



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

July 07, 2016

Daniel Fontaine
Chief Executive Officer
BC Care Providers Association
Metrotower I
738-4710 Kingsway
Burnaby, BC V5H 4M2

Dear Daniel Fontaine:

Re: Office of the Seniors Advocate residential care survey

I am writing in response to your June 10 letter, in which you pose several questions regarding the compliance of the Office of the Seniors Advocate's (OSA) residential care survey with BC's privacy legislation.

In addition to the specific questions set out below, you ask if the OIPC has reviewed and approved the survey and the corresponding privacy impact assessment (PIA).

The OIPC does not approve programs or PIAs. We may review and comment on programs and PIAs at the request of an organization or public body, or when we are required to do so by law. In this case, there does not appear to be such a requirement.

Nonetheless, I received a copy of the PIA from the Ministry of Health and I have discussed the survey with the Ministry's Provincial Director of Patient-Centred Performance Measurement and Improvement. I also understand that the Ministry will be providing you with a copy of the PIA.

Here are my answers to the itemized questions in your letter.

1. Definition of Personal Information under the *Freedom of Information and Protection of Privacy Act (FIPPA)*.

I agree that the identity of a publically subsidized resident's most frequent visitor (MFV) is personal information under FIPPA. I would add that this is the personal information of both the resident and the MFV.

The other data elements cited in the letter (e.g. Personal Health Numbers, cognitive performance scale scores, language codes) are also personal information when that information can be directly or indirectly attributed to a particular individual.

2. Definition of Personal Information under the *Personal Information Protection Act (PIPA)*.

I agree that the identity of a private-pay resident's MFV is personal information under PIPA. And as I mentioned above, it is the personal information of both the resident and the MFV.

3. Publically Subsidized Residents

FIPPA applies to personal information in the custody or under the control of public bodies. I presume that the personal information of publically subsidized residents is in the custody of the facility but under the control of a health authority (as care home operators act as service providers to the health authorities for the provision of care to publically subsidized residents).

If this is accurate, then care home operators, as service providers, can disclose MFV lists to the NRC/C pursuant to the s. 33.2(a) disclosure authorities cited in the PIA.¹

4. Private Pay Residents

The personal information of private pay residents appears to be in the custody and under the control of care home operators. This means that those operators will need a disclosure authority from PIPA to disclose the personal information of residents and their MFV to another organization or public body.

You ask if the disclosure of this information is authorized by s. 18(1)(o) of PIPA. This section authorizes organizations to disclose personal information if "the disclosure is required or authorized by law". At present, I am not aware of a law that requires or authorizes this disclosure.

I understand that care home operators will be asked to obtain the consent of residents and their MFV to disclose this information. Each resident and their MFV should consent to the collection and disclosure of his or her own information. However, if the resident has a "representative" - as defined in s. 2(1) of the PIPA Regulation - the representative may give or refuse consent to the collection, use and disclosure of personal information of the individual (in this case, the senior in care).

5. Public Dissemination of Data

It is my understanding that personally identifiable data will not be published by the OSA. Therefore, the publication of this data is not subject to privacy legislation.

Please contact me should you wish to discuss any aspect of these comments.

Sincerely,



Nathan Elliot
Policy Analyst

¹ Sections 33.2(l), and 33.2(c) seem directly applicable, and I think a case could be made that 33.2(a) also applies. However, only one of these authorities needs to authorize the disclosure.