

Presentation to the Standing Committee on Families and Communities

February 21, 2018-Panel C 11:30-12:30

Introduction

Thank you for the opportunity to give our views on this important piece of legislation.

- As you are aware Alberta Health Services (AHS) is Canada's first and largest province wide, fully-integrated health system.
- It has over 99,900 direct AHS employees.
- 106 acute care hospitals, 5 stand-alone psychiatric facilities, 8,471 acute care beds, 23,742 continuing care beds, 2,439 addiction and mental health beds.
- Programs and services are offered at over 650 facilities throughout the province, including hospitals, clinics, continuing care facilities, cancer centres, mental health facilities and community health sites.

My Role

- Privacy Counsel is to deal with privacy and assorted legislation that impacts upon that. *Freedom of Information and Protection of Privacy Act (FOIP)*, *Health Information Act (HIA)*, *Children First Act (CFA)* and of course the *Missing Persons Act (MSP)*.
- I've been in this role for 10 years and prior to that was a legal counsel to the Privacy Commissioner of Alberta for 4 years.

General Comments:

- The Act has worked well.
- The Act is clear as to its requirement's regarding custodians.
- Section 3 the Order provisions sets out what is needed as does section 4 the written demand in Emergency circumstances.
- Form 5 (Emergency Access Demand) is clear as to its expectation as to grounds and what records are required.

Process

- The usual process in handling missing persons (MPs) request at AHS is through Health Information Management-Access and Disclosure(A/D) Team which is staffed during business hours and there is an on-call component.
- Have a clear, practical Practice Support Document that they refer to.
- In some instances front line staff will contact Information and Privacy's Intake Line.
- Or if there is something unusual about the request (different legislation) HIM A/D will contact Information and Privacy for assistance.
- Since September 2012-and this is by no means scientific-merely indicative- Information and Privacy's sharepoint drive there has been 408 entries regarding the Act.
- One recurring theme has been requests for advice when police want to know the whereabouts of an individual. This is an informal request. Usually taken initially at the beginning of an investigation.
- As the *Missing Person's Act* currently stands such a simple disclosure could not be made. As it would not meet the provisions of the emergency circumstances under section 4(1).

Other legislative alternatives are limited:

- Section 35(1)(d) of HIA allows disclosure to a family member or friend of limited information about an individual who is injured, ill or deceased however in the case of MPs some may not have family or friends-and if they have- they may be disadvantaged and disinclined given their own situation to make such inquiries on a MPs behalf.
- Section 37.3 of HIA would allow disclosure if a custodian has a reasonable belief that
 1. the (health) information relates to the possible commission of an offence – which in missing persons cases are unlikely; and
 2. the disclosure will protect the health and safety of Albertans
- The information that could be disclosed would be of value to the police in that section 37.3(2) (d) and (e) allow disclosure of the date on which a health service was sought and the location.
- Only other section of possible assistance is 35(1)(m) of HIA:

- Disclosure of health information to any person if the custodian believes, on reasonable grounds, disclosure will avert or minimize
 - (i) *risk of harm* to the health and safety of a minor, or
 - (ii) an imminent danger to the health or safety of any person.

With those sections the individual who makes the call on grounds is the custodian and also the decision in the case of section 35(1)(m) as to what information is disclosed.

Compare that to the section 4 of the *Missing Persons Act*.

Where there are reasonable grounds to believe that immediate access to records is necessary to prevent imminent bodily harm to or the death of a missing person...a police officer may serve a written demand. The onus here is not on a custodian like AHS but a police officer.

