Government of Newfoundland and Labrador
Department of Health and Community Services
Office of the Deputy Minister

COR-2020-123922/01

November 27, 2020

Honourable David B. Orsborn
Committee Chair
Access to Information and Protection of Privacy Act Statutory Review 2020
davidorsborn@nlatippareview.ca

Dear Justice Orsborn:

In response to your correspondence of September 29, 2020, I am pleased to provide the Department of Health and Community Services' submission in support of the **Access to Information and Protection of Privacy Act, 2015** Statutory Review 2020. The department's submission is comprised of five focus areas: Schedule A - **Patient Safety Act**, Proprietary Information, Publication Scheme, Timeline Extension and Applicant Onus.

1. Schedule A - Patient Safety Act

Subsection 10(1) of the **Patient Safety Act** states that the **Access to Information and Protection of Privacy Act, 2015** (the Act) does not apply to the use, collection, disclosure, release, storage or disposition of, or any other dealing with, quality assurance information.

Quality assurance information is defined in paragraph 2(s) of the **Patient Safety Act** as information in any form that is:

(i) provided to or generated for a quality assurance committee or a quality assurance activity committee,
(ii) provided to or generated for the purpose of carrying out a quality assurance activity,
(iii) generated for the purpose of producing patient safety indicators,
(iv) generated in the course of carrying out a quality assurance activity, or
(v) contained in a report or notice made under section 4 or 7, but does not include
(vi) information contained in a record, such as a hospital chart or a medical record, that is maintained for the purpose of documenting health services provided to a patient,
(vii) the fact that a quality assurance activity committee met or that a quality assurance activity was conducted, and
(viii) the terms of reference of a quality assurance activity committee.

Section 15 of the **Patient Safety Act** states as follows:

Quality assurance information collected by or for a quality assurance committee or a quality assurance activity committee continues to be quality assurance information after:

(a) the committee is no longer in existence or no longer being maintained or operated; or
(b) the entity that established the committee no longer has the authority to establish or Maintain the committee.

The conduct of quality assurance activities within the health care system is critical to the safe delivery of health services to patients. Quality assurance is a means of identifying system improvements. To be effective, health professionals, particularly physicians, must participate in reviews and investigations in a frank and open manner.

For many years, physicians, in particular, were reluctant to participate in quality assurance activities for fear that their comments regarding a colleague's work, which are essential to the learnings process, would be made public or used in subsequent legal or disciplinary proceedings. Consequently, documents related to quality assurance activities have traditionally been treated as highly confidential.

One of the primary objectives of the **Patient Safety Act** when it came into force in 2017 (and the corresponding consequential amendments to subsection 8.1 of the **Evidence Act)** was to clarify the intention that quality assurance information, as defined in the **Patient Safety Act**, was protected and could only be disclosed in circumstances as prescribed in the **Patient Safety Act**.

The Canadian Medical Protective Association (CMPA) is a not-for-profit organization dedicated to promoting safe medical care in Canada through medical advice, patient compensation and professional development. On numerous occasions, the CMPA has stated to the Department of Health and Community Services that the failure to adequately protect quality assurance information would have a highly negative impact on the efforts to improve patient safety in the province. Without adequate protection against disclosure, the CMPA indicated that physicians might be reluctant to participate in quality assurance activities.

To fully appreciate the information protected under the **Patient Safety Act**, it is important to highlight the distinction between the systems-oriented quality assurance activities and the health care provider performance-oriented accountability responses to a particular incident or occurrence within the health care system. When conducting a quality assurance activity related to an incident or occurrence, if it appears that the actions of a particular health care provider did not meet the requisite standard of care, then a review into the skill, knowledge or clinical competency of that provider would be undertaken as an individual accountability review. This review would not form part of the quality assurance activity related to the occurrence. Rather, it would be conducted within an accountability context that may lead to discipline imposed on a health care provider by a regional health authority or a complaint made to the relevant professional regulatory body. The **Patient Safety Act** does not extend protection to the information generated for or produced in the context of that type of individual accountability review.

Moreover, the **Patient Safety Act** requires disclosure of adverse health events to patients impacted and their families. It also mandates the information that must be disclosed, including the recommendations from any quality assurance activity. Therefore, the Act override does not affect patients from accessing information regarding a review or investigation into the health care that they received.

