

Yes!

You Can!

**Dispelling the Myths about
Sharing Information Relating to Children and Youth
Who Receive Government Services**

Desktop Reference



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR



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Why Is This Book Necessary?

This booklet addresses the various circumstances under which an authorized professional may be able to disclose personal information or personal health information about a child or youth to another individual, a public body or custodian.

Please take a few minutes to review not only the scenarios applicable to your profession, but also to consider those circumstances where you may be seeking to obtain information from an authorized professional. We encourage you to share this resource with colleagues and other stakeholders you interact with, and to keep it close by as a quick and accessible reference.

This reference is accompanied by a background document which provides more detail about the rationale for this initiative as well as more information about the underlying legislation.

Privacy and Child and Youth Protection in Newfoundland and Labrador

Public bodies in Newfoundland and Labrador are governed by the **Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)** in their collection, use and disclosure of personal information. All healthcare custodians, providers, and employees, whether in the public or private sector, are subject to the **Personal Health Information Act (PHIA)** in their collection, use and disclosure of personal health information. The Office of the Information and Privacy Commissioner is responsible for oversight of **ATIPPA, 2015** and **PHIA** and investigating complaints from the public.

The Department of Children, Seniors and Social Development has a broad range of duties including the investigation of allegations that a child may be in need of protective intervention and operates under the authority of the **Children, Youth, and Families Act**. The Child and Youth Advocate is empowered under the **Child and Youth Advocate Act** to advocate on behalf of the rights and interests of children and conduct independent reviews and investigations.

Minimum Amount Necessary

Anyone sharing information between public bodies or custodians, whether personal information and personal health information, should be mindful of the imperative that only the minimum amount of information necessary should be disclosed. A stakeholder should not disclose an entire case file, for example, when the protection of a child's wellbeing can be accomplished with less information.

Protection from Liability

The use of the term “custodian” in this guide refers specifically to custodians of personal health information, such as doctors and regional health authorities.

Public bodies, custodians of personal health information and their employees are legislatively protected from liability if they act reasonably and in good faith in disclosing and sharing personal or personal health information amongst themselves.

Glossary

Authorized Legal Professional: For the purpose of this Guide, the term authorized legal professional refers to an employee within the Department of Justice and Public Safety, such as the Minister of the Department; the Attorney General; a lawyer with the Department or Legal Aid; a lawyer representing a child, youth, or parent client; or member of Family Justice Services.

Custodian: Within the meaning of this Guide, the term Custodian refers to an individual or organization that has custody or control of personal health information as a result of or in connection with the performance of the person's powers or duties. Custodians include physicians, healthcare professionals, and regional health authorities.

Teacher or School Personnel: For the purpose of this Guide, this term refers to a teachers or other school personnel of public and private schools; employees within the Department of Education, such as the Minister of the Department; employees with the Newfoundland and Labrador English School District or Conseil Scolaire Francophone.

Healthcare Professional: Within the meaning of this Guide, the term Healthcare Professional refers to custodians of personal health information, individuals within the child's circle of care, or social workers within healthcare.

Police Officer: Within the meaning of this Guide, the term Police refers to an officer with the Royal Newfoundland Constabulary or the Royal Canadian Mounted Police. It does not include other members of law enforcement or peace officers.

Public Body: Within the meaning of this Guide, the term Public Body refers to a Government Department created under the Executive Council Act; board, commission, or agency of the Provincial Government; corporations; or regional health authority. It does not include municipalities.

Social Worker: Within the meaning of the Guide, the term Social Worker refers specifically to social workers employed by the Department of Children, Seniors and Social Development.

For a more in-depth look at definitions, please consult the Yes! You Can Background Document.

“I am a healthcare professional. When I am asked to disclose information relating to a child or youth to . . . a **police officer**, can I disclose this information?”

YES, YOU CAN

Custodians and their employees must disclose personal health information to any person, including police officers, where that person is carrying out an investigation or similar procedure that is authorized by legislation where the information is necessary for the investigation (s. 42 of **PHIA**). This is a mandatory provision. All that is required is for the request to come from law enforcement and an assurance that an investigation is occurring which requires the information.

Consent is not required for the disclosure.

