

ACCESS TO PERSONAL INFORMATION

An individual or their representative may request and have a right of access to the information contained in the individual’s file. Generally, representatives for individuals with a mental disability include a substitute decision maker or a committee with the appropriate powers or any person with written authorization from the individual. Refer to *The Freedom of Information and the Protection of Privacy Act* (FIPPA, Section 79) and *The Personal Health Information Act* (PHIA, Section 60) for complete lists of representatives who may access information on the individual’s behalf.

ACCESSING INFORMATION INFORMALLY

Individual Plans and Personal Financial Plans containing personal information are routinely provided to the individuals the plans are about. Refer to Sections C66B and C166.1B of this manual respectively. Individuals in receipt of services from the Community Living disABILITY Services Program may also have other information contained in their departmental files. Refer to Individual File Content Guidelines (Section C155.11) for a listing of information that may be contained on an individual’s file.

Where it appears that restrictions apply to the individual’s access to their record (refer to page 2 of this appendix), the individual or their representative should be informed about the restriction(s). Where restrictions do not apply to the access for information, access may be provided on an informal basis by the individual’s Community Service Worker. The worker may allow the individual or their representative to view the record or may provide a copy of the record requested.

Unrestricted records may be accessed informally, as long as the staff person is certain there are no restrictions to releasing the information. This would include reports completed by outside sources (e.g., medical, psychiatric, psychological reports). However, it may be advisable for the worker to contact that outside source to determine if the information was provided in confidence or could be shared with the individual. A qualified physician, psychologist or other appropriate expert may also determine that revealing the information could seriously harm the individual.

ACCESSING INFORMATION FORMALLY

The individual or their representative may make a formal request for access to the individual’s record. A request for access must contain enough detail to identify the portion of the record the individual wishes to access. Under PHIA (Part 2), the request may be verbal or written as required by the trustee (i.e., the Department). Under FIPPA (Part 2), the request must be made on a prescribed form unless the individual is unable to make a written request. An individual may make a verbal request if he/she has a limited ability to read or write in English or French, or has a condition that impairs the ability to make a written request.

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Refer to page 1 and 2 of Section C155.3 (Protection of Personal Information Policy and Guidelines) for definitions on personal information and personal health information. The payment of a reasonable fee may be required to access a record under both FIPPA and PHIA.

Prescribed forms for access to personal information under FIPPA, are available at the regional offices or from the Department’s Access Coordinator. Formal applications for access to information are to be submitted to the Department’s Access Coordinator. Information on the application process is available through the Department of Sport, Culture, Heritage and Citizenship website (<https://www.gov.mb.ca/chc/fippa/index.html>).

RESTRICTIONS TO ACCESS

Under both FIPPA and PHIA, restrictions to the access of information may be mandatory or discretionary. **However, if the individual’s information can be reasonably severed from a restricted record, the individual has a right of access to the remainder of the record.** For a complete list of reasons why access to a record must or may be denied, refer to PHIA Section 11(1) and FIPPA (Division 3, Mandatory Exceptions to Disclosure and Division 4, Discretionary Exceptions to Disclosure). The divisional Access Coordinator should be contacted if there are any questions about whether information falls into a restricted category and how to carefully sever information from restricted records. Some of the common reasons why access to information may be refused are:

- access would reveal confidential personal information or personal health information about another person (FIPPA and PHIA);
- access would be harmful to another person’s business interests or could be harmful to a public body’s economic or other interests (FIPPA);
- access could reasonably be expected to be harmful to law enforcement (any action taken for the purpose of enforcing an Act or regulation including investigations) or legal proceedings (FIPPA);
- access would reveal the identity of another person who has provided information in confidence for the purpose of law enforcement or the administration of an Act or Regulation (FIPPA);
- the information has been provided in confidence by another local public body (e.g., educational, health, law enforcement body, agency) or another government body or department (FIPPA);
- access could reasonably be expected to seriously harm the individual in the opinion of a qualified physician, psychologist or other appropriate expert (FIPPA and PHIA);

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- access could reasonably be expected to harm the mental or physical health or safety of another person or other persons (FIPPA and PHIA); or
- access could reveal advice, opinions, proposals, recommendations, analyses, or policy options developed by or for the Department (FIPPA).

DEPARTMENT’S OBLIGATIONS WHEN ACCESS REQUESTED FORMALLY

The Minister of Families or the Minister’s delegate, must make a reasonable effort to respond to formal access requests without delay, openly, accurately and completely. The divisional Access Coordinators are responsible to coordinate requests for formal access to information. Community Service Workers and their supervisors rely on the divisional Access Coordinators to inform them about the process, reasonable fees allowed and the timelines involved.

As a result of a formal access request, the divisional Access Coordinator may ask the Community Service Worker may be asked to provide the record to the access unit for analysis. The worker may also be asked to determine if an error or omission has been made and to correct the information accessed by the individual (FIPPA Section 39(2), PHIA Section 12(3)). As well, the worker may be asked to pass on the correction to anyone to whom the information had been disclosed during the year before the correction was requested (FIPPA Section 39(5), PHIA Section 12(5)).

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