



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

**Report AH-2017-001**

**September 14, 2017**

**WorkplaceNL**

**Summary:**

The Applicant made a request to WorkplaceNL for information related to his claims files. WorkplaceNL advised the Applicant that the information could be made available through its routine file release process and proceeded to process the request under that system. The Applicant filed a complaint with this Office, alleging that WorkplaceNL was in violation of the *Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015)* by failing to process the request under that legislation. The Commissioner found that the request was in fact subject to the *Personal Health Information Act (PHIA)*. With respect to WorkplaceNL's routine file release process, the Commissioner found that WorkplaceNL could continue to respond to requests in accordance with that process provided that it continues to grant access in a timely manner and in accordance with *PHIA*.

**Statutes Cited:**

[\*Access to Information and Protection of Privacy Act, 2015\*](#), SNL 2015, c. A 1.2, ss.2, 3, 5, 6, 16; [\*Personal Health Information Act\*](#), SNL 2008, c P-7.01, ss. 4, 12, 55; [\*Workplace Health, Safety and Compensation Act\*](#), RSNL 1990, c W-11, s. 4.

## I BACKGROUND

- [1] The Applicant made the request to WorkplaceNL on March 27, 2017 for the following information:

*Medical adjudication consultants comments, caseworksheets claims [three numbered claims] coincide with previous request for medical claims cost 2012-2017;*

- [2] WorkplaceNL contacted the Applicant on March 30, 2017 and advised that the information sought in this request was available without an access to information request through WorkplaceNL's routine file release process and that, accordingly, the request would be handled through that process:

*As it is unnecessary to submit an ATIPP request for the information in [your request], please be advised that [the request] will be dealt with by the File Release area. A staff member from that area will be in contact with you in this regard.*

- [3] WorkplaceNL did not provide a response to the request and on May 2, 2017 the Applicant filed a complaint with this Office alleging that this failure to respond was a breach of section 16 of the ATIPPA, 2015 and a deemed refusal of his request.

- [4] This Office provided notice to WorkplaceNL of the complaint on May 5, 2017 and on May 8, 2017, WorkplaceNL made 35 pages of records available to the Complainant. These records were provided 42 days (28 business days) after the request had been made to WorkplaceNL. The Complainant continued to object to WorkplaceNL's failure to meet the time limit for a response set by the ATIPPA, 2015 as well as the agency's use of its routine file release process in order to fulfill his request. Submissions were received from both the Complainant and WorkplaceNL but the complaint could not be resolved informally and was referred to formal investigation.

## II WORKPLACENL'S POSITION

- [5] WorkplaceNL provided submissions detailing its routine file release process, taking the position that the policies and procedures developed by the agency allow it to respond to client requests in a timely and efficient manner even if such requests are not strictly processed in accordance with the *ATIPPA, 2015*. WorkplaceNL also notes that the Complainant was notified that his request would be processed under its routine file release process rather than under the *ATIPPA, 2015*.
- [6] WorkplaceNL further submitted that it deals with a large volume of requests, many of which must be fulfilled in a very short time frame in order to provide clients with information necessary for appeals or other judicial or quasi-judicial processes. As such, the flexibility to develop its own policies and procedures is necessary in order to effectively make information available to its clients.

## III COMPLAINANT'S POSITION

- [7] The Complainant argues that notwithstanding WorkplaceNL's routine file release process, he had made an access request under the *ATIPPA, 2015* and, once he had done so, WorkplaceNL was obliged to process that request in strict compliance with that legislation. He further submits that when WorkplaceNL failed to respond within 20 business days, it was in contravention of section 16 of the *ATIPPA, 2015*.

## IV DECISION

- [8] The investigation of this complaint requires the following to be addressed:
- a) Is the subject matter of the request under the jurisdiction of the *ATIPPA, 2015* or the *Personal Health Information Act* (the "PHIA")?
  - b) Does a public body or custodian have the power to develop and follow its own policies and procedures for making records and information available to the public?

a) *ATIPPA, 2015 OR PHIA?*

- [9] The Complainant attempted to make an access to information request under the *ATIPPA, 2015* when he sought “medical adjudication consultant comments”. WorkplaceNL processed the request under its own internal file release process and rendered records to the Complainant 42 days (28 business days) later. In order to determine whether WorkplaceNL properly dealt with the Complainant’s request, it must first be established whether the *ATIPPA, 2015* or *PHIA* applies.
- [10] The *ATIPPA, 2015*, in section 5, states that it applies to all records in the custody of or under the control of a public body. WorkplaceNL is a statutorily incorporated entity. Pursuant to section 4 of the *Workplace Health, Safety and Compensation Act*, WorkplaceNL’s board of directors is appointed by the Lieutenant Governor-in-Council. As such, it is a public body pursuant to section 2(x)(iii) of the *ATIPPA, 2015*.
- [11] Section 6(1) of the *ATIPPA, 2015* states, however, that it shall not apply where a public body is also a custodian of personal health information. In such cases, the *PHIA* and its regulations shall apply. Further, section 12(1)(b) of the *PHIA* confirms that the *ATIPPA, 2015* does not apply to a request for access to a record of personal health information. Finally, under section 4(1)(o) of *PHIA*, “custodian” is defined to include WorkplaceNL (under its formal name, the Workplace Health, Safety and Compensation Commission).
- [12] The Complainant sought “medical adjudication consultants comments” on several workplace injury claims files. I find that this information is personal health information and as WorkplaceNL is a custodian under the *PHIA*, a request for access to this information was subject to the *PHIA* and not the *ATIPPA, 2015*.
- [13] As a consequence, the *PHIA* applies to this complaint and this Report will proceed pursuant to Parts V and VI of that Act.

