing within 15 business days of the date of this letter. The address and contact information of the Office of the Information and Privacy Commissioner is as follows:

**Office of the Information and Privacy Commissioner**

2 Canada Drive  
P. O. Box 13004, Stn. A  
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309  
Toll-Free: 1-877-729-6309  
Facsimile: (709) 729-6500

Sections 19, 39 and 40 are attached and may be viewed online at <http://www.assembly.nl.ca/Legislation/sr/statutes/a01-2.htm>.

If you have any further questions or wish to discuss this request, please contact the undersigned by telephone at 709-729-7010 or by email at [HCSATIPP@gov.nl.ca](mailto:HCSATIPP@gov.nl.ca).

Sincerely,



A. Power on behalf of Vanessa Macey  
ATIPP Facilitator

/Encl.

Cc: NLMA

Available online at <http://www.assembly.nl.ca/Legislation/sr/statutes/a01-2.htm>

**Excerpts:**

**Third party notification**

19.(1) Where the head of a public body intends to grant access to a record or part of a record that the head has reason to believe contains information that might be excepted from disclosure under section 39 or 40, the head shall make every reasonable effort to notify the third party.

(2) The time to notify a third party does not suspend the period of time referred to in subsection 16(1).

(3) The head of the public body may provide or describe to the third party the content of the record or part of the record for which access is requested.

(4) The third party may consent to the disclosure of the record or part of the record.

(5) Where the head of a public body decides to grant access to a record or part of a record and the third party does not consent to the disclosure, the head shall inform the third party in writing

(a) of the reasons for the decision and the provision of this Act on which the decision is based;

(b) of the content of the record or part of the record for which access is to be given;

(c) that the applicant will be given access to the record or part of the record unless the third party, not later than 15 business days after the head of the public body informs the third party of this decision, files a complaint with the commissioner under section 42 or appeals directly to the Trial Division under section 53; and

(d) how to file a complaint or pursue an appeal.

(6) Where the head of a public body decides to grant access and the third party does not consent to the disclosure, the head shall, in a final response to an applicant, state that the applicant will be given access to the record or part of the record on the completion of the period of 15 business days referred to in subsection (5), unless a third party files a complaint with the commissioner under section 42 or appeals directly to the Trial Division under section 53.

(7) The head of the public body shall not give access to the record or part of the record until

(a) he or she receives confirmation from the third party or the commissioner that the third party has exhausted any recourse under this Act or has decided not to file a complaint or commence an appeal; or

(b) a court order has been issued confirming the decision of the public body.

(8) The head of the public body shall advise the applicant as to the status of a complaint filed or an appeal commenced by the third party.

(9) The third party and the head of the public body shall communicate with one another under this Part through the coordinator.

...

**Disclosure harmful to business interests of a third party**

39. (1) The head of a public body shall refuse to disclose to an applicant information

- (a) that would reveal
  - (i) trade secrets of a third party, or
  - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
- (b) that is supplied, implicitly or explicitly, in confidence; and
- (c) the disclosure of which could reasonably be expected to
  - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
  - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
  - (iii) result in undue financial loss or gain to any person, or
  - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

(2) The head of a public body shall refuse to disclose to an applicant information that was obtained on a tax return, gathered for the purpose of determining tax liability or collecting a tax, or royalty information submitted on royalty returns, except where that information is non-identifying aggregate royalty information.

(3) Subsections (1) and (2) do not apply where

- (a) the third party consents to the disclosure; or
- (b) the information is in a record that is in the custody or control of the Provincial Archives of Newfoundland and Labrador or the archives of a public body and that has been in existence for 50 years or more.

[2015 cA-1.2 s39](#)

### **Disclosure harmful to personal privacy**

**40.** (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy where

- (a) the applicant is the individual to whom the information relates;
- (b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;
- (c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is given in the form appropriate in the circumstances to the third party to whom the information relates;
- (d) an Act or regulation of the province or of Canada authorizes the disclosure;
- (e) the disclosure is for a research or statistical purpose and is in accordance with section 70;
- (f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;
- (g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;
- (h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;

- (i) public access to the information is provided under the *Financial Administration Act* ;
  - (j) the information is about expenses incurred by a third party while travelling at the expense of a public body;
  - (k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit;
  - (l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including
    - (i) personal information that is supplied in support of the application for the benefit, or
  - (ii) personal information that relates to eligibility for income and employment support under the *Income and Employment Support Act* or to the determination of income or employment support levels; or
  - (m) the disclosure is not contrary to the public interest as described in subsection (3) and reveals only the following personal information about a third party:
    - (i) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip, or
    - (ii) receipt of an honour or award granted by or through a public body.
- (3) The disclosure of personal information under paragraph (2)(m) is an unreasonable invasion of personal privacy where the third party whom the information is about has requested that the information not be disclosed.
- (4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where
- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
  - (b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation;
  - (c) the personal information relates to employment or educational history;
  - (d) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;
  - (e) the personal information consists of an individual's bank account information or credit card information;
  - (f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;
  - (g) the personal information consists of the third party's name where
    - (i) it appears with other personal information about the third party, or
    - (ii) the disclosure of the name itself would reveal personal information about the third party; or
  - (h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.
- (5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether
- (a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;

- (b) the disclosure is likely to promote public health and safety or the protection of the environment;
- (c) the personal information is relevant to a fair determination of the applicant's rights;
- (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;
- (e) the third party will be exposed unfairly to financial or other harm;
- (f) the personal information has been supplied in confidence;
- (g) the personal information is likely to be inaccurate or unreliable;
- (h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;
- (i) the personal information was originally provided to the applicant; and
- (j) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.

[2015 cA-1.2 s40](#)