Quality assurance activities are critically important to patient safety processes within the regional health authorities, which require the participation of physicians and other health care providers. However, there has been a general concern among physicians, as communicated by the CMPA, that their views of a colleague's work could be disclosed in a trial or made public. Sections 10 and 15 of the **Patient Safety Act**, as well as section 8.1 of the **Evidence Act** protects quality assurance information in order to encourage frank and open participation within the process. Therefore, the department recommends the continued inclusion of subsections 10 and 15 of the **Patient Safety Act** in Schedule A of the Act.

2. Proprietary Information

Frequent access to information requests received by the department entail consultation with third parties pursuant to subsection 19(1) of the Act. Throughout these consultations, third parties regularly cite the need to protect information they deem proprietary. The current provisions of section 39 entail a three-part test to determine if such information is eligible for exemption under the Act:

> 39. (1) The head of a public body shall refuse to disclose to an applicant information
> (a) that would reveal
> (i) trade secrets of a third party, or
> (ii) commercial, financial, labour relations, scientific or technical information of a third party;
> (b) that is supplied, implicitly or explicitly, in confidence; and
> (c) the disclosure of which could reasonably be expected to
> (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
> (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
> (iii) result in undue financial loss or gain to any person, or
> (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

Paragraphs 39(1)(a) and (b) were commonly raised during these consultations as being counter to the third party's ability to engage with the department as a partner. In requiring the exempt information to be considered supplied in confidence, third parties have argued that the threshold to refuse access is insufficient in protecting their business interests. Such concerns have been repeated by departmental divisions, such as Pharmaceutical Services. The possibility of third parties withholding further information for fear of disclosure under the Act remains a point of discussion during these consultations. Such concerns may impact the department's ability to work with our partners to deliver programs and services on behalf of the province.

In their submissions in favour of withholding proprietary information, third party consultations have cited the inconsistency between the provincial Act and subsection 20(1) of the federal **Access to Information Act**, which state:

> 20 (1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Part that contains:
> (a) trade secrets of a third party;
> (b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;
> (c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or
> (d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

Of note, in contrast to the provincial Act's public interest disclosure override, subsection 20(6) of the Federal **Access to Information Act** permits disclosure of such information if:

> 20(6)(a) the disclosure would be in the public interest as it relates to public health, public safety or protection of the environment; and
> (b) the public interest in disclosure clearly outweighs in importance any financial loss or gain to a third party, any prejudice to the security of its structures, networks or systems, any prejudice to its competitive position or any interference with its contractual or other negotiations.

As a public body subject to the Act, the department strives to balance the right of access with the ability to confidentially conduct business with our respective partners. While the department continues to apply the three-part test in accordance with section 39, the concerns raised by the third parties may warrant consideration. Accordingly, the department recommends the Committee assess the provisions of section 39 to ensure the Act does not disclose more third-party information than its federal counterparts while maintaining the inherent right of access and public interest override.

3. Publication Scheme

While not explicitly referenced in the mandate of the Statutory Review, the inclusion of a publication scheme within the Act would be consistent with Canada's National Action Plan on Open Government as means to allow citizens easier access to information held by public bodies.

A publication scheme emphasizes proactive disclosure while providing clear guidelines for all public bodies to follow. Legislative guidance on these schemes would ensure a framework is maintained so that government procedures match the public interest. This consideration would be consistent with recent amendments to the federal **Access to Information Act** which, pursuant to subsection 5(1), includes a mandate of federal bodies to release a publication containing:

> (a) a description of the organization and responsibilities of each government institution, including details on the programs and functions of each division or branch of each government institution;

(b) a description of all classes of records under the control of each government institution in sufficient detail to facilitate the exercise of the right of access under this Part;
(c) a description of all manuals used by employees of each government institution in administering or carrying out any of the programs or activities of the government institution; and
(d) the title and address of the appropriate officer for each government institution to whom requests for access to records under this Part should be sent.

The department recommends consideration of the addition of a publication scheme into the Act that is consistent with the federal legislation in granting citizens more efficient access to information.

