



PHIA Toolkit

For Custodians

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Notice to Users

This document is intended to provide general information only. It is important to read the full legislation not just the sections summarized to understand the full extent of the provision. This document is not intended nor can it be relied upon as legal advice. As an independent agency mandated to oversee compliance with *FOIPOP*, *MGA* and *PHIA* the Office of the Information and Privacy Commissioner for Nova Scotia cannot approve in advance any proposal from a public body, municipality or health custodian. We must maintain our ability to investigate any complaints and to provide recommendations in response to these complaints. The contents of this document do not fetter or bind this office with respect to any matter, including any complaint investigation or other matter respecting which the Information and Privacy Commissioner for Nova Scotia will keep an open mind. It remains the responsibility of each public body, municipality and health custodian to ensure that they comply with their responsibilities under the relevant legislation. Visit us at: <https://oipec.novascotia.ca/>

Contents

<i>Personal Health Information Act (PHIA) Toolkit</i>	
	Tab
<i>PHIA</i> Index	1
<i>PHIA</i> Privacy Rules at a Glance	2
<i>PHIA</i> Disclosures Without Consent	3
<i>PHIA</i> Access Rules at a Glance	4
<i>PHIA</i> Fee Fact Sheet	5
Resources	6



Tab 1

PHIA Index

PHIA Index

1	Title	Research	
2	Purpose	52	Definitions
3	Definitions	53	Planning & management is not research
4	Personal Health Information – exception	54	Minimum amount necessary
Application of the Act		55	Use for research requirements – custodian reqts
5	Act applies to custodian, not to stats, s/c privilege	56	Disclosure for research – researcher reqts
6	Act does not apply, agents	57	Disclosure without consent
7	Conflicts	58	Forms
8	FIPPA	59	Research plan requirements
9	Act does not apply (regulated health professions, tribunals etc.)	60	Research agreement
10	Consent and authority without consent	Practices to Protect PHI	
Consent		61	Requirement to protect confidentiality
11	Basic consent rule	62	Information practices required – policy
12	Express v. Knowledgeable implied consent	63	Record of user activity
13	Knowledgeable implied consent requirements	64	ROUA – frivolous & vexatious + RO
14	Knowledgeable	65	Electronic information system security
15	Notice – for reasonable belief of knowledge	66	Custodian restrictions with disclosure
16	Express consent – oral or written	67	Contact person
17	Revocation of consent	68	Public statement requirement
18	Age	Reporting a Privacy Breach	
19	Capacity	69	Notification to individual
20	Capacity	70	Notification to RO
Substitute Decision Maker		Access to an Individual's Own PHI	
21	List of & requirements to act	71	Right
22	Guidance to SDM	72	When access can be refused
23	Proof	73	When consultation with health prof. required
Collection, Use and Disclosure		74	FIPPA & agents of public body
24	General rule no cud if other info will serve purpose	Process for Requesting Access	
25	Minimum necessary, need to know	75	Request in writing, fees
26	Application of 24 & 25	76	Insufficient detail
27	Health card number – collection & use	77	Waiver of requirements
28	Agent permissions & notification of breach	78	No reasons required
29	Agent – use not disclosure	79	Must identify requester
Collection		80	Act does not prevent other disclosure
30	Collection authorized	81	Frivolous & vexatious
31	Direct collection & Indirect authorizations	82	Fees
32	Express consent	83	No fee from Minister
Use		84	Time limit
33	Use authorized	Correction	
34	Express consent	85	Request permitted
35	Use without consent	86	Deemed refusal
Disclosure		87	When request shall be granted
36	Custodian to custodian	88	Correction requirements
37	Disclosure to family & friends	89	Frivolous & vexatious
38	Disclosure without consent - RO & pmf	90	Process for frivolous & vexatious
39	Disclosure to non-custodian with Minister's consent	Review & Oversight	
40	Deceased individuals	91	Right to request review
41	Consent	92	Powers of RO
42	Documentation of disclosure without consent	93	RO estimates & annual report
43	Express consent	94	Process to request review
44	Out of province disclosures	95	Power of RO not to review
45	Non-custodian may collect authorized disclosures	96	Mediation
46	Health Card Number database	97	Review in private
Retention, Destruction, Disposal & De-Identification		98	Representations
47	Paper and electronic records	99	Power to request production
48	Information practices required	100	Requirements on completing review
49	Secure destruction	101	Custodian obligations on receiving report
50	Written retention schedule required	102-03	Appeal to SC & powers of SC
51	Requirement to follow retention schedule	General	
		104-05	No discipline, proceedings for good faith action
		Offences & Penalties	
		106-15	Offences, review, Regulation, repeals

Tab 2

PHIA Privacy
Rules at a
Glance



Personal Health Information Act - Privacy Rules At a Glance

A. Consent Rules

B. Collection

- General Rule
- Best Practices
- Collection by Non-Custodian
- Indirect Collection

C. Use

- General Rule
- Best Practices
- Use by Non-Custodian
- Use by Agent
- Uses Authorized or Permitted Under *PHIA*

D. Disclosure

- General Rule
- Best Practices
- Disclosures Without Consent – Effect of Authority
- Disclosures Without Consent – Documentation Required
- Disclosures by Non-Custodians
- Disclosures Authorized or Permitted Under *PHIA*
 - Disclosures by Recipient
 - Disclosures by Purpose
 - Disclosures Outside Nova Scotia
 - Disclosures of Deceased's Personal Health Information

E. Health Card Number Rules

F. Agents

G. Retention, Destruction, Security, Breach Reporting

Notice

This table is intended as a quick reference tool. The sections are only summarized. You must read the entire provision to properly understand the full requirements of each section. You can find a copy of the *Personal Health Information Act* at <https://nslegislature.ca/sites/default/files/legc/statutes/personal%20health%20information.pdf>

A. Consent Rules Summary	
11	<p>General rule</p> <p>A custodian shall not collect, use or disclose (cud) personal health information (phi) unless</p> <ul style="list-style-type: none"> • The custodian has the individual’s consent under this Act and the cud is reasonably necessary for a lawful purpose; or • The cud is permitted or required by this Act
10(1)	<p>“With consent” rule doesn’t affect “without consent” rules</p> <ul style="list-style-type: none"> • A provision of this Act that applies to cud of phi with consent, does not affect the cud that this Act permits or requires without consent
12	<p>Knowledgeable implied consent - acceptable</p> <p>Unless this Act requires express consent or makes exception to the requirement for consent, knowledgeable implied consent may be accepted as consent for cud of phi</p>
32, 34 43	<p>Express consent requirements</p> <ul style="list-style-type: none"> • Express consent is required for <u>collection and use</u> of phi for market research, marketing any service for a commercial purpose and fundraising • Express consent is required for <u>disclosure</u> of phi <ul style="list-style-type: none"> ○ By custodian to non-custodian unless required or authorized by law ○ By a custodian to another custodian if it is not for the purpose of providing health care unless required or authorized by law ○ For fundraising activities ○ For market research or marketing any service for a commercial purpose ○ To media ○ To a personal or organization for the purpose of research unless provided for in s. 57
13	<p>Requirements for consent</p> <p>For both knowledgeable implied consent and express consent, the consent must:</p> <ul style="list-style-type: none"> • Be a consent of the individual • Be knowledgeable • Relate to the specific information at issue and • Be voluntary
14	<p>“Knowledgeable”</p> <p>Consent to cud of phi is knowledgeable if it is reasonable in the circumstances to believe that the individual knows:</p> <ul style="list-style-type: none"> • The purpose of the cud as the case may be and • That the individual may give or withhold consent
15	<p>“Reasonable”</p> <p>It is reasonable to believe that an individual knows the purpose of cud of phi if the custodian:</p> <ul style="list-style-type: none"> • Makes readily available a notice describing the purpose in a manner that the purpose is likely to come to the individual’s attention or • Explains the purpose to the individual <p>It is not reasonable to believe the individual knows the purpose if the custodian should have known that the individual has a language or reading barrier.</p>
17	<p>Revocation</p> <p>An individual may limit or revoke consent to collection, use or disclosure of phi</p> <ul style="list-style-type: none"> • Revocation is not retroactive • Custodian must take reasonable steps to comply • Custodian shall inform the individual of the consequences of limiting or revoking consent • Custodian shall notify custodian to whom phi is disclosed of limitations • Revocation does not apply to phi that a custodian is required by law to cud

