



Memorandum

Date: September 21, 2005

To: Community Social Services
Supervisors – EIA and
EIA Rural Program Managers

From: Pam Goulet, Executive Director
Adult and Children's Programs, and

John Petersen, Executive Director
Employment and Income
Assistance Programs

Telephone:

Subject: **EIA Release of Participant Personal Info and Personal Health Info**

A review of EIA's policies and practices related to our compliance with *The Freedom of Information and Protection and Privacy Act* (FIPPA) and *The Personal Health Information Act* (PHIA) has been completed and has led to an adjusted EIA policy and process. To access these pieces of legislation online, you may connect to the following links:

<http://web2.gov.mb.ca/laws/statutes/ccsm/f175e.php>

<http://web2.gov.mb.ca/laws/statutes/ccsm/p033-5e.php>

The EIA Program collects and/or stores both personal privacy information and personal health information regarding our participants. Our program's policy of acquiring a signed consent form from participants during the intake process grants us the authority to collect and/or store this information. We are viewed as a "trustee" of this information and thereby have legal responsibilities around the sharing of this information (regardless of how the information was obtained).

We receive requests to share this information from many sources including: the participant, the Social Services Appeal Board (SSAB) and other external parties.

A) Participant Requests for Information from their EIA File:

EIA staff must remember that except under very specific circumstances, the information in a participant's EIA file (including both manual and electronic) is their information and that the participant should be able to gain access to the information if requested. They therefore have the legal right to request and view it. This includes EIA case notes, medical information provided to us from medical providers, and some third party information.

It is EIA's legal responsibility to review the information requested by the participant and remove only the information that can be legally denied as per the privacy provisions within FIPPA and/or PHIA. EIA is then obligated to provide the remaining information requested to the participant.

Generally, personal information can be denied under FIPPA only in the following circumstances:

- Where disclosure would be an unreasonable intrusion on another person's privacy;
- Where disclosure could threaten public safety, or the safety of other persons, or the applicant; and
- Where disclosure could be harmful to legal proceedings which Manitoba is a party or harm a law enforcement matter.

For additional details, see FIPPA Part 2, Division 3 "Mandatory Exemptions to Disclosure" and Division 4, "Discretionary Exemptions to Disclosure."

Generally personal health information can be denied under PHIA in the following circumstances:

- Where disclosure could reasonably be expected to endanger the health or safety of the individual or another person;
- When the information was provided by a 3rd party (who is not a trustee under PHIA) in confidence and in a context where confidentiality could reasonably be expected; and
- Where disclosure of the information would reveal the personal health information of another person who has not consented to the disclosure.

For more details, see PHIA Part 2 "Access to Personal Health Information."

EIA Process for Sharing Information with Participants:

- Receive participant request (verbal or written) for information;
- Clarify with the participant, if possible, what specific information they wish to obtain;
- The intent is not to inhibit or restrict the informal exchange of information. An informal exchange may continue without the requirement of an Application for Access form, and associated fees, as long as only non-exempt information is requested. Wherever possible, EIA staff are encouraged to be open and receptive to participants who request information and to provide non-exempt information on an informal basis. In future staff will be able to consult with a "FIPPA/PHIA Contact" within their district office to assist in making these decisions. Note: These representatives will be identified and will receive specialized training. More information about these contacts will be shared as it is available.
- If you remain uncertain of whether the specific information is something that can be legally shared, then request the participant's submit a written request for information (using the FIPPA freedom of information Application for Access form) to our Departmental Access and Privacy Coordinator, by fax at 948-4656. They will facilitate the sharing of all appropriate information with the participant.

B) Sharing of Personal and Personal Health Information between EIA and SSAB:

There is legal support for the sharing of participant personal and health information between EIA and the SSAB.

Both PHIA and FIPPA permit the sharing of information where authorized by or required by, other statute or an enactment. In order to ensure a fair hearing by, The Social Services Appeal Board, *the SSAB Act* and the *EIA Act* contain provisions requiring the director to disclose all relevant information to the SSAB. These provisions thus provide legal authorization for EIA to share personal and personal health information with the SSAB (including medical information provided to EIA by medical practitioners). The EIA Program must use care in ensuring that the information shared with the SSAB is necessary and relevant to the appeal at hand.

EIA Process for Sharing Information with the SSAB:

- Review issue(s) participant is appealing;
- Prepare EIA field report for the hearing including summaries of necessary relevant information;
- Attach copies of any information (personal or personal health) to the report that is necessary

and relevant for the SSAB to review.

C) Sharing of Personal and Personal Health Information with other External Parties:

Most requests from other external parties related to sharing personal and/or personal health information requires that the external party provide a signed release from the participant. This release is necessary even if the external party has opted to submit a FIPPA application. EIA staff should ensure all information shared is necessary and relevant to the issue at hand. In cases where a FIPPA application has been completed, EIA staff should forward the application and consent form by fax at 948-4656 who will facilitate the sharing of any appropriate information with the external party.

There are some exceptions to this rule including:

- Requests by any police organization engaged in an investigation, subpoenaed information through the court process, child maintenance enforcement program representatives and child and family services social workers investigating Child Protection issues. When you receive these types of requests, EIA staff should provide the information directly.
- EIA has formal written contracts/agreements with specific agencies which include the requirement that both organizations obtain a signed release of information from all participants. In these cases EIA staff can share information with the third party agency entrusting they have complied with the agreement vs. requiring copies of the release be forwarded to EIA. If you have questions about which agencies have these types of contracts please contact the Support Services and Employment Development area.