- If there was a provision regarding simple “location requests”- then I would recommend to keep it narrow to the information set out in section 37.3 (2)(d) and (e) of HIA: the date in which a service was sought and the location.
- There would have to be consideration as to the grounds that would have to exist to make such a request. Given that such a request might be made at the beginning of a missing person investigation “reasonable grounds” may be too high a standard. Although a “reasonable suspicion” (as used in investigative processes for administrative tribunals for disclosure) may be too low a standard.
- Such limited information would help the police at the initial stage of an investigation and be protected under the limited use and disclosure provisions of section 6 and 7 of the *Missing Person’s Act*.
- i.e. Section 6 a police service may use the information for the purpose of investigating the whereabouts of a person, a use consistent with that purpose or limited disclosure under section 7.
- This would also be in line with “use of the least information necessary” and “need to know” privacy principles enshrined in the *Health Information Act*.

One final comment for your consideration:

- I understand the reason for a high threshold for section 4(1) but would state that perhaps the section be amended in the case of minors to make it fall in line with section 35(1)(m) of HIA.

- The lower threshold for minors, “the risk of harm” was an amendment to HIA as part of the *Children First Act* in 2013.

All of which is respectfully submitted,

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Alberta Health Services

TITLE**DISCLOSURE OF HEALTH INFORMATION FOR MISSING PERSONS**

DOCUMENT #
HIM-IV-06

INITIAL APPROVAL DATE
April 10, 2015

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SPONSOR
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CATEGORY
Access & Disclosure

NEXT REVIEW
April 10, 2018

If you have any questions or comments regarding the information in this standard, please contact Health Information Management at him.web@ahs.ca

CLARIFICATION OF INTENT

This is a living document. It may change to comply with AHS organizational policy, legislative requirements, regulation, accreditation, and/or in response to broader stakeholder engagement. The migration of information from the current hybrid to fully electronic state may affect related processes. As a result, some of the recommendations provided in this document may change. The information is accurate only on the date that it is viewed/printed.

OBJECTIVES

To provide guidance to Health Information Management (HIM) staff when processing written or verbal requests for [disclosure](#) of health information on missing persons under the [Missing Persons Act](#) of Alberta and the [Health Information Act](#).

APPLICABILITY

Compliance with this standard is required by all AHS HIM employees, students, volunteers and other persons acting on behalf of AHS HIM for records managed by HIM as outlined in the [Inventory of Records Managed by HIM](#).

Provincial Services - Access & Disclosure (AD) staff will normally perform the functions related to this standard. If there are no Provincial Services AD staff is on site or on shift, the designated zone-specific HIM staff will assume responsibility for processing the request in consultation with the designated HIM supervisor on call or delegate.

STANDARD**1. Who Processes these Requests**

1.1 Requests received during HIM regular business hours:

- a) These requests are to be directed to the Provincial Services AD staff on site for processing. If there are no Provincial Services AD staff on duty, the designated HIM staff who perform access and disclosure functions will process these requests in consultation with the HIM supervisor on duty.

1.2 Requests received after HIM regular business hours:

- a) These requests are to be directed to the designated HIM supervisor on call who will respond to the request or advise staff on duty how to respond to and process the request.

2. Authority to Disclose Health Information

2.1 It is the responsibility of the HIM staff disclosing the health information to identify the legislative authority which supports the disclosure of information based on the request for information. The amount of information disclosed must align with the legislative authority used to support the disclosure.

2.2 The disclosure of health information under the [Missing Persons Act](#) is supported by the [Health Information Act](#) under section 35(1) (p) which indicates:

“A custodian may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information if the disclosure is authorized or required by an enactment of Alberta or Canada.”

- a) The [Missing Persons Act](#) allows disclosure of personal and health information to a [police service](#) where:
 - The police service has obtained an [order for records](#) under the Act, or
 - The police service has issued an [emergency access demand](#), also known as a written demand, for records that are urgently required to locate a [missing person](#), in emergency situations, when the police service believe a missing person may be at risk of imminent bodily harm or death.

2.3 Information can be disclosed to a police service outside of the [Missing Persons Act](#).

- a) The [Health Information Act](#) section 35(1)(m) indicates:

“A custodian may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information to any person if the custodian believes, on reasonable grounds, that the disclosure will avert or minimize a risk of harm to the health or safety of a minor, or an imminent danger to the health or safety of any person.”