4. Timeline Extension

The department continues to receive some of the highest number of access to information requests in core government. Due to the ongoing COVID-19 disruption, the department continues to face challenges in maintaining operational capacity while adhering to the legislative timelines of the Act. Pursuant to subsection 23(1) of the Act, the department submits extension requests to the Office of the Information and Privacy Commissioner (OIPC). A common rationale for these extensions is the department's ability to process a high volume of information against the operational capacity of the department and the public bodies that are consulted during the review process.

While the OIPC generally grants these extensions, the resources required to submit such a request can inadvertently impact the capacity to process the information request itself. One consideration to ensure efficiency of such operations would be to enshrine the legislative authority of the public body to extend the maximum timeline. Such a mandate is consistent with the federal **Access to Information Act,** subsections 9(1) and (2) which state:

9 (1) The head of a government institution may extend the time limit set out in section 7 or subsection 8(1) in respect of a request under this Part for a reasonable period of time, having regard to the circumstances, if
(a) the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution,
(b) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or
(c) notice of the request is given pursuant to subsection 27(1)by giving notice of the extension and, in the circumstances set out in paragraph (a) or (b), the length of the extension, to the person who made the request within thirty days after the request is received, which notice shall contain a statement that the person has a right to make a complaint to the Information Commissioner about the extension.

(2) Where the head of a government institution extends a time limit under subsection (1) for more than thirty days, the head of the institution shall give notice of the extension to the Information Commissioner at the same time as notice is given under subsection (1).

By maintaining consistency with the federal **Access to Information Act**, the Act would continue to ensure public bodies are accountable for meeting legislative timelines while ensuring the continued oversight by the OIPC.

5. Applicant Onus

In adhering to the legislated timelines, it is critical for the department to work with the applicant to ensure that adequate detail is provided to effectively process an access to information request. The department strives to meet its duty to assist by frequently engaging with applicants by ensuring a request's parameters are mutually understood. While such efforts are largely met with success, the department periodically receives requests where detail is insufficient to process or where the applicant is unwilling to engage. While the department makes every effort to meet its duty to assist, such requests challenge these efforts and can occasionally impact the processing of other requests. It is not uncommon to have the legislative mandated timeline consumed with determining the intent of the request.

The department recommends the Committee consider the potential of legislating the onus on the applicant to provide sufficient detail in their request. This recommendation would ensure a degree of responsibility is placed on the applicant to ensure that sufficiently specific information is provided to allow the request to be processed as efficiently as possible. This recommendation is consistent with Section 13(2) of the federal **Privacy Act**, which states:

(2) A request for access to personal information under paragraph 12(1)(b) shall be made in writing to the government institution that has control of the information and shall provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.

On behalf of the Department of the Health and Community Services, I wish to thank the Committee for the opportunity to participate in the **Access to Information and Protection of Privacy Act, 2015** Statutory Review 2020. Please be advised that submissions by Eastern Health, Western Health, Labrador-Grenfell Health, the Newfoundland and Labrador Centre for Health Information and the Health Research Ethics Authority are enclosed. Central Health and the Mental Health Care and Treatment Review Board were provided an opportunity to contribute written submissions but chose not to participate.

Sincerely,

Karen Stone

Karen Stone
Deputy Minister

Enclosures
cc: Andrea McKenna, Assistant Deputy Minister
Michael Cook, Manager of Privacy and Information Security

Eastern Health

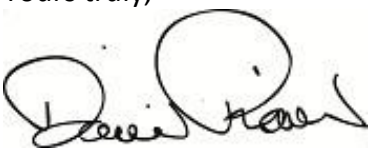
November 24, 2020

Honourable David B. Orsborn
Committee Chair
Access to Information and Protection of Privacy Act Statutory Review 2020
3rd Floor, Beothuck Building
20 Crosbie Place
St. John's, NL A1B 3YB
davidorsborn@nlatippareview.ca

Dear Honourable Justice Orsborn:

Thank you for the invitation for Eastern Health to provide a submission in support of the Access to Information and Protection of Privacy Act (ATIPPA) statutory review. The attached submission has been prepared by Eastern Health's Privacy and Access to Information Division staff. I trust that this information is helpful and look forward to the findings of the review.