## b) Alternate Access Methods

- [14] In the access to information context, the *ATIPPA, 2015* and the *PHIA* exist to ensure that public bodies and custodians are transparent and accountable to the public. There are nuances, however, in the extent to which these statutes recognize and accommodate other procedures for access.
- [15] Section 59 of the *PHIA* states that nothing in the *Act* prevents a custodian from granting an individual access to his or her own personal health information, pursuant to an oral request for access or absent any request, provided that access is authorized under the *Act*. Section 53(1) allows custodians to require written requests. When an individual makes a request for access to personal health information, custodians must respond within 60 days, but can extend the deadline to 90 days in limited circumstances as set out in section 55(2) of the *PHIA*.
- [16] The prescriptive requirements on custodians under *PHIA* relating to access to personal health information are few, and therefore custodians should develop their own policies and procedures in this regard, as WorkplaceNL has done. WorkplaceNL provided this Office with details of its routine file release process, relevant policies and statistics. The custodian has three full-time equivalent positions staffing its file release area and these individuals are responsible for receiving and processing file requests from clients and employers as well as providing documents for review by WorkplaceNL's review division. However, the majority of their resources are committed to routine file release. The collection and protection of worker and employer information is governed by a written policy (GP-01 Information Protection Access and Disclosure) and a form is provided by WorkplaceNL for clients requesting access to their file. In processing file requests, staff review records to ensure the completeness of a record and to redact personal information where appropriate. WorkplaceNL further advises that it has an unwritten service standard of responding to requests within 30 calendar days. Where a client is seeking a copy of their case file in preparation for an internal review, WorkplaceNL aims to provide records within 7 to 10 days on account of the need for the parties to adhere to strict timelines for the conduct of such a review. In 2016, WorkplaceNL received 1,064 requests and processed 1,069 responses with an average time for a

response of 21 calendar days. WorkplaceNL was not able to provide an explanation for why the Complainant's request took longer (42 days) than either the average or standard time, however that is still 18 days less than the prescribed limit of 60 days.

[17] I appreciate that the Complainant assumed that his request was subject to the *ATIPPA, 2015* and therefore believed that WorkplaceNL was required to respond within 20 business days. While WorkplaceNL did communicate to the Complainant its intention to handle the request under its routine file release process, greater awareness on the part of WorkplaceNL as to the applicable legislation may have avoided some misunderstandings. In future, when clients seek personal health information pursuant to the *ATIPPA, 2015*, they should be referred to section 6 of *ATIPPA, 2015*:

*6. (1) Notwithstanding section 5, but except as provided in sections 92 to 94, this Act and the regulations shall not apply and the Personal Health Information Act and regulations under that Act shall apply where*

*(a) a public body is a custodian; and*

*(b) the information or record that is in the custody or control of a public body that is a custodian is personal health information.*

*(2) For the purpose of this section, "custodian" and "personal health information" have the meanings ascribed to them in the Personal Health Information Act.*

## CONCLUSIONS

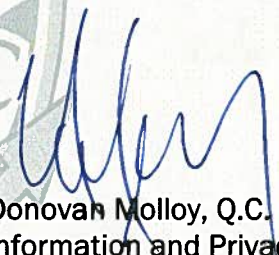
[18] To summarize my findings in this matter:

- (a) a client's WorkplaceNL case file would typically include personal health information that is subject to the *PHIA*; and,
- (b) the requested information was provided to the Applicant within the legislated time limits in the *PHIA*;

## VI RECOMMENDATIONS

- [19] Under the authority of section 72 of the *PHIA*, I recommend that WorkplaceNL treat all requests for personal health information as requests governed by the *PHIA*. WorkplaceNL can continue to utilize its file release process for making case files available to clients subject to the requirement of compliance with the mandatory timelines in the *PHIA*.
- [20] As set out in section 74 of the *PHIA*, the head of WorkplaceNL must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report (in this case the Applicant) within 15 days of receiving this Report.
- [21] Dated at St. John's, in the Province of Newfoundland and Labrador, this 14<sup>th</sup> day of September, 2017.



  
Donovan Molloy, Q.C.  
Information and Privacy Commissioner  
Newfoundland and Labrador