Consent Rules continued	
18	<p>Age & capacity Any capable individual, regardless of age may consent or withdraw consent for the purpose of <i>PHIA</i></p>
20	<p>Capacity includes Where an individual is deemed to have the capacity to consent to cud of phi, this capacity includes disclosure to a parent, guardian or substitute decision-maker where applicable.</p>
3(b)	<p>Definition of "capacity" Means the ability to understand information that is relevant to the making of a decision related to the cud of phi and the ability to appreciate the reasonably foreseeable consequences of a decision or lack of decision</p>
21(1)	<p>Substitute decision maker Consent to cud may be given by a substitute decision maker (sdm) if the individual lacks the capacity to make the decision</p>

B. Collection	
11	<p>General rule Health custodians shall not collect personal health information (phi) unless</p> <ul style="list-style-type: none"> • The custodian has the individual's consent <u>and</u> the collection is reasonably necessary for a lawful purpose or • The collection is permitted or required by this Act
24 25(1) 26(1) 26(2)	<p>Best practice requirements:</p> <ol style="list-style-type: none"> 1. Collect non- phi first: A custodian shall not collect phi if other information will serve the purpose of collection 2. Minimum necessary: Collection of phi must be limited to the minimum amount of phi necessary to achieve the purpose for which it is collected <p>Application of s. 24 and 25 rules:</p> <ul style="list-style-type: none"> • These rules apply where the custodian is authorized to collect phi with knowledgeable implied consent, without consent and without consent unless the individual objects • These rules do not apply to phi that a custodian is required by law to collect
45(1) 38(5)	<p>Collection by non-custodian</p> <ul style="list-style-type: none"> • A non-custodian is authorized to collect the phi that a custodian may disclose to it but does not become a custodian merely by virtue of the collection • A prescribed entity that is not a custodian is authorized to collect the phi that the custodian may disclose to the prescribed entity under clause 38(1)(j)
31	<p>Indirect collection A custodian shall collect directly from the individual about whom the information is being collected except:</p> <ol style="list-style-type: none"> a. Consent: If the individual authorizes indirect collection b. Substitute decision maker: The collection is from the substitute decision-maker (sdm) if the sdm has authority to act c. Inaccurate or not timely: The information is reasonably necessary for providing health care and it is not reasonably possible to collect directly from the individual phi that can be reasonably relied on as accurate or phi in a timely manner d. Safety: Direct collection would prejudice the safety of any individual e. Family history: Collection is to assemble family history in the context of providing health care f. Eligibility for program: Collection is in the course of processing an application for a benefit or program g. Breach of agreement or proceedings: The custodian is a public body under <i>FOIPOP</i> and is collecting the information for a purpose related to investigating a breach of an agreement, to conduct a proceeding or in relation to a statutory function of the custodian h. Research: Custodian is collecting for a research project approved by a research ethics board i. Prescribed entity: Custodian is a prescribed entity j. Treaty or agreement: Custodian collects the info from a person who is permitted or required by law, treaty or agreement made under this or another Act to disclose it to the custodian k. Permitted or required by law: Custodian collects as permitted or required by law or treaty l. Minister of Health: Collection by minister for the purpose of planning or managing the health system m. Quality or standards of care: Collection is for the purpose of ensuring quality or standards of care within a quality review program n. Payments: Collection is reasonably necessary for the administration of payments in connect with the provision for health care o. Minister of Health: Collection is from another custodian for the purpose of creating or maintaining an electronic health record

C. Use	
11	<p>General rule Health custodians shall not use personal health information (phi) unless</p> <ul style="list-style-type: none"> • The custodian has the individual’s consent <u>and</u> the use is reasonably necessary for a lawful purpose or • The use is permitted or required by this Act
24 25(1) 25(2)(a) 26(1) 26(2)	<p>Best practice requirements:</p> <ol style="list-style-type: none"> 1. Use non-phi first: A custodian shall not use phi if other info will serve the purpose of the use 2. Minimum necessary: Use of phi must be limited to the minimum amount of phi necessary to achieve the purpose for which it is used. 3. Agents need to know: Use of phi by agents of custodian shall be limited to those of its agents who need to know the information to carry out the purposes for which it was collected or a purpose authorized under this Act <p>Application of s. 24 and 25 rules:</p> <ul style="list-style-type: none"> • These rules apply where the custodian is authorized to use phi with knowledgeable implied consent, without consent and without consent unless the individual objects • These rules do not apply to phi that a custodian is required by law to use
45(2)(a) 45(2)(b)	<p>Use by non-custodian A non-custodian (to whom a custodian has disclosed phi) shall not use phi for any purpose other than</p> <ul style="list-style-type: none"> • For the purpose the custodian was authorized to disclose the information under <i>PHIA</i> or • For the purpose of carrying out a legal duty <p>A non-custodian shall not use more information than is reasonably necessary to meet the purpose of the use, unless the use is required by law.</p>
25(2)(a) 29(1) 29(2) 33(c) 35(2)	<p>Use by agent</p> <ul style="list-style-type: none"> • Need to know: Use of phi by agents of custodian shall be limited to those of its agents who need to know the information to carry out the purposes for which it was collected or a purpose authorized under this Act • Authority: Where a custodian is authorized to use phi for a purpose, the custodian may provide the information to an agent who may use it for that purpose on behalf of the custodian. • Use not disclosure or collection: For the purpose of <i>PHIA</i>, the providing of phi between a custodian and an agent of the custodian is a use by the custodian and not a disclosure by the custodian or a collection by the agent • Education: A custodian may use phi for educating agents to provide health care • Non-consensual use: Where custodian is authorized to use phi without consent, the custodian may provide the information to an agent of the custodian who may use if for that purpose on behalf of the custodian
33	<p>Uses permitted or required under <i>PHIA</i></p> <ol style="list-style-type: none"> a. Use for original purpose: A custodian may use phi for the purpose for which the information was collected or created and for all the functions reasonably necessary for carrying out that purpose b. For purposes which this Act or another Act permit or requires a personal to disclose it to the custodian or c. For the purpose of educating agents to provide health care.