Yours truly,



David Diamond
President and Chief Executive Officer

Attachment - 1

Eastern Health

Submission to the ATIPPA Review Committee

November 2020

SUBMISSION TO THE ATIPPA REVIEW COMMITTEE ACCESS TO INFORMATION AND PROTECTION OF PRIVACY ACT, 2015

CONTENTS

OVERVIEW

EASTERN HEALTH

Eastern Health is the largest Regional Health Authority in Newfoundland and Labrador. We provide the full continuum of health services to a regional population of more than 300,000 and are responsible for several unique provincial programs. Our over 13,000 health care and support services professionals believe in providing the best quality of care and health service delivery in our region and in the province. Eastern Health extends west from St. John's to Port Blandford and includes all communities on the Avalon, Burin, and Bonavista Peninsulas.

Eastern Health is pleased to provide feedback and offer suggestions for amendments to the *Access to Information and Protection of Privacy Act, 2015* (the Act) that, if operationalized, could assist Eastern Health to more efficiently use applied resources to maximum benefit in promoting goals outlined in the Act while securing appropriate and timely access to public body information.

Eastern Health is supportive of goals of the Act and remain committed to not only upholding the letter of the law but the spirit and intent of the Act as well.

RECOMMENDATION FOCUS

Eastern Health's presentation focuses on three areas of Justice Orsborn's mandate:

- Public body response times for access requests and whether the current *ATIPPA, 2015* requirements for response and administrative times are effective;

- An examination of the request for extensions/disregards process to the Office of the Information and Privacy Commissioner; and

- Whether the current Cost Schedule set in accordance with subsection 25(6) of *ATIPPA, 2015* is effective.

RECOMMENDATION OVERVIEW

Increase in Legislated Timeframes

The primary challenge with operationalizing the requirements of the Act is adherence to statutory timeframes, given the increasing demands driven by the volume, scope and complexity of ATIPPA requests. This, combined with diverse information holdings, a myriad of inter-departmental consultations and shared custody arrangements make it increasingly difficult to meet the timeframes imposed by the Act. Eastern Health recommends increases to legislated timeframes as detailed in the recommendations section.

Suspension of Timeframe for Final Response Pending Application Decision by OIPC

Given the increase in volume, complexity, and scope of ATIPPA requests, coupled with diverse information holdings within a shared services model for some programs, it is becoming increasingly difficult to meet the 20 business day timeframe required by the Act, especially if disregards or extensions are warranted. The application process for disregards and extensions detracts from the ongoing processing of requests; the application process not only draws resources away from other requests, the requests that are the subject of such applications must continue to be processed, given that the applications for extension/disregard may be refused by the OIPC. This leads to an inefficient allocation of resources potentially causing delays in the processing of other requests, especially if the decision on the application takes up to the legislated maximum of three days. Eastern Health is recommending suspension of the final response timeframe during the application period as detailed in the recommendations section.

Varying the Timeframe and Process for Requesting Extensions to the Final Response Timeframe

Given the increase in volume, complexity, and scope of ATIPPA requests combined with diverse information holdings requiring a myriad of consultations, the more complex cases are not becoming more clearly defined until much further along the ATIPPA timeline (in some cases, in excess of 15 days – the deadline for applying for an extension). The full parameters of the request may not be known until the final days during preparation for release to the applicant. Eastern Heath proposes increasing the timeframe for requesting extensions up to the final response date while also varying the process for requesting extensions to allow for, and in addition to the current process, an automatic one-time extension of not more than 10 business days to be determined by the public body after discussion with the applicant and subsequent notification to the applicant and the OIPC.

Amendment to the Cost Schedule

The amount of processing time and dedicated resources needed to process ATIPPA requests continue to increase as the line by line analysis of frequent, broad and repetitive requests command considerably more effort. To ensure equitable, timely access to information by all applicants, there must be an effort to discourage repetitive requests that draw resources away from processing other requests. As such, Eastern Health is recommending the introduction of a nominal application fee.

RECOMMENDATIONS

AMENDMENT TO SECTION 16 – TIMEFRAME FOR FINAL RESPONSE

Issue: Timeframe for Final Response be Increased from 20 Business Days to 30 Business Days.

