

**THE NOVA SCOTIA FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT**

A **REQUEST FOR REVIEW** of a decision of the **CAPITAL DISTRICT HEALTH AUTHORITY** to deny access to records regarding services provided to an American patient.

**REVIEW OFFICER:** Darce Fardy

**REPORT DATE:** June 2, 2005

**ISSUE:** Whether the information sought falls within Section 71(1) of the *Hospitals Act* which overrides the *Freedom of Information and Protection of Privacy Act*.

In a Request for Review, pursuant to the **Freedom of Information and Protection of Privacy Act** (FOIPOP), received February 16, 2005, the Applicant asked that I recommend to the Capital District Health Authority (CDHA) that it reverse its decision not to provide the Applicant with all of the information being sought.

*Background:*

The application followed a report of the Nova Scotia Auditor General (December 2004) noting that CDHA had been unable to collect for services provided to a foreign patient in the amount of approximately \$642,000.

The Applicant asked for:

1. A list of medical services provided to the patient;
2. the patient's diagnosis;

3. where the patient was from;
4. the period over which the services were provided;
5. efforts CDHA has made to collect the money from an insurance company;  
and
6. the name of the insurance company.

Through mediation by the Review Office, the request was reduced to three items: the patient's diagnosis, where the patient was from, and copies of letters CDHA sent to an insurance company to try to collect the money. The Applicant did not want any identifying personal information.

*CDHA's decision:*

The CDHA refused access to any of the information sought citing *Section 71(1)* of the *Hospitals Act* and **Section 4A(2)(g)** of the *Freedom of Information and Protection of Privacy Act*.

*CDHA's submission:*

It is argued that the reasoning used to apply the exemption provided in Section 71 of the (Hospitals) Act is applicable to this situation insofar as patient information is personal information that Capital Health protects as confidential information, even with the patient identifiers removed. It is not just the patient records but the "particulars" of the patient which the applicant seeks and Capital Health feels strongly should be protected against any access not covered specifically under the Hospitals Act, Section 71(1).

**Conclusions:**

Section 71(1) of the Hospitals Act reads:

The records and particulars of a hospital concerning a person or patient in the hospital or a person or patient formerly in the hospital shall be confidential and shall not be made available to any person or agency except with the consent or authorization of the person or patient concerned

Section 4A(2)(g) of FOIPOP is clear that Section 71 of the Hospitals Act “prevails” over the FOIPOP Act.

Whatever concerns I have with the wording of Section 71(1), and they are noted below, there can be no argument that the FOIPOP Act does not apply to information which falls within s.71(1). I am satisfied that the records the Applicant seeks fall under this section.

**Recommendation:**

That the CDHA confirm in writing to the Applicant that it’s original decision will stand.

**NOTE:**

Section 71(1) properly reaffirms the need to protect an individual’s health information from disclosure, even though the FOIPOP Act itself provides that same protection. However, as it is written, s.71(1), in my view, is too broad. It applies to any “person” “in the hospital,” not just a patient, and this would include employees. This distinguishes hospital employees from other public employees whose records are subject to the FOIPOP Act, although exemptions could apply. The

CDHA says it has not been required to interpret the difference between “person” and “patient” but concedes that s.71(1) “does raise the issue that the reference to records may not be restricted to patient’s records.”

As well, s.71(1) of the Hospitals Act makes no specific reference to “health records.” Instead it refers to “records and particulars.” No definition is provided for “particulars.”

I recommend the legislature adopt new wording for this section of the Hospitals Act to make it more specific and to reflect what I believe was intended.

**Dated** at Halifax, Nova Scotia this 2<sup>nd</sup> day of June, 2005.

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Darce Fardy, Review Officer