Uses Authorized or Permitted Under <i>PHIA</i>				
Type of information or use	<i>PHIA</i> provision	Express Consent	Implied Consent	No consent = statutory authority
Circle of care – within health care facilities	12, 25(2)(a)		•	•
Consent – may use phi to seek consent – limited to name & contact info	35(1)(e)			•
De-identification	35(1)(d)			•
Educating agents to provide health care	33(c)			•
Electronic Health Record – to create or maintain if the custodian is the Minister	35(1)(ha)			•
Fraud prevention – detect & monitor unauthorized receipt of services or benefits	35(1)(b)			•
Fundraising activities	34(a)	•		
Law – for a purpose permitted under <i>PHIA</i> or another Act	33(b)			•
Law – permitted or required by law or treaty made under <i>PHIA</i> or another Act	35(1)(i)			•
Legal proceeding	35(1)(f)			•
Market research, commercial purpose	34(b)	•		
Original purpose collected and functions reasonably necessary to carry out that purpose	33(a)			•
Payment processing – obtaining, verifying reimbursing claims for payment	35(1)(g)			•
Planning and delivery or programs	35(1)(a)			•
Quality review program	35(1)(c)			•
Research conducted by the custodian <ul style="list-style-type: none"> • Must use minimum amount of info necessary (s. 54) • Must comply with s. 55 	35(1)(h)			•
Risk Management	35(1)(j)			•

D. Disclosure	
11	<p>General rule Health custodians shall not disclose personal health information (phi) unless</p> <ul style="list-style-type: none"> • The custodian has the individual’s consent <u>and</u> the disclosure is reasonably necessary for a lawful purpose or • The disclosure is permitted or required by this Act
24 25(1) 25(2)(b) 36	<p>Best practice requirements</p> <ol style="list-style-type: none"> 1. Disclose non-phi first: A custodian shall not disclose phi if other information will serve the purpose of disclosure 2. Minimum necessary: Disclosure of phi must be limited to the minimum amount of phi necessary to achieve the purpose for which it is disclosed. 3. Circle of care – facilities: Custodians shall limit disclosure of phi to those regulated health professionals who have the right to treat individuals in the custodian’s health care facility, to only that information that the health professionals require to carry out their duties and responsibilities 4. Circle of care – generally: Custodians may disclose phi to a custodian involved in the individual’s health care if the disclosure is reasonably necessary for the provision of health care to the individual
26(1) 26(2)	<p>Application of s. 24 and 25 rules:</p> <ul style="list-style-type: none"> • These rules apply where the custodian is authorized to disclose phi with knowledgeable implied consent, without consent and without consent unless the individual objects • These rules do not apply to phi that a custodian is required by law to disclose
10(2) 41(1)	<p>Disclosures without consent – effect of authority A provision in this Act that permits a custodian to disclose phi without consent</p> <ul style="list-style-type: none"> • does not require the custodian to disclose it unless required to do so by law, • does not relieve the custodian from a legal requirement to disclose the information and • does not prevent the custodian from obtaining the individual’s consent for the disclosure or giving notice to the individual of the disclosure <p>41(1)</p> <ul style="list-style-type: none"> • A provision of <i>PHIA</i> that permits disclosure without consent does not prevent the custodian from obtaining the individual’s consent to disclosure (except where disclosure is required by law)
42(1)	<p>Disclosures without consent – documentation required</p> <ul style="list-style-type: none"> • Disclosures without consent must be documented • Documentation must include: <ul style="list-style-type: none"> ○ Description or copy of phi disclosed ○ Name of person or organization to whom the phi was disclosed ○ Date of disclosure ○ Authority for disclosure
45(2) 45(3)	<p>Disclosure by non-custodian A non-custodian (to whom a custodian disclosed the phi) shall not disclose phi for any purpose other than</p> <ul style="list-style-type: none"> • For the purpose the custodian was authorized to disclose the information under <i>PHIA</i> or • For the purpose of carrying out a legal duty <p>45(3)</p> <p>A non-custodian shall not disclose more information than is reasonably necessary to meet the purpose of the disclosure, unless the disclosure is required by law.</p>

Disclosures authorized or permitted under PHIA				
Type of information or disclosure	PHIA provision	Express Consent	Implied Consent	No consent = statutory authority
Disclosure by Recipient				
CIHI – Canadian Institute for Health Information <ul style="list-style-type: none"> For planning and management 	38(1)(i)			•
Circle of care <ul style="list-style-type: none"> Generally Within custodian’s facility 	12, 36 12, 25(2)(b)		• •	• •
Family/close personal relationship <ul style="list-style-type: none"> Information related to deceased family member General information about presence & general condition of individual on day information not contrary to express request 	40(1) & (2) 37		•	•
Correctional facility <ul style="list-style-type: none"> To allow the provision of health care 	38(1)(e)			•
Custodian <ul style="list-style-type: none"> Reasonably necessary for the provision of care Not for health care To prevent fraud, an offence or assist in investigation under enactment Within a quality review program To determine or verify eligibility for insured services 	36 43(b) 38(1)(a) 38(1)(f) 38(1)(m)	•	•	• • •
Legal advisor <ul style="list-style-type: none"> An agent who receives phi for the purpose of a proceeding or contemplated proceeding may disclose the information the agent’s or former agent’s professional advisor for the purpose of providing advice or representation 	38(7)			•
Legal guardian <ul style="list-style-type: none"> Acting on behalf of the individual 	38(1)(b)(ii)			•
Litigation guardian <ul style="list-style-type: none"> For purpose of appointment To commence or defend legal action 	38(1)(o) 38(1)(p)			• •
Media	43(e)	•		
Minister <ul style="list-style-type: none"> For planning and management of health system For purpose of creating or maintaining an electronic health record 	38(1)(g) 38(1)(u)			• •

Type of information or disclosure	PHIA provision	Express Consent	Implied Consent	No consent = statutory authority
Disclosure by Recipient continued				
Non-custodian <ul style="list-style-type: none"> • Generally, unless authorized by law • To avert or minimize an imminent risk to any person • For risk management within the custodian's organization • To facilitate assessment, care or treatment and with authorization of Minister • Administration of payments for health care • Risk management or patient safety within the custodian's organization 	43(a) 38(1)(d) 38(1)(t) 39 38(1)(r) 38(1)(t)	•		• • • • •
Prescribed entities <ul style="list-style-type: none"> • For planning and management subject to conditions in 38(2) 	38(1)(j)			•
Prescription Monitoring Board <ul style="list-style-type: none"> • For monitoring prescriptions pursuant to the Prescription Monitoring Act 	38(1)(h)			•
Provincial or territorial government <ul style="list-style-type: none"> • From the Province to another for planning and management 	38(1)(k)			•
Representative, litigation guardian, administrator <ul style="list-style-type: none"> • To persons acting on behalf of the individual • Proposed litigation guardian or legal representative for the purpose of having them appointed as such • Litigation guardian or legal representative authorized to commence or defend a proceeding 	38(1)(b) 38(1)(o) 38(1)(p)			• • •
Regulated health profession body <ul style="list-style-type: none"> • For the purpose of carrying out its duties under provincial or federal law 	38(1)(c)			•
Researcher – unless s. 57 applies	38(1)(f)	•		
Researcher – with plan, REB approval and agreement	57			•
Substitute decision maker <ul style="list-style-type: none"> • Person legally entitled to make health-care decisions on behalf of the individual • Legal Guardian • Estate Administrator 	38(1)(b)(i) 38(1)(b)(ii) 38(1)(b)(iii)			•
Within health care facility/custodian organization <ul style="list-style-type: none"> • Circle of care disclosures • Risk management or patient safety 	25(3) 38(1)(t)		•	• •