Eastern Health recognizes and supports the principle of providing applicants with access to information as quickly as possible. Given the increase in volume, complexity, and scope of ATIPPA requests, Eastern Health is increasingly challenged to meet the statutory deadlines imposed by the Act. It is not unusual to receive requests that are very broad in nature, resulting in thousands of pages, across multiple programs, services and information stores that require multiple consultations, line by line reviews, and significant preparation time before release. The size, complexity and scope of these requests are not taken into consideration as the Act imposes a hard deadline for a final response equally on all requests irrespective of the aforementioned factors. While the Act provides an avenue for extensions to an access request, the request is subject to an application process and a discretionary decision of the Information and Privacy Commissioner. With deadlines continually pushed and extensions frequently required, resources are being allocated inefficiently away from other requests as time is lost continually preparing extension applications while working the same requests in case such extension requests are denied.

AMENDMENT TO SECTION 21 – DISREGARDING A REQUEST

Issue: Timeframe for Disregarding a Request be Increased from 5 Business Days to 10 Business Days.

The Act allows for the public body to apply for a disregard not later than 5 business days after receiving the request. The process is subject to an application process and a discretionary decision by the OIPC that can take up to three days. Furthermore, the time to make an application

and receive a decision from the OIPC does not suspend the requirement to respond within the 20-business day timeframe.

Given the increase in volume, complexity, and scope of ATIPPA requests, it is difficult to determine the need for a disregard in 5 business days. As such, the coordinator could be forced to work a nonviable request by missing this deadline, thereby taking resources away from other requests. Even if the deadline for the application for a disregard is met, applied resources are diverted away from other requests not only because of the application process but also due to having to work the potentially nonviable request for up to three days while awaiting a decision on the application.

AMENDMENT TO SECTION 23 – SUSPENSION OF THE TIMEFRAME FOR FINAL RESPONSE WHILE APPLICATION FOR DISCRETIONARY DECISIONS PENDING.

Issue: Final response Timeline be Suspended for Application for Disregards and Extensions

Given the increase in volume, complexity, and scope of ATIPPA requests, it is becoming increasingly difficult to meet the 20-business day time limit required by the Act, especially if extensions or disregards are required. This can result in numerous requests for extensions and disregards. Not only does the application process for these requests draw resources away from ongoing processing activities, but because a decision on the application can take up to three days, in the case of a request for a disregard, the coordinator potentially could have to work a nonviable request for up to three days while awaiting a decision on the application. As a result, you could have a less than optimum allocation of limited resources as resources are potentially redirected away from viable requests to nonviable requests.

AMENDMENT TO SECTION 15 – ADVISORY RESPONSE.

Issue: Timeframe for Advisory Response be Increased from 10 Business Days to 15 Business Days

As per section 15 of ATIPPA, an advisory response is required to be provided to the applicant within 10 business days. Given the increase in volume, complexity, and scope of ATIPPA requests, it is becoming increasingly difficult to have ATIPPA requests sufficiently defined to provide a wholesome response envisioned by section 15 of the Act. By allowing additional time to further define the request, the response provided could be more informative and not simply a generic statement of what the applicant already knows – that the request is being processed and a reply expected by a certain date. The advisory letter is more beneficial to the applicant if additional time is permitted to allow the parameters of the request to be more clearly defined and investigated.

AMENDMENT TO SECTION 23 – EXTENSION OF TIME LIMIT

Issue: Extend the Timeframe and Vary the Process for Requesting an Extension

Section 23 of ATIPPA requires that a request for an extension to the final response time be requested not later than 15 business days after receiving the request. By application to the OIPC, a new extension date is either approved or rejected. Eastern Health is proposing, in addition to extending the timeframe for extension requests up to the final response date, varying the process for requesting extensions to allow for, and in addition to the current process, an automatic one-time extension of not more than 10 business days to be determined by the public body after discussion with the applicant and subsequent notification to the applicant and the OIPC.

These recommendations help to streamline the process and provide applicants with greater input in the process. By extending the timeframe for extension requests and varying the process for requesting extensions, the full parameters of the request may become more fully defined, unexpected issues not earlier discovered resolved and the applicant provided with a more comprehensive response.

AMENDMENT TO THE COST SCHEDULE

Issue: Introduction of a nominal application fee

The amount of processing time and dedicated resources needed to process ATIPPA requests continue to increase as the line by line analysis of frequent, broad, and repetitive requests command considerably more effort. To ensure equitable, timely access to information by all applicants, there must be an effort to discourage repetitive requests that draw resources away from processing other requests. Eastern Health is recommending a nominal application fee for ATIPPA requests.