- This section can be used to support verbal disclosure of health information if an order or emergency access demand for records under the [Missing Persons Act](#) has not been received.
 - Examples of verbal disclosures under this section would be to confirm or deny if a patient is or has been in hospital.
- b) The [Health Information Act](#) section 37.3(1) indicates:

“A custodian may disclose individually identifying health information referred to in subsection (2) without the consent of the individual who is the subject of the information to a police service or the Minister of Justice and Solicitor General where the custodian reasonably believes

- (a) that the information relates to the possible commission of an offence under a statute or regulation of Alberta or Canada, and
- (b) that the disclosure will protect the health and safety of Albertans.”

This section can only be invoked to support the authority for disclosure if the missing person has been involved in the possible commission of an offence and the disclosure will protect Albertans. Refer to [Risk Assessment](#) section for additional information.

If section 37.3(1) is used to support the authority for the disclosure, only disclose the information outlined under section 37.3(2) as follows:

“A custodian may disclose the following information under subsection (1):

- (a) The name of an individual;
- (b) The date of birth of an individual;
- (c) The nature of any injury or illness of an individual;
- (d) The date on which a health service was sought or received by an individual;
- (e) The location where an individual sought or received a health service;
- (f) Whether any samples of bodily substances were taken from an individual;
- (g) Information specified in section 1(1)(i)(ii) about a health services provider who provided a health service to an individual referred to in subsection (1).

Verbal disclosure of information under this specific section is commonly used to provide a police service sufficient information, as outlined above, in order to obtain a court order for disclosure of copies of health information.

2.4 Questions to ask that may assist in determining the authority to disclose the health information are:

- a) Why do you need the information?
- b) How will the information be used?
- c) Is the request for information related to:
 - A missing person?
 - A criminal investigation?
 - Protecting the safety of an individual or the public?
- d) Can you obtain consent from the individual?
- e) If not able to obtain consent, can you obtain a production order or subpoena?
- f) If related to a missing person, is an emergency access demand under the Missing Persons Act an option?

3. Types of Records

3.1 Records that may be requested under an order for records or emergency access demand (written demand) include:

- a) Contact or identification information
 - b) Health information to the extent that the records might indicate if the missing person has recently been admitted to a hospital and, if the records do so indicate:
 - Which hospital
 - Date and time of admission
 - Reason for admission
 - c) Employment information
 - d) Telephone and other electronic communication records
 - e) School information
 - f) Video records
 - g) Any other information specified in the order for records or written demand
- 3.2 The records may pertain to the missing person or another individual who may be in the accompaniment of the missing person.
- 3.3 HIM will only respond to requests for records that are managed by HIM.
- 3.4 HIM will redirect the police service to the appropriate area if an order for records or emergency access demand (written demand) includes a request for health information or other record types not managed by HIM.

4. Order for Records versus an Emergency Access Demand (Written Demand)

- 4.1 A police service can obtain health information by two different methods – an order for records or an emergency access demand, also known as a written demand.
- 4.2 **Order for Records**
- a) A police service can obtain an order for records from a justice of the peace requiring AHS to provide records that may assist in the investigation of a missing person.
 - b) If the missing person is a minor or a represented adult under the [Adult Guardianship and Trusteeship Act](#) and there is reason to believe the missing person may be in the company of another adult, the justice of the peace may make an order for records requiring AHS to make available to the police service any records specified in the order related to that other individual.
 - c) The [Missing Persons Act](#) empowers the justice of the peace to require any person against whom an order for records is made to provide the police service with an accounting of the efforts made to locate any records that cannot be found.
 - d) The order for records must be submitted in writing using the wording as indicated on the template in the [Missing Persons Regulation](#).
 - e) HIM will respond to the order within the designated time period outlined in the order. If the order does not indicate a specific time period HIM staff will respond immediately.