Type of information or disclosure	PHIA provision	Express Consent	Implied Consent	No consent = statutory authority
Disclosure by purpose				
Administer estate <ul style="list-style-type: none"> To the administrator of an estate if the disclosure is for the purpose of the estate 	38(1)(b)(iii)			•
Eligibility for insured services <ul style="list-style-type: none"> To another custodian to verify or determine eligibility for insured services Administration of payments in connection with health care 	38(1)(m) 38(1)(r)			•
Electronic health record (ehr) <ul style="list-style-type: none"> To Minister for the purpose of creating or maintaining an ehr 	38(1)(u)			•
Family concerns <ul style="list-style-type: none"> Information related to deceased family member General information about presence & general condition of individual on day information not contrary to express request 	40(1) & (2) 37		•	•
Fraud or offence detection & prevention <ul style="list-style-type: none"> To another custodian to prevent or assist an investigation of fraud in the use of health services or prevent commission of offence 	38(1)(a)			•
Fund raising	43(c)	•		
Insured services <ul style="list-style-type: none"> To another custodian to verify or determine eligibility for insured services 	38(1)(m)			•
Law, treaty or arrangement <ul style="list-style-type: none"> Disclosures required or permitted by law, treaty or arrangement made pursuant to PHIA or another Act 	38(1)(l)			•
Legal proceedings <ul style="list-style-type: none"> For purpose of legal proceeding in which the custodian or agent is a party or witness To appoint litigation guardian or legal representative To commence or defend litigation To comply with summons, order or procedural rule 	38(1)(s) 38(1)(o) 38(1)(p) 38(1)(q)			• • •
Marketing and service for a commercial purpose	43(d)	•		
Market research	43(d)	•		
Offence prevention <ul style="list-style-type: none"> To another custodian if the disclosure will prevent the commission of an offence under and enactment 	38(1)(a)			•
Payment for healthcare	38(1)(r)			•
Prescription monitoring – to PM Board only	38(1)(h)			•

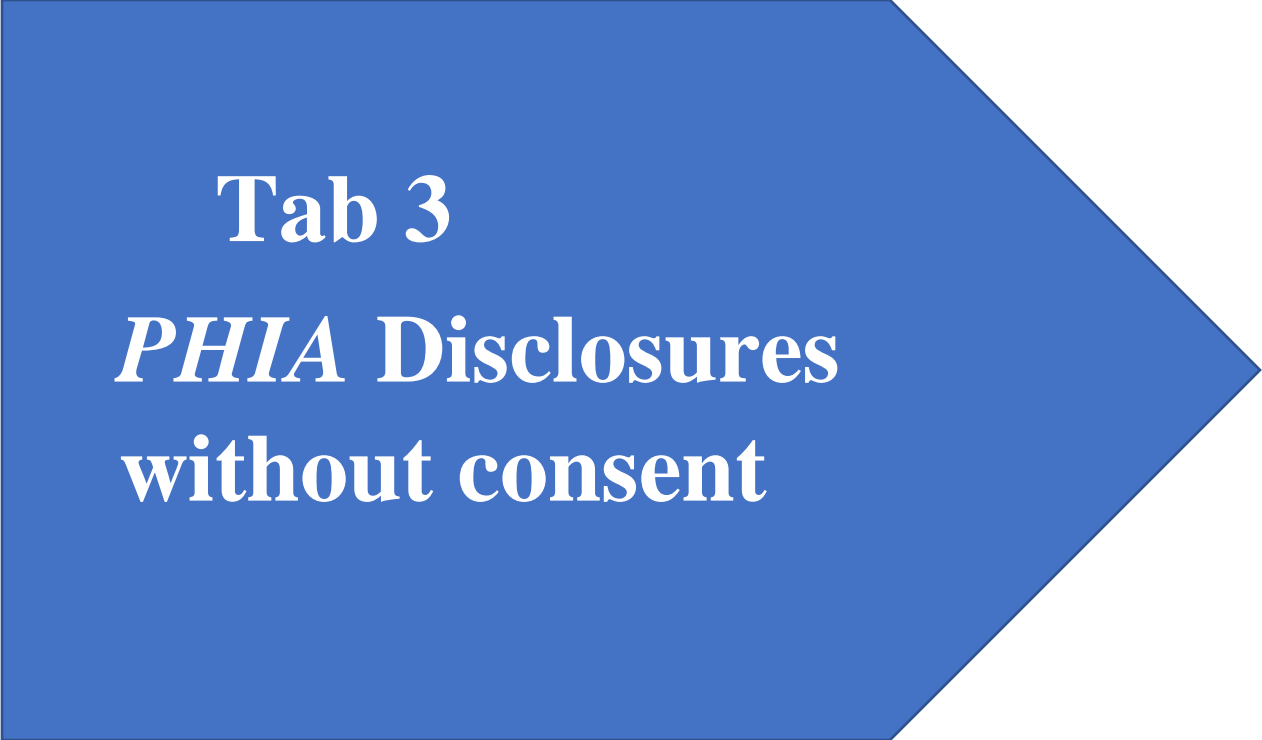
Type of information or disclosure	PHIA provision	Express Consent	Implied Consent	No consent = statutory authority
Disclosure by purpose continued				
Planning & management of the health system <ul style="list-style-type: none"> • CIHI in accordance with agreement • Minister • Prescribed entities • Provinces & territories • Planning & management does not = research 	38(1)(i) 38(1)(g) 38(1)(j) 38(1)(k) 53			• • • •
Quality review program	38(1)(f)			•
Regulation of professions (to colleges) <ul style="list-style-type: none"> • Information required for the purpose of carrying out its duties under an Act 	38(1)(c)			•
Research generally (unless s.57 applies)	43(f)	•		
Risk management within the custodian's organization	38(1)(t)			•
Safety – to avert or minimize imminent danger	38(1)(d)			•
Treatment related <ul style="list-style-type: none"> • To correctional facility in which the individual is being lawfully detained to allow the provision of health care • To custodian where reasonably necessary for provision of care (circle of care) • To non-custodian for the purpose of facilitating assessment, care or treatment with authorization of Minister • To person acting on behalf of the individual who is legally entitled to make health care decisions • To family member or close relationship information about presence and condition • Outside NS where reasonably necessary for the provision of health care and no express instruction to the contrary 	38(1)(e) 36 39 38(1)(b) 37 44(1)(e)			• • • • •
Disclosure outside NS				
Outside NS – generally with consent	44(1)(a)		•	
Outside NS – permitted by PHIA	44(1)(b)			•
To a regulated health professional – prescription monitoring	44(1)(c)			•
Planning and management of health care	44(1)(d)			•
Info relates to health care provided in NS to an individual who resides outside NS	44(1)(d)			•
To the government of a province or Canada	44(1)(d)			•
Reasonably necessary for provision of health care	44(1)(e) 44(2)	•		•

Type of information or disclosure	PHIA provision	Express Consent	Implied Consent	No consent = statutory authority
Deceased (phi relating to deceased persons)				
• For the purpose of identifying the individual	40(1)(a)			•
• To inform any person that the individual is deceased	40(1)(b)			•
• To listed relatives if the information is needed to make health care decisions	40(1)(c)			•
• For carrying out the deceased person's wishes for the purpose of tissue donation	40(1)(d)	•		
• Info relating to circumstances of death to family members or close personal relationship – so long as not contrary to a prior express request of the individual	40(2)		•	•
• To estate administrator for purpose of the estate	38(1)(b)(iii)			•

E. Health Card Number Rules	
27	A person who is not a custodian or authorized by the Regulations (Reg. 6) shall not collect or use an individual's health card number
Reg. 6	<p>For the purposes of clause 27 the following non-custodians are authorized to collect and use an individual's health card number for the purposes specified:</p> <ul style="list-style-type: none"> • WCB – assess worker's entitlement to benefits • MCS – facilitate health care for children, indicate eligibility for pharmacare program, determine benefits • MSNS and MR – Vital Statistics division for registering births and deaths • Office of Public Trustee – facilitate health care decisions for clients • Mi'kmaw First Nations band to create and maintain NS FN Client Linkage Registry
Reg. 7	Non-custodian is authorized to collect and use an individual's health card number for the purposes of facilitating the provision of insured services
46	Notwithstanding any enactment except the <i>Juries Act</i> and the <i>Elections Act</i> the Minister has the sole authority for deciding who may have access to the information in the health card number database, the Common Client Registry or any successor client information system related to the health card number.