RECOMMENDATION LISTING

Eastern Health is putting forth the following recommendations for consideration and discussion:

Recommendation 1:

Timeframe for Final response be increased from 20 business days to 30 business days.

Recommendation 2:

Timeframe for disregarding a request be increased from 5 business days to 10 business days

Recommendation 3:

Timeframe for Final response be suspended for the application period for disregards and extensions

Recommendation 4:

Timeframe for Advisory Response be increased from 10 business days to 15 business days

Recommendation 5:

Timeframe for requesting an extension be extended to the final response date

Recommendation 6:

Varying the process for requesting extensions to allow for, and in addition to the current process, an automatic one-time extension of not more than 10 business days to be determined by the public body after discussion with the applicant and subsequent notification to the applicant and the OIPC.

Recommendation 7:

Amendment to the Cost schedule to allow for the introduction of a nominal application fee ($5) to reduce repetitive requests that result in drawing resources away for viable requests.

SUMMARY

Eastern Health is very supportive of goals of the *Access to Information and Protection of Privacy Act, 2015* (the Act) and remains committed to not only upholding the letter of the law but also the spirit and intent of the Act.

Eastern Health also recognizes the OIPC as an important and beneficial oversight body. Changes suggested here are intended to streamline the process, to allow for greater applicant input, and to ensure appropriate access to information held by public bodies.

Eastern Health is pleased to have this opportunity to contribute to this statutory review and we thank you for the invitation to submit. We look forward to your findings.

November 12, 2020

The Honourable David B. Orsborn
Committee Chair
Access to Information and Protection of Privacy Act
Statutory Review 2020
3rd Floor, Beothuck Building, 20 Crosbie Place
St. John's, NL A1B 3Y8

Dear Mr. Orsborn.

Re: Access to Information and Protection of Privacy Act Statutory Review 2020

Please accept this correspondence as Western Health's response to your invitation for written submissions with respect to the five-year review of the *Access to Information and Protection of Privacy Act* (ATIPPA). We appreciate the opportunity to contribute to this review of the province's access to information legislation.

Recognizing that compliance with the ATIPPA requires cooperation among many individuals within Western Health, we posed questions to several of our leaders based on the issues raised by the Terms of Reference. Two common themes were identified from the feedback that was received. These include legislation that may impact disclosure of information in response to access to information requests under the ATIPPA and the time frame for a response of twenty business days.

It has been our experience at Western Health that the exceptions to disclosure set out in the ATIPPA provide an adequate level of protection for personal information in response to requests where personal information also falls under legislation including, but not limited to, the *Patient Safety Act*, *Adult Protection Act*, and *Mental Health Care and Treatment Act*. Feedback from our leaders, however, does indicate a general level of concern for the privacy and safety of individuals and groups of individuals where the information that may be disclosed concerns issues such as workplace investigations, third party information or where requests for data create risk of identifying or re-identifying individuals when data yields low numbers, pertains to specific catchment areas or otherwise risks identifying vulnerable individuals or populations. We anticipate that current protections that reduce such risk will remain in effect following the current review.

Western Health supports the right of access to information set out in the purpose of the ATIPPA. Western Health has generally responded to access to information requests within the allotted time frame of twenty business days. Occasionally when needed an extension of the timeline has been approved by the Office of the Information and Privacy Commissioner (OIPC). However, in certain circumstances, meeting the twenty-day requirement has been difficult and the criteria for extension included in the legislation have not been applicable. One such notable circumstance

is when a high level of coordination among individuals and groups within the organization is needed in order to respond to the request. Another is when the expert knowledge and technical skills limited to a specific employee is required to respond to a request and this individual is engaged in other time sensitive projects or may be otherwise unavailable. We have seen an increase in the number and complexity of requests for large amounts of data, which has placed significant pressures on various parts of the system, including individuals. While we do not make a specific recommendation in this regard, we wish to highlight the fact that responding to an access to information request may require significant effort on the part of several employees across programs and organizations. It is unlikely that this situation is unique to Western Health. We submit our view that this is an important consideration in the examination of whether response times and administrative timelines currently included in the ATIPPA are effective.