4.3 Emergency Access Demand (Written Demand)

- a) The police service may serve a written demand instead of an order for records if immediate access to the records is required to prevent imminent bodily harm or death of a missing person.
- b) The written demand must be submitted in writing using wording as indicated in the template in the [Missing Persons Regulation](#).
- c) To facilitate this process, an Emergency Access Demand form has been developed and posted to the [List of Forms](#) on Insite. Refer to [Section 7.4](#) for further details on use of this form.
- d) The written demand states a person is required to provide the information within a specified time period.
- e) HIM staff will respond to the written demand within the designated time period outlined in the demand. If the written demand does not indicate a specific time period HIM staff will respond immediately.

5. Risk Assessment

- 5.1 If there is no order or emergency access demand provided and the missing person is a minor, disclosure of the health information without consent can be undertaken under section 35(1)(m) of the Health Information Act if the disclosure will avert or minimize a risk of harm to the health or safety of a minor. This threshold is just a 'risk of harm' and not a 'risk of imminent harm' and it is assumed that minors would typically be subject to some risk of harm when missing.
- 5.2 If the missing person is an adult and the police service does not indicate or state there is a risk of harm, an order under the Missing Person Act would be required unless another disclosure provision under the Health Information Act applies. Disclosure under the Health Information Act cannot be completed if the police service is not able to indicate if there is imminent danger or an emergency or a commission of an offence. If the police service states that there are indications that the missing person may have been the subject of a criminal act or other foul play it is safe to assume that there is an imminent risk of danger.
- 5.3 The onus is on the police service to indicate there is the risk of harm or risk of imminent danger before releasing health information under section 35(1)(m) of the Health Information Act.
- 5.4 If the missing person is suspected in the commission of an offence, health information may be released under section 37.3(1) of the Health Information Act under the pretence that there could be potential harm to other Albertans.
- 5.5 If the police service states there is potential harm to other Albertans in conjunction with being a suspect in the commission of an offence, the request for health

information will be processed. AHS will not challenge or question the police service's assessment of risk.

- 5.6 If release is made under section 37.3(1) of the Health Information Act, only the additional information noted under section 37.3(2) can be released. Refer to the [Authority to Disclose Health Information](#) section for additional information.
- 5.7 The intent of releasing information under section 37.3(2) is to provide sufficient information for the police service to obtain a court order should copies of health information be required.
- 5.8 Where information is disclosed on belief of reasonable grounds, HIM staff will document the reasonable grounds as provided by the police service for making the disclosure to the police service. i.e. "Officer XYZ reported that Based on this information the health information was released under section xxx of the HIA". This can be documented on the [Health Information Request Follow up Record](#), the written request or in the appropriate section of a release of information module.
- 5.9 Verbal requests for health information are not authorized under the [Missing Persons Act](#). However, should the police service indicate the missing person is in danger of harm or foul play and request verbal confirmation if the missing person is or has been in hospital since the date they went missing, HIM will release this information under section 35(1)(m) of the Health Information Act.

If the entire record is requested, HIM will advise the police service that an order or emergency access demand under the Missing Person Act will be required.

6. Legal Privilege

- 6.1 The Missing Persons Act does not compel the disclosure of any information that is subject to any type of [legal privilege](#). The authority to withhold this information is outlined in section 9 of the [Missing Persons Act](#).

Example: If a record contains a notation that reflects legal advice between AHS legal counsel and staff, that advice must be excluded from disclosure to the police service.

7. Forms

- 7.1 The schedule in the [Missing Persons Regulation](#) indicates the various forms to be used and provides content for these forms.
- 7.2 The following forms are used by the police service and judicial system. These forms are initiated by the police service and presented to a justice of the peace for approval which leads to a signed order being issued by the justice of the peace. The following forms are not available in HIM. A link to the sample templates in the Missing Persons Act Regulation Schedule is provided in [Appendix A](#) for information purposes.
- a) Form 1 - Application for Access to Records
- Completed by the police service and submitted to the provincial court.