F. Agents	
3(a)	Agent , in relation to a custodian means a person who, with authorization of the custodian, acts for or on behalf of the custodian in respect of phi. Includes an employee, volunteer, insurer, lawyer or liability protection provider.
6(2)	Regulated health professionals: Except as prescribed, a regulated health professional is not a custodian in respect of phi that the person collects, uses or discloses while performing the person's powers or duties when an agent of a custodian.
28	General rule: A custodian may permit the custodian's agent to cud, retain, destroy or dispose of phi on the custodian's behalf only if: <ul style="list-style-type: none"> • The custodian is permitted or required to cud, retain, destroy, or dispose of the phi • The cud, retention, destruction or disposition of the information is in the course of the agent's duties and not contrary to the limits imposed by the custodian, this Act or another law <u>and</u> • The prescribed requirements, if any, are met (none currently)
25(2)(a) 29(1) 29(2) 33(c) 35(2)	Use <ul style="list-style-type: none"> • Need to know: Use of phi by agents of custodian shall be limited to those of its agents who need to know the information to carry out the purposes for which it was collected or a purpose authorized under this Act • Authority: Where a custodian is authorized to use phi for a purpose, the custodian may provide the information to an agent who may use it for that purpose on behalf of the custodian. • Use not disclosure or collection: For the purpose of <i>PHIA</i>, the providing of phi between a custodian and an agent of the custodian is a use by the custodian and not a disclosure by the custodian or a collection by the agent • Education: A custodian may use phi for educating agents to provide health care • Non-consensual use: Where custodian is authorized to use phi without consent, the custodian may provide the information to an agent of the custodian who may use if for that purpose on behalf of the custodian
38(7)	Disclosure <ul style="list-style-type: none"> • An agent who receives phi for the purpose of a proceeding or contemplated proceeding may disclose the information the agent's or former agent's professional advisor for the purpose of providing advice or representation

G. Retention, Destruction, Security, Breach Reporting	
50(1) 51 49(2)	Retention rule <ul style="list-style-type: none"> • Custodian must have a written retention schedule for phi • Custodian must follow retention schedule • At expiry of relevant retention period phi must be securely destroyed, erased or de-identified.
49(2)	Destruction rule <ul style="list-style-type: none"> • Must securely destroy (erase or de-identify) phi at expiry of relevant retention period
61 62(c)	Security rule <ul style="list-style-type: none"> • Custodian shall protect confidentiality of phi • Shall protect against theft, loss, unauthorized access to or use, disclosure, copying or modification of information
69 70	Breach reporting <ul style="list-style-type: none"> • Must notify affected individual at first reasonable opportunity if the custodian believes information is stolen, lost, subject to unauthorized access, use, disclosure, copying and, as a result, there is a potential for harm or embarrassment to the individual • Where the custodian believes on a reasonable basis that there is no potential for harm or embarrassment, notification of the affected individual is not required but the custodian shall notify the Information and Privacy Commissioner as soon as possible



Tab 3
***PHIA* Disclosures**
without consent



Personal Health Information Act

Disclosures Without Express Consent

Office of the Information and Privacy Commissioner for Nova Scotia

Notice to Users

This document is intended to provide general information only. It is not intended nor can it be relied upon as legal advice. As an independent agency mandated to oversee compliance with *FOIPOP*, *MGA* and *PHIA* the Office of the Information and Privacy Commissioner for Nova Scotia cannot approve in advance any proposal from a public body, municipal body or health custodian. We must maintain our ability to investigate any complaints and to provide recommendations in response to these complaints. The contents of this document do not fetter or bind this office with respect to any matter, including any complaint investigation or other matter respecting which the Commissioner (Review Officer) will keep an open mind. It remains the responsibility of each public body, municipal body and health custodian to ensure that they comply with their responsibilities under the relevant legislation. Visit us at: <https://oipc.novascotia.ca>.

TABLE OF CONTENTS

Introduction	3
General Rule	3
Approach	4
Step 1: Is the information personal health information?	5
Step 2: Is the disclosure authorized?	6
Step 3: Should you disclose the information?	9
Step 4: Documentation requirements	9
Non-custodians	
Further use or disclosure of personal health information by non-custodians	10
Agents	11

INTRODUCTION

Health custodians are entrusted with some of our most private and sensitive personal information. Traditionally, health custodians have carefully guarded that personal health information. But from time to time, other organizations request that health custodians disclose personal health information to them for some other purpose. For example, police may be investigating a crime and believe that their suspect suffered an injury for which he or she is likely to seek treatment at the local emergency department. They may seek information from the local emergency department in hopes of capturing their suspect. Is the identity of an individual at an emergency department personal health information? Can the health custodian disclose the information without the consent of the individual?

Another example is when a young adult seeks mental health treatment. If the young adult is at risk of harm to herself can the health custodian disclose personal health information to the young adult's parents? If so, under what circumstances?

These guidelines are designed to walk health custodians in Nova Scotia through a four-step process when they are faced with a request for disclosure of personal health information without consent. The four-step approach will help ensure that any disclosure takes into account the rules in the *Personal Health Information Act (PHIA)*.

To assist readers, each rule described below includes a reference to the relevant section of *PHIA*. Health custodians should always take the time to read the exact section of *PHIA* they are relying on to authorize a disclosure to ensure that the circumstances fit the rule.

GENERAL RULE

Under *PHIA*, a custodian must have the individual's consent to collect, use or disclose personal health information, or the collection, use or disclosure must be permitted or required by law (s. 11).

Express consent is required for the disclosure of personal health information by a custodian to a non-custodian unless required or authorized by law (s. 43). *PHIA* and other statutes provide authority for non-consensual disclosures in limited circumstances.

APPROACH

The analysis of whether or not a disclosure of personal health information is authorized under *PHIA* involves a four-step process:

1. Is the information in question “personal health information” within the meaning of *PHIA*?
2. Does *PHIA* permit the disclosure without the consent of the individual?
3. Even if authorized, should the health custodian disclose the information?
4. Has the authorized disclosure been properly documented?

PHIA defines disclosure as making the information available or releasing it to another person. Keep in mind that even if *PHIA* permits disclosure without consent, best practice is to get consent whenever possible (s. 41(1)). Where express consent is required, it can be given orally or in writing (s. 16).

Also note that providing information to an “agent” is not a disclosure under *PHIA* (s. 29(2)). An “agent” is defined in *PHIA* (s. 3(a)) and includes a person who, with the authorization of the custodian, acts for or on behalf of the custodian in respect of personal health information for the purposes of the custodian and not the agent’s purposes. Agents can include employees of a custodian, volunteers, insurer, lawyers retained by the custodian and liability protection providers. At the end of this document there is a discussion that explains the seven essential rules about sharing personal health information with agents.

Use the following table to determine if a disclosure of personal health information without consent is authorized.

PHIA DISCLOSURE DECISION TABLE

Step 1: Is the information “personal health information” (both recorded & unrecorded)?

If one or more of the following statements apply, the requested information is personal health information (phi) and so the *PHIA* disclosure rules also apply.

- | | |
|---|--|
| 1. The information relates to the physical or mental health of the individual, including information that consists of the health history of the individual's family. | |
| 2. The information relates to the application, assessment, eligibility and provision of health care to the individual, including the identification of a person as a provider of health care to the individual. | |
| 3. The information relates to payments or eligibility for health care in respect of the individual. | |
| 4. The information relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance. | |
| 5. The information is the individual's registration information, including the individual's health card number. | |
| 6. The information identifies an individual's substitute decision-maker. | |

If one or more of the following statements apply, the *PHIA* disclosure rules do not apply.