In addition to these themes representing our leaders' perspectives, we also wish to offer broad commentary concerning the current cost schedule. With respect to the cost schedule, it has been our experience that the current cost structure is not applicable to the access to information requests that Western Health has received in that we have not experienced a situation where Western Health requires in excess of fifteen hours to locate a record. Furthermore, most Applicants request responses in electronic format. As such, we are not copying or otherwise reproducing records for which we could apply a cost. Western Health supports individuals' right of access, and we are committed to our duty to assist Applicants in making their requests. That said, we ask that consideration be given to a review of the applicability of the current cost structure to the types of requests that public bodies are receiving. Western Health recognizes that, in the spirit of meeting our duty to assist Applicants under the ATIPPA, at times we may be extending our efforts beyond the requirements of the legislation, particularly when responding to complex requests involving a high volume of data. In these circumstances on times we struggle with determining whether we are creating new records as opposed to producing a meaningful response from existing raw data. We accept that perhaps Western Health would benefit from additional education about our obligations under the ATIPPA legislation in this regard.

Again, thank you for the opportunity to make a written submission for the purpose of the ATIPPA statutory review. If you have any questions, please contact Sherri Tiller-Park, Regional Manager Information Access and Privacy, at sherritiller@westernhealth.nl.ca or (709) 784-5248.

Sincerely,

Cynthia Davis
Chief Executive Officer
Western Health

Labrador-Grenfell Health

November 23, 2020

Honourable David B. Orsborn
Committee Chair
Access to Information and Protection of Privacy Act Statutory Review 2020
3rd Floor, Beothuck Building
20 Crosbie Place
St. John's, NL
A1B 3Y8

davidorsborn@nlatippareview.ca

Dear Justice Orsborn,

Regarding: Access to Information and Protection of Privacy Act statutory review

Please accept this correspondence as Labrador Grenfell Health's written submission with respect to the five-year review of the *Access to Information and Protection of Privacy Act* (ATIPPA). We appreciate the opportunity to provide feedback.

Recognizing that compliance with the ATIPPA requires cooperation among many individuals within Labrador Grenfell Health, we posed questions to several of our leaders. Based on our feedback, reflecting on the Terms of Reference, and our experience in responding to ATIPPA requests, we have identified the following themes.

We believe that there are categories or types of information that may require greater consideration other than what section 40 of ATIPPA can provide. Feedback from our team recognizes workplace investigations, third party information or where requests for data creates potential risk for identifying or re-identifying individuals. In some instances, the sharing of information can result in undue hardship for parties involved, particularly those associated with personal situations such as the division of assets during divorce, custody, and child support etc. In smaller regions such as Labrador Grenfell Health, position titles and human resource information can be easily associated to an individual. There is a greater chance in the Labrador Grenfell Health region of an individual being recognized, as they are the sole individual in that work role. Labrador Grenfell Health welcomes consideration for future discussion regarding this.

Labrador Grenfell Health supports the right of access to information set out in the ATIPPA. Labrador Grenfell Health has generally responded to access to information requests within the allotted time frame of twenty business days. Labrador Grenfell Health does not have a dedicated position for Privacy and ATIPPA, which poses significant challenges with managing other priorities. We have noted a significant

increase in the complexity of requests as well requests requiring large amounts of data to be reviewed. This poses significant challenges for our resources.
We recommend the possibility of an automatic extension for a substantial ATIPPA request.

Labrador Grenfell Health has never charged for ATIPPA. There is significant cost involved in locating records and the work and the effort required to review and redact those records. Large ATIPPA requests require significant organizational resources to respond. We recommend consideration of a revised fee schedule to reflect the cost incurred by the regional health authority for large requests.

In relation to the current legislation and recent ATIPPA requests, there are potential opportunities for improved clarity. Requests should have clear language to limit misinterpretation. There should be clearly identified timelines related to the amount of data requested and the extent of the request. This would allow opportunity to streamline, monitor and measure requests and volumes, as well as provide time to complete the request. For example, there have been several ATIPPA requests processed involving upwards of 10,000 emails, requiring significant resources and time to review.

I trust the above noted information is satisfactory. Should you have any questions, please feel free to contact either myself or Stacey Knudsen, (acting ATIPPA Coordinator) 709-454-0123 or anastasia.knudsen@lghealth.ca at any time.