- b) Form 2 – Order for Records
 - Completed by the justice of the peace upon approval of the application and given to the police service who then serves the order on the site(s) for the specific information.
 - c) Form 3 – Application for an Order for Entry
 - Completed by the police service and submitted to the provincial court.
 - d) Form 4 – Order for entry
 - Completed by the justice of the peace upon approval of the application and given to the police service to allow entry into a location to search for a Missing Person.
 - e) Form 6 – Application for an Order to Comply with Demand
 - Completed by the police service and submitted to the provincial court when a person has been served with a written demand and has failed to comply with the demand.
 - f) Form 7 – Order to Comply with Demand
 - Completed by the justice of the peace in response to the form 6 application directing a person to comply with the demand.
 - g) Form 8 – Application for Disclosure of Information
 - Completed by the parent or guardian of the missing person to apply to the police service for disclosure of any information collected during the course of its investigation into the missing person.
- 7.3 When making a request for health information under an order, the police service must present the completed order signed by a judge. Should the police present without an order HIM will:
- a) Provide the officer with the link to the [Missing Persons Regulation](#) to obtain the required form and advise the order must be completed and signed by a judge prior to disclosure of health information under the [Missing Persons Act](#).
 - b) Advise the officer to follow up with their administration area to obtain access to the correct templates for future requests.
- 7.4 The following form is used when it has been deemed there is imminent harm to the missing person. The police service may submit a written request without obtaining a signed order by a justice of the peace.

Emergency Access Demand – Form 5

- a) To facilitate the request process, HIM developed the Emergency Access Demand form in conjunction with Information & Privacy for use by the police service should the police service present on site without a completed form.
- b) The Emergency Access Demand form is available on the [List of Forms](#) web page. As a backup in case of system downtime, HIM will have a small supply of blank Emergency Access Demand forms available to provide to the police service as required.
- c) When making a request for health information under an Emergency Access Demand and the police service does not present with the completed form, HIM will provide a blank Emergency Access Demand form for completion. This form does not require completion or signature by a judge.

8. How to Respond

- 8.1 Only release the specific information outlined in the order for records or emergency access demand by keeping in mind the key principle of disclosing the least amount of information to satisfy the purpose of the request.
- 8.2 Respond to the request for information by the time period specified in the order for records or emergency access demand. If a time period for a response is not indicated in the request, HIM staff will respond to the request immediately.
- 8.3 Depending on the specific request, HIM staff may provide copies, verbal disclosure or inspection of records.
 - a) If a verbal disclosure or inspection of the records is requested, HIM staff will follow the established processes within their respective sites ensuring that the date of disclosure, information disclosed and to whom the disclosure was made is documented and filed in the access and disclosure section of the record.
- 8.4 Any information not relevant to the order for records or emergency access demand must not be disclosed and must be removed before providing to the police service. This also applies when an inspection of the records takes place.
- 8.5 Information disclosed to the police service under an order for records or emergency access demand is not reviewed for severing of harmful information under Section 11 of the [Health Information Act](#).
 - a) The exception to this practice is the removal of any information that falls under legal privilege as outlined in [Section 6 – Legal Privilege](#).

9. Expressed Wishes by Patient to Not disclose to Police Service

- 9.1 HIM is required to comply with the [Missing Persons Act](#) which compels the disclosure of health information in cases when an expressed wish may be documented.