- | | |
|--|--------------------|
| 1. Employee information: phi does not include the identifying information contained in the record if the record relates primarily to an employee or agent of the custodian and the record is created or maintained primarily for a purpose other than the provision of health care or assistance in providing health care to the employee or agent. | Not phi |
| 2. Aggregate information: <i>PHIA</i> does not apply to statistical, aggregate or de-identified health information. | Not
<i>PHIA</i> |
| 3. Age of records: <i>PHIA</i> does not apply to records that are 120 years old or 50 years after the death of an individual (whichever is earlier). | Not
<i>PHIA</i> |

Step 2: Is the disclosure authorized?

If the information in question is personal health information within the meaning of *PHIA* (step 1), you must next determine whether the disclosure is authorized either because there is implied consent to the disclosure or because consent is not required.

Using the table below, identify all potential authorities for the proposed disclosure. It is very important to read each authority carefully and ensure that all of the requirements of the authority are met.

Implied consent

Health custodians may disclose personal health information based on implied consent in two circumstances:

1. **Provision of health care:** A custodian may disclose personal health information about an individual to a custodian involved in the individual's health care if the disclosure is reasonably necessary for the provision of health care to the individual (ss. 36 and 25(2)(b)).
2. **Family or close personal relationship:** A custodian may disclose personal health information to family or an individual in a close personal relationship if the information is given in general terms and concerns the presence, location and general condition of the individual on the day on which the information is disclosed and the disclosure is not contrary to the express request of the individual (s. 37).

Consent not required

A custodian may disclose personal health information without consent in limited circumstances as follows:

To another custodian:

1. If the custodian disclosing the information has a reasonable expectation that the disclosure will prevent or assist an investigation of fraud or prevent the commission of an offence under an enactment of a province or Canada (s. 38(1)(a)).
2. For the purpose of ensuring quality or standards of care within a quality review program (s. 38(1)(f)). Note in May 2015 this authority was repeated in the *Quality Improvement & Information Protection Act*, SNS 2015, c. 8.
3. For the purpose of determining or verifying an individual's eligibility for insured services (s. 38(1)(m)).

Safety and treatment-related disclosures:

4. To any person if the custodian believes the disclosure will avert or minimize an imminent and significant danger to health or safety of any person or class of persons (s. 38(1)(d)).
5. For the purpose of risk management or patient safety within the custodian's organization (s. 38(1)(t)).
6. To a non-custodian for the purpose of facilitating assessment, care or treatment services for the individual and with authorization of the Minister (s. 39)¹ (see further discussion below on disclosures for the purpose of facilitating assessments).

¹ Exchange of phi under this section may involve police and mental health service providers for example. Exchanges may include information necessary to adequately assess the situation, engage identified individuals within the formal mental health system, assist them in avoiding unnecessary utilization of emergency and

Step 2: Is disclosure authorized?	
<i>Consent not required (cont'd)</i>	
<p>Correctional facilities:</p> <p>7. To an official of a correctional facility in which the individual is being lawfully detained if the purpose is to allow the provision of health care (s. 38(1)(e)) (Health Information Transfer Form).</p>	
<p>To a representative of an individual or following death:</p> <p>8. To a person legally entitled to make health care decisions on behalf of the individual, such as a legal guardian or administrator of the estate (for the purpose of the estate) (s. 38(1)b)).</p> <p>9. To a proposed litigation guardian or legal representative of the individual for the purpose of having the person appointed as such (s. 38(1)(o)).</p> <p>10. To a litigation guardian or legal representative who is authorized under the Civil Procedure Rules or by a court order (s. 38(1)(p)).</p> <p>11. Custodians may disclose personal health information of an individual who is deceased in limited circumstances (identification, reasonable notification, organ donation (s. 40(1)).</p>	
<p>In relation to regulation, administration and planning of health care:</p> <p>12. To a regulated health profession body that requires the information for the purpose of carrying out its duties under an enactment (s. 38(1)(c)).</p> <p>13. To the Nova Scotia Prescription Monitoring Board for monitoring prescriptions pursuant to the <i>Prescription Monitoring Act</i> (s. 38(1)(h)).</p> <p>14. Where disclosure is reasonably necessary for the administration of payments in connection with the provision of health care or for contractual or legal requirements in that connection (s. 38(1)(r)).</p> <p>15. To the Canadian Institute for Health Information to assist in the planning and management of the health system (s. 38(1)(i)).</p> <p>16. To a prescribed entity (none have been prescribed) for the planning and management of the health system (s. 38(1)(j)).</p> <p>17. To the Minister for the purpose of planning and management of the health system (s. 38(1)(g)).</p> <p>18. From the Province to another provincial or territorial government or the Government of Canada to assist in the planning or management of the health system (s. 38(1)(k))</p> <p>19. To the Minister for the purpose of creating or maintaining an electronic health record (s. 38(1)(u)).</p>	

inpatient services, determine obstacles to engagement with outpatient and/or community based services, and jointly plan an appropriate intervention.

Step 2: Is disclosure authorized?

Consent not required (cont'd)

Legal proceedings, law and investigations:

20. For the purpose of complying with a summons, order or procedural rule that relates to the production of information in a proceeding (s. 38(1)(q)).
21. For the purpose of a proceeding or a contemplated proceeding in which the custodian or an agent is expected to be a party or witness (s. 38(1)(s)).
22. The disclosure is required or permitted by law or a treaty, agreement or arrangement made pursuant to this Act or another Act of the Province or the Parliament (s. 38(1)(l)). Examples include the *Children and Family Services Act*, *Gunshot Wounds Mandatory Reporting Act*, *Adult Protection Act*, and *Health Protection Act*.
23. To a person carrying out an inspection, investigation or similar procedure that is (s. 38(1)(n)):
 - (i) Authorized
 - by a warrant; or
 - by or under this Act or another Act of the Province or Parliament (for example the *Fatality Investigations Act*).
 - (ii) For the purpose of
 - complying with the warrant; or
 - facilitating the inspection, investigation or similar procedure.
 - (iii) Subject to the requirements and restrictions, if any, that are prescribed (none have been prescribed).
24. An agent or former agent who receives personal health information for the purpose of a proceeding or contemplated proceeding may disclose the information to a professional advisor if the advisor is under a professional duty of confidentiality. (s. 38(7)).

Step 3: Should you disclose the information?

If you have identified one or more authorities that permit disclosure of the personal health information (step 2), you must next ensure that you follow best privacy practices and further, that if you have discretion as to whether or not to disclose the phi, you properly exercise your discretion. The table below will assist you in identifying the relevant questions that must be addressed.

1. If the disclosure is authorized, identify the minimum amount of phi necessary to meet the authorized needs of the requester.

2. Is the disclosure authority such that the disclosure is mandatory (reasons 20, 21, 22 above)? For example:

- Is there another statute that requires the disclosure?
- Is there a court order?
- Is there a warrant or subpoena?

If so, you can skip the next step on exercise of discretion because you must comply with any mandatory requirement. Read the statutory provision, court order, warrant or subpoena carefully and ensure that only information clearly captured by the mandatory authority is disclosed.

3. Except as noted above, disclosures without express consent under *PHIA* are discretionary. The law says that health custodians “may” disclose personal health information, not that they must disclose it. Review the proposed disclosure and determine whether or not you should exercise discretion in favour of disclosure. You may want to consider such things as:

- Your organization’s policy regarding disclosures without consent. The policy may limit the circumstances under which disclosure may occur and may also limit who is authorized to disclose the phi.
- Professional code of ethics requirements.
- Age of the records.
- Original purpose for collection versus purpose for disclosure.
- Expectations of the patient.
- Sensitivity of the information.
- Past practice of your organization.

Step 4: Complete documentation requirements

1. Disclosures without consent must be documented (s. 42(1)).

2. The documentation must include:

- A description or copy of the phi disclosed;
- The name of the person or organization to whom the phi was disclosed;
- The date of disclosure; and
- The authority for the disclosure (s. 42(2)).

