



## Memo

**To:** Chief Executive Officers  
Ontario Public Hospitals

**From:** Dykeman Dewhirst O'Brien LLP

**Date:** February 2, 2011

**Re:** Getting Ready for FIPPA:  
What to do in February & March, 2011

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Many Ontario hospitals sent representatives to the Ontario Hospital Association's program on *Freedom of Information: A Primer* on Thursday, January 27, 2011. It was invaluable to hear from organizations such as Cancer Care Ontario and Ryerson University, whose representatives shared their stories of recent implementation of the *Freedom of Information and Protection of Privacy Act* (FIPPA). We heard lessons learned from British Columbia and Alberta, where freedom of information legislation has for some time applied to the hospital and broader health care sectors. People left the conference feeling much more knowledgeable, but wondering where to start in their own preparations.

To summarize some of the key messages from the OHA Conference:

- Since FIPPA will apply to public hospitals in Ontario effective January 1, 2012, hospitals should maximize the coming 11 months to understand, and prepare for, FIPPA.
- The OHA is preparing FIPPA tools and advice for hospitals for release over the next weeks and months (most information to come by Spring/early Summer). There will be primer documents, fact sheets and a FIPPA Toolkit. They are also developing educational tools such as workshops and on-line learning modules for target audiences in hospitals, including Boards, Senior Management, FOI Leads, Clinical/Administrative Staff and Legal Counsel.
- Implementing FIPPA is not a linear process – many FIPPA compliance tasks can be initiated simultaneously. The list of FIPPA compliance tasks is significant. Practically speaking, to achieve compliance, hospitals will have to (among other things) do the following:
  - **Governance:** Create a FIPPA governance model. Since the hospital Board Chair is identified in FIPPA as the “Head” of the institution with all the

responsibilities of FIPPA, it will be essential for each hospital to decide to whom to delegate those responsibilities.

- **Implementation Team:** Identify a FIPPA team to prepare for the implementation of FIPPA.
- **FIPPA Staff:** Determine the staffing needs to deal with FIPPA after implementation.
  - Determine whether additional staff need to be hired or whether the responsibility to manage FIPPA issues will be assigned to existing personnel.
  - Choose an FOI Coordinator.
  - Decide whether to identify other hospital staff to act as FOI Leads.
  - Assess the financial and human resources necessary to support FIPPA.
  - Consider contingency human resource strategies for managing short term high volume FOI requests.
- **Compliance Strategy:** Create a FIPPA strategy and compliance timeline.
- **Records Identification\*:** Create a “Records Inventory” and catalogue of “Personal Information Banks”.
- **Retention and Disposal\*:** Update/establish record retention schedules and undertake disposal of unnecessary records.
- **Cultural Shift\*:** Lay a foundation for an organizational culture shift to a FIPPA-friendly environment.
- **Access Process:** Develop access policies, procedures and forms (that is, a strategy and tools to manage FOI requests).
- **Vendor Relations\*:** Revise contracts and procurement documentation.
- **Reporting:** Implement a FIPPA Case Management Tool to track FIPPA statistics that are required to be reported annually to the Information and Privacy Commissioner/Ontario.
- **Notices:** Update/establish public notices about the hospital’s information management practices (that is, update the *Personal Health Information Protection Act, 2004* (PHIPA) notices, posters and brochures to include FIPPA requirements).
- **Training:** Train the Board, senior management, and staff on FIPPA issues.
- **Proactive Public Information:** Identify records that can be proactively made available to the public (so that a FIPPA request is not required).
- **Fees:** Establish processes for enforcing and collecting FIPPA fees.

\* We recommend you start these tasks now.

## Preparing for FIPPA – What to Do in February and March 2011 (Prior to Fiscal Year-End)

While waiting for the OHA FIPPA Toolkit to come out in the Spring/Summer, there are 4 action steps that hospitals can initiate now, to lay the ground work for FIPPA:

- **Records Inventory:** One of the key lessons learned from those who are already subject to FIPPA is to undertake a records inventory to determine the types of records you hold and where you hold them. This includes the identification of Personal Information Banks, which hospitals are required under FIPPA to report. We are assisting our clients to achieve this through a Records Management Audit service we offer.
- **Record Retention Audit:** We can assist you to undertake a review of your Records Retention Policy and record retention practices (to include drafting a policy if necessary or updates to the policy and recommendations for practice changes as necessary). We can highlight the legal requirements for record retention periods and can assist you to identify records you are no longer required to keep, so you may dispose of them.
- **Primary Education:** Education and training will be an ongoing requirement over the next 11 months to achieve the necessary culture shift to becoming a FIPPA-friendly organization. We can provide you with your phase 1 education where we explain to your Board and senior management staff the impact of FIPPA to their roles. We have also developed tools to assist you with educating your staff on email etiquette, FIPPA-friendly minute taking and documentation, record retention practices, and separating personal items, notes, emails and files.
- **Vendor Contract Review:** We can assist you to review and update your standard terms and conditions to address FIPPA issues such as who will have custody and control over created records and confidentiality.

Since we are in the year-end phase, hospitals should take advantage of the time period (and any available year-end funding) to get these preparation tasks completed now. Dykeman Dewhirst O'Brien LLP is offering these services to our clients at fixed prices. Our legal advice is privileged and confidential and we can assist you with your FIPPA preparation with the benefit of solicitor-client privilege. Please contact us to receive a quote.

Kate Dewhirst  
416.967.7100 x.226  
<mailto:kd@ddohealthlaw.com>

Mary Jane Dykeman  
416.967.7100 x.225  
<mailto:mjd@ddohealthlaw.com>

Kathy O'Brien  
416.967.7100 x.227  
<mailto:kob@ddohealthlaw.com>