Also, custodians of personal health information and their employees have a duty to report information to law enforcement that a child is or may be in need of protective intervention under section 11 of the **Children, Youth, and Families Act**.

“I am a healthcare professional. When I am asked to disclose information relating to a child or youth to . . . **the Child and Youth Advocate**, can I disclose this information?”

YES, YOU CAN

Custodians and their employees must disclose personal health information to any person, including the Advocate and their employees, where that person is carrying out an investigation or similar procedure that is authorized by legislation where the information is necessary for the investigation (s. 42 of **PHIA**). This is a mandatory provision. All that is required is for the request to come from the Advocate and an assurance that an investigation is occurring which requires the information.

Consent is not required for the disclosure. Furthermore, under section 21 of the **Child and Youth Advocate Act** it is mandatory to disclose information relating to a matter being investigated to the Advocate. The only exceptions are information protected by solicitor-client privilege, which reveals the identity of someone making a report; or disclosure prohibited by the **Adoption Act, 2013** or the **Child and Youth Advocate Act**.

“I am a healthcare professional. When I am asked to disclose information relating to a child or youth to . . . a social worker, can I disclose this information?”

YES, YOU CAN

Custodians and their employees must disclose personal health information to any person, including a social worker, where that person is carrying out an investigation or similar procedure that is authorized by legislation where the information is necessary for the investigation (s. 42 of **PHIA**). This is a mandatory provision. All that is required is for the request to come from the social worker and an assurance that an investigation is occurring which requires the information.

Consent is not required for the disclosure.

Furthermore, section 96 of **CYF Act** gives social workers the right to all necessary information with respect to a child or a youth provided the requested information isn't protected by solicitor-client privilege. Also, custodians and their employees have a duty to report information that a child is or may be in need of protective intervention pursuant to section 11 of the **CYF Act**.

“I am a healthcare professional. When I am asked to disclose information relating to a child or youth to . . . an authorized legal professional, can I disclose this information?”

YES, YOU CAN

Custodians and their employees must disclose personal health information where they are presented with a summons, subpoena, warrant, demand, or order of court which compels production. (s. 41(1) of **PHIA**).

Similarly, custodians and their employees are entitled to disclose information to prevent the risk of serious harm; for public health and safety (s. 40 of **PHIA**); and for the purpose of a proceeding or contemplated proceeding or the laying an information or making an application for an order where the information relates to the matter (s. 41(2) of **PHIA**).

“I am a police officer. When I am asked to disclose information relating to a child or youth to . . . a healthcare professional, can I disclose this information?”

YES, YOU CAN

Section 68 of **ATIPPA, 2015** allows for the disclosure of information by public bodies.

Where information is requested by a stakeholder in relation to a child or youth in need of or possibly in need of protection, **ATIPPA, 2015** does not act as a barrier to such a disclosure.

“I am a police officer. When I am asked to disclose information relating to a child or youth to . . . **the Child and Youth Advocate**, can I disclose this information?”

YES, YOU CAN

Under section 21 of the **Child and Youth Advocate Act** it is mandatory to disclose information relating to a matter being investigated to the Advocate. Exceptions include information protected by solicitor-client privilege, which reveals the identity of a reporter; or disclosure prohibited by the **Adoption Act, 2013** or the **Child and Youth Advocate Act**.

The Minister of Justice and Public Safety must certify if any information cannot be provided because it will interfere with or impede the investigation or detection of an offence (Section 21.1)

“**I am a police officer.** When I am asked to disclose information relating to a child or youth to . . . **a teacher or school personnel**, can I disclose this information?”

YES, YOU CAN

Section 68 of **ATIPPA, 2015** allows for the disclosure of information by public bodies.

Where information is requested by a stakeholder in relation to a child or youth in need of or possibly in need of protection, **ATIPPA, 2015** does not act as a barrier to such a disclosure.

“I am a police officer. When I am asked to disclose information relating to a child or youth to . . . a social worker, can I disclose this information?”

YES, YOU CAN

Section 96 of the **Children, Youth, and Families Act** gives social workers the right to all necessary information with respect to a child or a youth provided the requested information isn't protected by solicitor-client privilege, would interfere with public safety, or be harmful to law enforcement.

Additionally, there is a duty to immediately report any information that a child is or may be in need of protective intervention to a social worker or police officer, regardless of whether that information is confidential or privileged.

