

LIMITED AUTHORITY TO DISREGARD CERTAIN REQUESTS FOR ACCESS – [SECTION 11.1 of PHIA]

Summary: PHIA provides individuals with a right of access to their personal health information and the exercise of that right should not be infringed upon without justification in limited and specific circumstances. Subsection 11.1 of PHIA enables a trustee to disregard a request from an individual for access to their personal health information that the trustee reasonably believes is an abuse of the right to make a request because it is unduly repetitive or systematic, or otherwise made in bad faith, or if the request is for information already provided to the individual. A decision by a trustee to disregard a request pursuant to section 11.1 must be carefully considered on a case-by-case basis. As with all decisions by trustees, there should be documentation supporting the decision and setting out the underlying rationale for the decision to disregard a request for access. If a trustee disregards a request for access to personal health information under section 11.1 of PHIA, the trustee must notify the individual in writing of the decision and the reasons for it, and of the individual's right to make a complaint about the decision to the Ombudsman.

The request is for information already provided to the individual who made the request [clause 11.1(1)(a)]

A trustee may disregard an access request if it is for information that has already been provided to the individual.

It is important to remember that while an individual may have made previous requests under PHIA that fall within the circumstances of subsection 11.1(1)(a), this does not mean that an access request by the individual can automatically be disregarded. Subsection 6(2) of PHIA requires a trustee to make every reasonable effort to assist an individual and to respond to a request from an individual for access to their personal health information without delay, openly, accurately and completely. This includes, for example, assisting individuals, who may have lost a copy of information previously provided by the trustee. All access requests submitted by an individual to a trustee must be considered in relation to the requirements of PHIA, including the duty to assist an individual.

The request amounts to an abuse of the right to make a request because it is unduly repetitive or systematic, or otherwise made in bad faith [clause 11.1(1)(b)]

If a request is to be disregarded under clause 11.1(1)(b) the trustee must reasonably believe that the request:

- (i) is either **repetitive or systematic, or otherwise made in bad faith**, and
- (ii) amounts to **an abuse of the right to make the request**.

If a request is to be disregarded under clause 11.1(1)(b), it is important for trustees to articulate the basis on which they have concluded that the request is **unduly repetitive or systematic, or otherwise made in bad faith**.

A request is "**unduly repetitive**" when an access request for the same information is submitted a number of times. This may include, for example, requests for access to information that the trustee has previously determined and advised the individual does not exist or cannot be found.

"Systematic" requests include a pattern of conduct that is regular or deliberate. This may include for example, an individual submitting a number of access requests to a trustee in a short period of time.

Generally, **"abuse"** means misuse or improper use; to make "excessive or improper use" of something. In the concept of 'abuse of process', there is a connotation of "something not legitimate".

Generally, **"bad faith"** means that a person is submitting a request for a purpose other than obtaining the information being requested.

The fact that an access request might result in the disclosure of information that the trustee would rather not disclose is not grounds for disregarding an access request under subsection 11.1.

In looking at the concept of 'abuse of the right of access', the following comments may be helpful:

..... Access to information legislation confers on individuals such as the respondent a significant statutory right, i.e., the right of access to information (including one's own personal information). All rights come with responsibilities. The right of access should only be used in good faith. It must not be abused. By overburdening a public body, misuse by one person of the right of access can threaten or diminish a legitimate exercise of that same right by others, including as regards their own personal information. Such abuse also harms the public interest, since it unnecessarily adds to public bodies' costs of complying with the Act.

B.C. Information and Privacy Commissioner decision respecting the Insurance Corporation of British Columbia, dated November 8, 2002 (Auth. (s. 43) 02-02) at: <http://www.oipc.bc.ca/rulings/decisions.aspx> .

In short, clause 11.1 (1)(b) is intended to be applied sparingly to those rare and egregious circumstances where the right of access to personal health information provided by PHIA is being misused.

The trustee must notify the individual in writing [subsection 11.1(2)]

The trustee's response to the access request must be given to the individual in writing and must state:

- that the trustee is refusing to deal with the access request,
- the reason for the refusal. The reason must be one of the reasons set out in subsection 11.1 of PHIA;
- an explanation of why subsection 11.1 applies; and
- that the individual may make a complaint to the Ombudsman about the refusal **[clause 39(1)(a.1)]**.