NON-CUSTODIANS

Note on further use or disclosure of personal health information by non-custodians

PHIA has rules for the further use and disclosure of phi by non-custodians. The key points are:

- A non-custodian does not become a custodian merely by virtue of its collection of phi (s. 45(1)).
- A non-custodian shall not use or disclose phi for any purpose other than the purpose for which it was disclosed or for the purpose of carrying out a legal duty (s. 45(2)).
- A non-custodian shall not use or disclose more of the information than is reasonably necessary to meet the purpose of the use or disclosure unless required by law (s. 45(3)).

AGENTS

Health custodians may provide personal health information to their agents in limited circumstances under *PHIA*. “Agent” means a person who, with the authorization of a custodian, acts for or on behalf of the custodian in respect of phi for the purposes of the custodian and not the agent’s purposes – whether or not paid. Agents include employees, volunteers, the custodian’s lawyer and insurer (s. 3(a)).

A regulated health professional is not a custodian in respect of phi that the person collects, uses or discloses while performing the person’s powers or duties as an agent of a custodian (s. 6(2)).

Seven essential rules about sharing phi with agents are:

1. Providing phi between a custodian and an agent is a use and not a disclosure (s. 29(2)).
2. Agents are permitted to collect, use or disclose phi only in the same circumstances that the custodian is permitted or required to collect, use or disclose phi (s. 28).
 - a. Custodians shall not collect, use or disclose phi if other information will serve the purpose (s. 24).
 - b. Collection, use or disclosure of phi must be limited to the minimum amount of phi necessary to achieve the purpose (s. 25(1)).
3. Custodians shall limit the use of phi to those of its agents who need to know the information to carry out the purpose for which the information was collected (s. 25(2)(a)).
4. Custodians may use phi for educating agents to provide health care (33(c)).
5. If a custodian is authorized to use phi for a purpose, the custodian may provide the information to an agent to use for that purpose (29(1)).
6. Where the custodian is permitted to use without consent, the custodian can provide the information to an agent for that same purpose (s. 35(2)).
7. The agent shall notify the custodian if phi is lost or accessed by unauthorized persons (28(3)).

QUESTIONS

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Tab 4

***PHIA Access
Rules***



Personal Health Information Act - Access Rules At a Glance

A. Basic Access Rules

There are seven basic access rules under *PHIA*:

1. **Right of access:** Individuals have a right to access personal health information about themselves (s. 71). Requests can be written or oral (s. 77)
2. **No reason necessary:** Individuals do not have to provide the reasons or purposes for which they are requesting the information (s. 78).
3. **Limited, discretionary exemptions:** Custodians may refuse to grant access to all or part of the record only as set out in *PHIA*. Custodians must only sever the portions of the record that fits within the exemption and disclose the remainder (s. 72(2)). The nine exceptions to disclosure are:

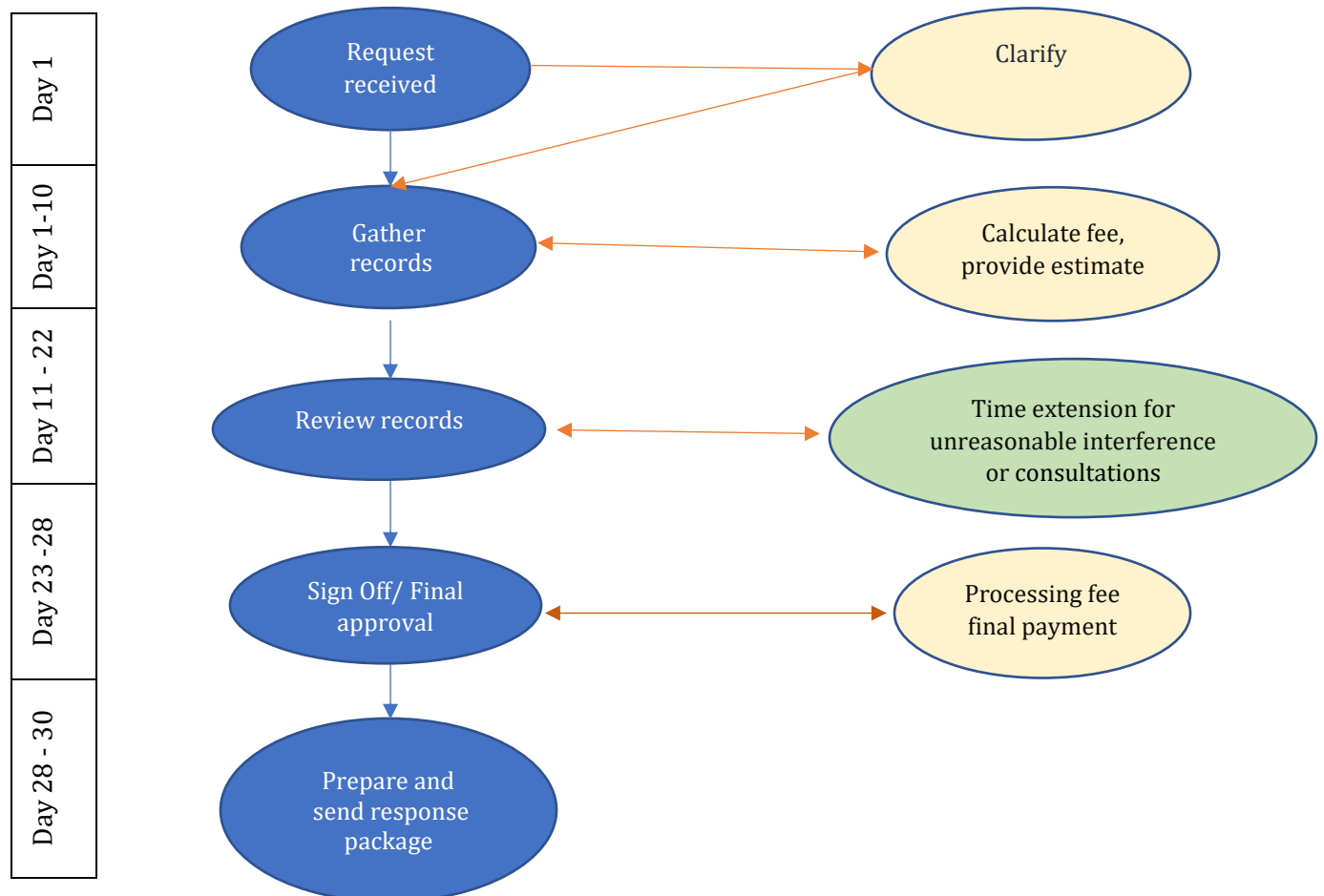
	<i>PHIA</i>	Exemption
1.	72(1)(a)	Legal privilege
2.	72(1)(b)	Court order
3.	72(1)(c)	Quality review program
4.	72(1)(d)	Active proceeding
5.	72(1)(e)	Active inspection or investigation
6.	72(1)(f)	Risk of serious harm to the applicant
7.	72(1)(g)	Risk of serious harm to another individual
8.	72(1)(h)	Identify confidential source of information
9.	72(1)(i)	Release of another individual's personal health information

4. **Confirm individual's identity:** Before releasing personal health information, custodians must take reasonable steps to be satisfied as to the individual's identity and authority to access the information.
5. **Time:** Custodians must respond to requests within 30 days after receiving the request unless a time extension is authorized (ss. 83, 84).
6. **Fees:** Custodians may charge fees for providing personal health information only in accordance with *PHIA* and only after first providing a fee estimate. (s. 75(c), s. 82, Regulation ss. 14, 15 and 16). Custodians may grant a fee waiver where the applicant cannot afford to pay or for any other reason it is fair to do so (s. 82(3)).
7. **Alternative access processes:**
 - a. Nothing in *PHIA* prevents a custodian from communicating with the individual about the personal health information.
 - b. Nothing in *PHIA* relieves the custodian from a legal duty to provide personal health information as expeditiously as necessary for the provision of health care.
 - c. A custodian has discretion to determine whether to grant informal access.

