



Prince Edward Island  
Legislative Assembly

Information and  
Privacy Commissioner  
PO Box 2000, Charlottetown PE  
Canada C1A 7N8

Île-du-Prince-Édouard  
Assemblée législative

Commissaire à l'information et  
à la protection de la vie privée  
C.P. 2000, Charlottetown PE  
Canada C1A 7N8

PERSONAL AND CONFIDENTIAL

October 28, 2024

[REDACTED]  
[REDACTED]  
[REDACTED]

Via Email

Dear [REDACTED],

**Re: Privacy Complaint under the *Health Information Act*  
Our file reference C/24/00234**

We received your privacy complaint on July 29, 2024, relating to information about your [REDACTED] who is under 18 years of age. More specifically, you expressed concern that someone from the Student Well-being Program (from the Bluefield Family School Well-being Team) collected your [REDACTED] personal health information, then disclosed it to a doctor, without the consent of a parent or guardian.

For clarity, I am only addressing consent as it relates to the collection, use or disclosure of personal health information. Sometimes people confuse consent to collect, use and disclose personal health information with consent to treatment (or to receive a service), which is a separate issue that is not within our jurisdiction.

We requested information from the Department of Education and Health PEI about the Student Well-being Team's involvement with your [REDACTED], in order to assess your complaint. We also reviewed the information you provided in your request for review and the attachments.

*Health Information Act*

As a preliminary remark, I will note that I am addressing consent under the *Health Information Act*. As part of our assessment of your complaint, we confirmed that while the Student Well-being Team Program is a program of the Department of Education, the Student Well-being Teams are multidisciplinary, with members from different departments and agencies. Each Student Well-being Team member remains an employee of, and under the supervision of, their own department.

In this case, your complaint was regarding the actions of the Bluefield Family School Well-being Team and, more specifically, the Team Lead. The Team Lead is an employee of Health PEI. Health PEI is a custodian of personal health information under the *Health Information Act*, and

the information that was collected and disclosed was personal health information. Therefore, the applicable legislation in this situation is the *Health Information Act*.

## **No Inquiry**

Not all complaints proceed to a review. Under section 62 of the *Health Information Act*, I may refuse to conduct an inquiry if the circumstances warrant. After reviewing the information provided to our office by you, Health PEI, and the Department of Education, I am refusing to conduct an inquiry because I am satisfied that the Student Well-being Team member had the legal authority to collect and disclose your [REDACTED] personal health information. My reasons are set out below.

### A. Collection

Clause 17(1)(a) of the *Health Information Act* authorizes a custodian to collect personal health information if the person consents (and the collection is for a lawful purpose). There is also a legal presumption that an individual has the capacity (ability) to give or refuse consent. Unless a custodian has reasonable grounds to believe the person does not have the capacity to give or refuse consent, a person has the right to give or refuse consent on their own behalf. This presumption applies to all individuals, regardless of their age, which includes minors (persons under 18). So, a minor child is presumed to have capacity to give or refuse consent to the collection, use, or disclosure of their own personal health information unless the custodian has reasonable grounds to believe the minor child does not have capacity to do so.

Please find enclosed a copy of section 14 of the *Health Information Act* which addresses a person's capacity to consent. Subsection 14(1) describes the components of a person's capacity to consent. Subsection 14(3) of the *Health Information Act* presumes that a person is capable of consenting to the collection, use or disclosure of their own personal health information. Subsection 14(4) sets out that a custodian may rely on this presumption of capacity, unless they have reasonable grounds to believe that the person is not capable of consenting to the collection, use, or disclosure of their personal health information.

Section 76(1)(c) of the *Health Information Act* authorizes a parent or guardian of a minor to consent on behalf of a minor child (if it would not be an unreasonable invasion of the personal privacy of the minor). But this does not mean that a minor child is incapable of consenting (or refusing to consent) on their own behalf. A custodian is not required to obtain the consent of the parent/guardian if the custodian is confident that the minor is able to consent on their own behalf.

Health PEI provided copies of some records created at the time that support that the Student Well-being Team member did consider your [REDACTED] capacity to consent to the collection of [REDACTED] personal health information, and assessed [REDACTED] as being capable of giving or withholding consent to collect [REDACTED] personal health information. These records also satisfy me that your

██████ verbally consented to the collection of █████ personal information by the Student Well-being Team. There is no indication that █████ withdrew █████ consent at any time.

B. Disclosure

Clause 23(5)(a) of the *Health Information Act* authorizes a custodian to disclose personal health information with the individual's consent. As noted above, the records provided by Health PEI support that the Student Well-being Team member did consider your █████ capacity to consent and assessed █████ as being capable of giving or withholding consent. These records also satisfy me that your █████ verbally consented to the disclosure of █████ personal information to █████ doctor. There is no indication that █████ withdrew █████ consent at any time.

Additionally, even if your █████ had not consented, subsection 23(8)(a) of the *Health Information Act* authorizes a custodian to disclose personal health information to another custodian without consent if it is necessary for the provision of health care to that person. In this instance, records indicate that the disclosure was to your █████ doctor, and was for the purpose of getting █████ health care that the Student Well-being Team member considered necessary for your █████ health and well-being.

**Conclusion**

The *Health Information Act* authorizes a custodian to obtain consent to collect, use and disclose personal health information directly from a minor as long as the minor has capacity to consent, without a requirement to obtain consent from the minor's parent/guardian. I am persuaded that the Student Well-being Team member turned their mind to your █████ capacity to consent, assessed █████ as having capacity to consent, and that your █████ continuously consented to the collection and disclosure of █████ personal health information. On the face of it, the Student Well-being Team member was authorized to collect and disclose your █████ personal health information under the *Health Information Act*.

For these reasons, I consider the circumstance to warrant refusing to conduct and inquiry. Therefore, pursuant to clause 62(b) of the *Health Information Act*, I am refusing to conduct a review in this matter, and am closing our file.

Sincerely,



Denise N. Doiron  
Information and Privacy Commissioner

Enclosure: Excerpt of section 14 of the *Health Information Act* (1 page)

cc: Bobbi-Jo Dow Baker, solicitor for Access and Privacy Services (APSO)