Sincerely,

Heather M Brown

Heather Brown
President & Chief Executive Officer

Annex D

ATIPPA, 2015 Review Submission

Table of Contents

1 Introduction

1.1 Role of the NL Centre for Information

The current Access to Information and Protection of Privacy Act, 2015 (ATIPPA, 2015) was proclaimed five years ago on June 1, 2015. As per section 117, the ATIPPA, 2015 is to be reviewed five years after its proclamation.

The Newfoundland and Labrador Centre for Health Information (the Centre) is a crown agency of the Government of NL as per Centre for Health Information Act, 2018.

The Centre has established many information networks including those that form the provincial electronic health record. The Centre is also responsible for gathering information from other stakeholders in the provincial health system, processing and analyzing information and providing it to key stakeholders.

Ensuring the public's right of access to records and protecting the personal information in the custody or control of the Centre are top priorities for the Centre. The Centre relies on the ATIPPA and the Personal Health Information Act (PHIA) as the framework for our privacy program.

Below is our submission in response to the committee's request from public bodies to provide a submission as a part of the ATIPPA review.

2 Part I: Interpretation

2.1 Interpretation (s.2)

Personal Information

The Centre has noted the following potential additions to the definition of "personal information" that the ATIPP Review Committee may wish to consider:

- Internet Protocol (IP) addresses. Other jurisdictions have held that IP addresses are included in the definition of personal information (see Review Report LA-2013-003 OIPC Sask). A vast array of information can be assembled on an individual from their IP address. Given the ability to track an individual's web activity using an individual's IP address and the general public's lack of knowledge as to how to hide or disguise such information, the Centre proposes that IP address should be explicitly contained in the definition of personal information.

Public Body

The Centre is satisfied with the definition of "public body" based on its interactions with other public bodies.

3 Part II/Division 1: The Request

3.1 Public Body Response Times

While the Centre would value additional time for issuing responses to access to information requests, the Centre does accept that the response times set out in the ATIPPA, 2015 are reasonable for responding to most requests.

3.2 Extensions and Disregards

On the occasions when the Centre has had to avail of an extension or disregard request, no difficulties have been experienced and the interaction with the OIPC has been cooperative and reasonable.

4 Part II/Division 2: Exceptions to Access

4.1 Disclosure Harmful to Personal Privacy (s.40)

As referenced under Heading 2.1 above, reference should be explicitly made and protections afforded to IP address information.

5 Part II/Division 3: Complaint

The Centre supports the current provisions for making and managing a complaint with the OIPC.

6 General

The Centre has no additional comments to make with regards to the provisions and operations of the ATIPPA, 2015.

7 Conclusions

Thank you to the committee for providing the Centre the opportunity to provide feedback based upon our experience operationalizing ATIPPA, 2015.

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NEWFOUNDLAND AND LABRADOR
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November 19, 2020

Honourable David B. Orsborn
Committee Chair
Access to Information and Protection of Privacy Act Statutory Review 2020
3rd Floor, Beothuck Building, 20 Crosbie Place
St. John's, NL A1B 3Y8

Dear Honourable David B. Orsborn;

Re: Submission to support the Access to Information and Protection of Privacy Act statutory review

Thank you for the opportunity to comment on the issues identified in the Terms of Reference for the ATIPPA statutory review. Please find comments on two bullet items in the Mandate section of the Terms of Reference.

1. Bullet 3: As a small public body, HREA was operationally debilitated when we had to deal with approximately 12-15 ATIPP requests of substantive nature, including an appeal over a 12-month period. Small entities have limited ability to respond to such demands and some have unique restraints that do not allow them to function operationally when this demand is placed on them.

2. Exemptions: 32 (e) includes the evaluation of research conducted by employees affiliated with an educational body, but not that of private/industry researchers. An exemption for all research reviewed under Section 9 of the HREA Act could be considered under section 32 (e). This would cover all reviews conducted under the HREA Act including Section 11 (Monitoring), 13 (Reconsideration), and 17 (Appeals).

   Alternatively, might HREB review be considered under the ATIPPA exempt bodies? This exemption could be applicable only to HREB research review such as that currently included in 32(e). It would not have to apply to the HREA office.

We look forward to further involvement as this review process evolves.

Kind regards,

Sharon Newman

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