B. How to Sever a Document

1. Read the document carefully, make sure you understand the content. Talk to the health care provider who produced the record if you need help understanding the document and its implications.
2. Read all nine exemptions to disclosure carefully so you have a sense of what information might fall within the exemptions. For the most part, no exemption will apply. However, you must consider the possibility each time. Be particularly vigilant for third party personal information.
3. Do some research on how the exemptions might apply to the type of record you are reviewing. Talk to your colleagues and other health custodians, check your files to see if your own organization has had previous similar requests and read the information available on the Information and Privacy Commissioner's website.
4. Carefully review the record with the exemption in mind. Make sure that any information you sever (redact) satisfies all of the requirements of the exemption.

C. 30 Day Timeline for PHIA Record Request





Tab 5
PHIA Fee Fact
Sheet



Office of the Information and Privacy Commissioner for Nova Scotia

***PHIA* Fee Fact Sheet**

General rule:

Under the *Personal Health Information Act (PHIA)*, a custodian may charge an individual fees for accessing her personal health information including:²

1. A basic fee of \$30.³
2. Additional fees for activities listed in the Regulations. If an activity is listed in the Regulations, fees may not exceed the prescribed amount.
3. If an activity is not listed in the Regulation, the custodian may charge a fee for reasonable cost recovery.⁴

The Regulation also lists circumstances in which no fee may be charged (discussed below).

Basic fees:

The \$30 fee covers all of the following:⁵

- Receiving and clarifying the request;
- Locating and retrieving the record (whether electronic or paper);
- Providing the individual requesting access with a fee estimate;⁶
- The first 15 minutes of reviewing the record to see if information needs to be withheld;⁷
- Severing any information the custodian decides to withhold from the record;
- The first 30 minutes of preparing the record for copying, printing, or electronic transmission;
- Writing the response letter to the individual;
- The first 30 minutes of supervising an individual's examination of the original records;
- Mailing the record by regular mail.

² *PHIA* s. 82(1).

³ *PHIA* Regulation 14.

⁴ *PHIA* s. 82(2).

⁵ *PHIA* Regulation 14.

⁶ *PHIA* s. 82(1) requires a fee estimate be provided before fees are charged.

⁷ *PHIA* s. 72(1) sets out a number of circumstances in which a custodian is authorized to refuse an individual access to his/her own personal health information.

Additional fees:

In addition to the general fee, custodians may also charge specific amounts for each of the following activities:⁸

Activity	Maximum fee
Making photocopies of a record	\$0.20 per page
Preparing a record for photocopying, printing or electronic transmission	\$12.00 for every 30 minutes after the 30 minutes covered by the general fee
Faxing a record	\$0.20 per page
Copying an electronic record to a CD	\$10.00 per request
Making copies from a microfilm or microfiche	\$0.50 per sheet
Making a copy of an audio cassette recording	\$5.00 per cassette
Making and providing a copy of a 1/4", 1/2" or 8 mm video cassette recording 1 hour long or less	\$20.00
Making and providing a copy of a 1/4", 1/2" or 8 mm video cassette recording longer than 1 hour	\$25.00
Making and providing a copy of a 3/4" video cassette recording that is 1 hour long or less	\$18.00
Making and providing a copy of a 3/4" video cassette recording that is longer than 1 hour	\$23.00
Producing a record stored on medical film, including x-ray, CT, and MRI films	\$5.00 per film
Printing a photograph from a negative or electronic photograph - 4" x 6"	\$10.00
Printing a photograph from a negative or electronic photograph - 5" x 7"	\$13.00
Printing a photograph from a negative or electronic photograph - 8" x 10"	\$19.00
Printing a photograph from a negative or electronic photograph - 11" x 14"	\$26.00
Printing a photograph from a negative or electronic photograph - 18" x 20"	\$32.00
Reviewing the record to see if information needs to be withheld	\$25.00 for every 15 minutes after the 15 minutes covered by the general fee
Supervising an individual's examination of the original records	\$6.00 for every 30 minutes after the 30 minutes covered by the general fee

⁸ PHIA Regulation 15.

The *PHIA* Regulation also permits custodians to charge certain direct costs and costs related to producing a visit history:

Direct costs:

A custodian may pass along direct costs incurred by the custodian for the following:⁹

- Charges to retrieve a record from and return the record to off-site storage, if an individual requests expedited access to a record for which additional retrieval costs are charged to the custodian;
- Courier costs, if courier delivery is requested by the individual;
- The cost of mailing a record to an address outside Canada;
- Taxes payable on the services provided.

Visit history:

- If a custodian has the ability to produce a visit history, they may produce that visit history at the individual's request for a maximum cost of \$10. The \$30 general fee does not apply.¹⁰ [Regulation 17(3)].

Fees do not apply:

The fees do not apply to any of the following:¹¹

- **User activity report:** Where a custodian has an electronic information system, the custodian shall make a record of user activity available at the individual's request, and at no charge to the individual.¹²
- **New patients:** A request from a regulated health professional who is entitled to personal health information in accordance with a consent¹³ given by the individual whose personal health information is the subject of the request;
- **Legal aid representation:** A request made by a solicitor representing a legal aid client;
- **Review Board appearance:** A request from an individual for the purposes of appearing before the Review Board under Section 68 of the *Involuntary Psychiatric Treatment Act*;
- **Police officer:** A search warrant presented by a police officer under section 487 of the Criminal Code (Canada) or a production order presented by a police officer under section 278.7 of the Criminal Code (Canada);
- **Police and probation:** A request by a police officer or probation officer who is entitled to personal health information because the individual whose personal health information is the subject of the request has consented¹⁴ to disclosure;
- **Investigation by regulatory colleges:** A request from a regulated health-profession body that is using the information for the purposes of regulating the health profession;¹⁵
- **Workers' Compensation:** A request from the Workers' Compensation Board of Nova Scotia

⁹ *PHIA* Regulation 16.

¹⁰ *PHIA* Regulation 17(3).

¹¹ Items other than the user activity report are set out in *PHIA* Regulation 12.

¹² *PHIA* s. 63(1), 63(4).

¹³ See *PHIA* s. 11(a).

¹⁴ See *PHIA* s. 11(a).

¹⁵ See *PHIA* s. 38(1)(c).



Tab 6
Resources

PHIA Tools – All available at: [https://oipc.novascotia.ca/PHIA Custodians](https://oipc.novascotia.ca/PHIA_Custodians)

PHIA Rule Guides:

[PHIA - Rules Summary and Checklist for Custodians](#)

[PHIA Fee Fact Sheet - *Personal Health Information Act*](#)

[Fiche de renseignements - Frais liés à la PHIA](#)

[PHIA - Disclosures Without Express Consent](#)

[PHIA – Disclosures to Researchers](#)

Privacy Breach Management:

[Key Steps to Responding to Privacy Breaches](#)

[Étapes à suivre en cas d'attentes à la vie privée](#)

Privacy Management Framework:

[Privacy Management Program: At a Glance](#)

[Privacy Management Program Toolkit for Health Custodians](#)

General Guidance Documents:

[Privacy Impact Assessment - *Personal Health Information Act*](#)

[Reasonable Security Checklist for Personal Information](#)

[External Link - Department of Health and Wellness Toolkit for Health Custodians](#)

[Best Password Practices / Meilleures pratiques pour les mots de passe](#)



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