10. Notation of Disclosure

- 10.1 When information is released under the [Missing Persons Act](#) HIM is required to make a notation of the disclosure. The notation of disclosure will align with the [Health Information Act](#) and HIM best practice.
- 10.2 The notation of disclosure can be incorporated into a written response letter by including the following information in the letter:
- a) documents that were disclosed including names and dates of documents
 - b) total number of pages disclosed
 - c) who the information was disclosed to
 - d) date of disclosure
 - e) section of the [Health Information Act](#) that authorizes the disclosure of health information
 - f) purpose of disclosure
 - g) name of HIM staff member disclosing the health information which is usually captured in the signature block of the letter
- 10.3 A copy of the written response letter will be attached to the order for records or emergency access demand and filed in the appropriate access and disclosure section of the health record.
- 10.4 If the written response letter does not include the information outlined above, complete the [Notice to Recipient of Health Information Form](#).
- a) The original Notice to Recipient of Health Information form is attached to the copies of health information that are being disclosed.
 - b) A copy of the Notice to Recipient of Health Information form is attached to the order or emergency access demand and filed in the appropriate access and disclosure section of the health record.
- 10.5 Where HIM releases information on belief of reasonable grounds, HIM staff will document the reasonable grounds as provided by the police service. Example: Officer XYZ reported that Based on this information the health information was released under section xxx of the HIA". This can be documented on the [Health Information Request Follow up Record](#), the written request or in the appropriate section of a release of information module.

DEFINITIONS

Disclosure means to the release, transmittal, exposure, revealing, showing, providing copies of, telling the contents of, or giving health information by any means to any person or organization outside of an AHS program or service. Disclosure includes oral transmission by telephone, voice mail or in person; provision of the information on paper, by facsimile or in another format; and electronic transmission through electronic mail, data transfer or the Internet. Source: Guidelines for Disclosure of Health Information – AHS Information & Privacy as of November 4, 2014.

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Emergency Access Demand means a written request or demand for records completed by a police service and served to a site(s) to obtain the specific information in emergency situations, when the police service believe a missing person may be at risk of imminent bodily harm or death. This written request is not an order for records and therefore not required to be signed by a justice of the peace. [<return to page 2>](#)

Legal Privilege means the fundamental right to protect the confidentiality of certain communications between a solicitor and client if those communications are of a confidential nature and directly relate to seeking or receiving legal advice or legal assistance. Privilege may also apply to confidential communications to or from third parties that are prepared or assembled for the dominant purpose of litigation and to negotiations which have the dominate purpose of attempt to settle a pending or contemplated legal matter. Source: AHS Corporate Directive Waiver of Solicitor-Client Privilege LP-12-01 as of January 7, 2012. [<return to page 5>](#)

Missing Person means an individual who has not been in contact with those persons who would likely be in contact with the individual, or an individual whose whereabouts are unknown despite reasonable efforts to locate the individual, and whose safety and welfare are feared for given the individual's physical or mental capabilities or the circumstances surrounding the individual's absence. Source: Missing Persons Act as of September 6, 2012. [<return to page 2>](#)

Order for Records means a written request for records signed by a justice of the peace and served on a site(s) to obtain the information specified in the order to assist in the investigation of a missing person. The written request uses wording as indicated on the template in the [Missing Persons Regulation](#). [<return to page 2>](#)

Police Service means a police service as defined in section 1(l) of the [Police Act](#). Source: Missing Persons Act as of September 6, 2012. [<return to page 2>](#)

REFERENCES

- HIM Guideline - [Individual & Third Party Requests Guideline HIM-IV-01](#)
- [Information & Privacy/General Information](#)
- [Adult Guardianship and Trusteeship Act](#)
- [Health Information Act](#)
- [Missing Persons Act](#)
- [Missing Persons Regulation](#)
- [Police Act](#)

REVISIONS

March 10, 2016

APPENDIX A

SAMPLE TEMPLATES OF FORMS USED IN CONJUNCTION WITH THE MISSING PERSONS ACT

[MISSING PERSONS ACT REGULATION SCHEDULE](#)

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APPENDIX B

EMERGENCY ACCESS DEMAND FORM

The Emergency Access Demand form can be found on the [List of Forms](#) web page.