“I am a police officer. When I am asked to disclose information relating to a child or youth to . . . an authorized legal professional can I disclose this information?”

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“I am a teacher or school personnel. When I am asked to disclose information relating to a child or youth to . . . a **police officer**, can I disclose this information?”

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Where information is requested by a stakeholder in relation to a child or youth in need of or possibly in need of protection, **ATIPPA, 2015** does not act as a barrier to such a disclosure.

Section 68(1)(n) of **ATIPPA, 2015** specifically allows for the disclosure of information to law enforcement.

Additionally, you have a duty to immediately report any information that a child is or may be in need of protective intervention to a social work manager or police officer, regardless of whether that information is confidential or privileged.

“I am a teacher or school personnel. When I am asked to disclose information relating to a child or youth to . . . a **healthcare professional**, can I disclose this information?”

YES, YOU CAN

Section 68 of **ATIPPA, 2015** allows for the disclosure of information by public bodies.

Section 31(b) of **PHIA** also permits the indirect collection of information where the information is necessary for providing healthcare to an individual and it is not reasonably possible to collect information in a timely manner or in a timely manner directly from the individual.

Where information is requested by a stakeholder in relation to a child or youth in need of or possibly in need of protection, **ATIPPA, 2015** does not act as a barrier to such a disclosure.

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“I am a social worker. When I am asked to disclose information relating to a child or youth to . . . the **Child and Youth Advocate**, can I disclose this information?”

YES, YOU CAN

Under section 21 of the **Child and Youth Advocate Act** it is mandatory to disclose information relating to a matter being investigated to the Advocate. The only exceptions are information protected by solicitor-client privilege, which reveals the identity of a reporter; or disclosure prohibited by the **Adoption Act, 2013** or the **Child and Youth Advocate Act**.

“I am a social worker. When I am asked to disclose information relating to a child or youth to . . . a teacher or school personnel, can I disclose this information?”

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“I am an authorized legal professional. When I am asked to disclose information relating to a child or youth to . . . a **police officer**, can I disclose this information?”

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“I am an authorized legal professional. When I am asked to disclose information relating to a child or youth to . . . a **teacher or school personnel**, can I disclose this information?”

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Where information is requested by a public body in relation to a child or youth in need of or possibly in need of protection, **ATIPPA, 2015** does not act as a barrier to such a disclosure.

Resources

Office of the Child and Youth Advocate

<https://www.childandyouthadvocate.nl.ca/>

1-877-753-3888

Office of the Information and Privacy Commissioner

<https://www.oipc.nl.ca/>

1-877-729-6309

Department of Children, Seniors and Social Development

Child Protection and In Care Division

1-709-729-2668

Eastern Health - Information Security and Privacy Office

Email: privacy@easternhealth.ca

1 (709) 777-8025

Central Health – Privacy Office

Email: privacy@centralhealth.nl.ca

1 (709) 256-5452

Western Health - Regional Manager Information Access & Privacy

Email: sherritiller@westernhealth.nl.ca

1 (709) 784-5248

Labrador-Grenfell Health - Privacy Office

Email: privacy@lghealth.ca

1 (709) 454-0243

Department of Education

<https://www.gov.nl.ca/education/>

1 (709) 729-5097

NL English School District (NLESD)

<https://www.nlesd.ca/>

1 (709) 758-2372

Conseil scolaire francophone provincial de Terre-Neuve-et-Labrador

<https://csfp.nl.ca/>

1 (888) 794-6324

Department of Health and Community Services

<https://www.gov.nl.ca/hcs/>

1 (709) 729-4984

Department of Justice and Public Safety

<https://www.gov.nl.ca/jps/>

1 (709) 729-5902

Royal Canadian Mounted Police

<https://www.rcmp-grc.gc.ca/en/nl/home>

1 (800) 709-7267

Royal Newfoundland Constabulary

<https://www.rnc.gov.nl.ca/>

Northeast Avalon: 709-729-8000

Corner Brook: 709-637-4100

Labrador City: 709-944-7602

Churchill Falls: 709-925-3524

Deaf/Hard of Hearing TTY: 1-800-363-4334

Office of the Information and Privacy Commissioner

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