



MEMO

To: Chief Executive Officers, Chief Privacy Officers, and FOI Coordinators
Ontario Public Hospitals

From: Dykeman Dewhirst O'Brien LLP

Date: March 29, 2011

Re: Preparing for FIPPA: Three-Phases to Compliance by January 2012

As you know, freedom of information rules come into effect for hospitals on January 1, 2012. Being compliant with the *Freedom of Information and Protection of Privacy Act* (FIPPA) by January 1st means being ready by December 15th. Are you prepared?

You have recently received the Ontario Hospital Association's *OHA Primer: A Practical Guide for Hospitals Preparing for FIPPA Implementation*. The following sets out our recommendations on how it should be interpreted and used to assist you with your FIPPA compliance.

OHA FIPPA PRIMER

The OHA FIPPA Primer lists twenty-five tasks that hospitals should start now to be FIPPA-ready by January 1st. DDO recommends a three-phase approach to organizing and implementing these tasks.

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| 1. Get your senior leadership on side | 10. Identify the role for third parties (like outside legal counsel) to assist in the FOI process |
| 2. Delegate the duties of the "head" | |
| 3. Convene a FIPPA leadership team | |
| 4. Approve a hospital FIPPA implementation plan | 11. Convene a hospital FIPPA implementation committee |
| 5. Communicate with staff and stakeholders | 12. Assess FIPPA readiness and set priorities |
| 6. Designate a FOI Coordinator | 13. Take an inventory of key policies and procedures |
| 7. Develop a FOI Office | |
| 8. Train the FOI Coordinator and other staff | 14. Arrange for payment of fees |
| 9. Determine FIPPA support from other hospital departments | 15. Make records available |
| | 16. Complete an inventory of hospital records |

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| 17. Review record retention policies | 22. Develop a communications stakeholder list |
| 18. Review existing information management policies | 23. Identify public facing communications |
| 19. Identify and rectify information management issues | 24. Consider proactive posting of records |
| 20. Examine information security programs | 25. Develop an orientation program |
| 21. Define business and technical requirements | |

DDO'S THREE-PHASE APPROACH TO COMPLIANCE BY JANUARY 1, 2012

PHASE 1: APRIL 2011 – FIPPA COMPLIANCE STRATEGY AND INITIAL IMPLEMENTATION

Initiate the following tasks:

- **Governance:** Create a FIPPA governance model. Since the hospital Board Chair is identified in FIPPA as the “Head” of the institution with all of the responsibilities of FIPPA, it will be essential for each hospital to decide to whom the Board Chair will 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, or complex FOI requests within strict timeframes.
- **Compliance Strategy:** Create a FIPPA strategy and compliance timeline.
- **Board Briefing, Annual General Meeting (AGM) and Primary Education:** Consider giving your hospital Board a FIPPA briefing before it breaks for the summer. Your CEO may also want to include a message about transparency and accountability at your AGM, with specific reference to FIPPA. To achieve the necessary culture shift to make

your organization FIPPA-friendly, training will be an ongoing requirement over the next nine months.

Some hospitals have already completed (or are well into) Phase 1; however, for hospitals that have not yet started, it is not too late to be in full compliance by the January 1, 2012, deadline.

DDO's recommendations on how to structure FIPPA governance, leadership and accountability models include lessons learned from universities and other public-sector agencies when those groups established their policies and procedures to become FIPPA compliant.

DDO has developed a training program for Phase 1 that includes: explaining the impact of FIPPA on the roles of your Board and senior management; training your staff on email etiquette, FIPPA-friendly minute-taking and documentation; record retention practices; and separating personal items, notes, emails and files.

PHASE 2: APRIL TO DECEMBER 2011 – RECORDS MANAGEMENT

Do you know what records you hold?

Are you keeping unnecessary records that should be disposed of?

Which records do you need to keep, and for how long?

FIPPA compliance requires awareness of all records you maintain. This includes emails, paper records and electronic records. From experience, DDO knows that significant time will be needed to fine tune your records management.

- **Records Inventory:** You are required under FIPPA to create a list of the categories of your records (such as: "Finance", "Human Resources", "Clinical", "Facilities and Equipment", "Patient Relations" etc.) You need to know what records you have and generally where they are stored. You are also required to identify your "personal information banks" (such as: "Health Records", "Litigation Files", "OHIP Payments"). You need to know what personal information banks you have, where they are stored, the types of personal information they contain, on what authority you collect that information, the uses for that information, the types of individuals referenced, and what retention and destruction schedules apply. This should be accomplished at a high level first and then supplemented with surveys of staff.
- **Record Retention Policy:** FIPPA readiness requires an up-to-date records retention policy that deals with more than your clinical records. It should include information about your key business and other records, where and for how long you store them, and the policy should make clear to staff which records can be disposed of. The OHA's Record Retention Toolkit (2006) can be used to update your policies and practices.

- **Disposal:** Responding to access requests under FIPPA will take longer and be more complicated than necessary, if your hospital has never disposed of unnecessary records. Hospitals can and should dispose of records that are:
 - Beyond the record retention period (if there is no longer a legitimate use for the records)
 - Transitory records, meaning temporary records that have short-term value for a particular task (such as drafts, duplicate copies, handwritten notes, emails such as “let’s get together for lunch”).

You should designate “record clean-up days” to give staff time to review all the records they hold (including emails, papers, and electronic documents). Cleaning out records for disposal can take many months and should be done well in advance of December 2011.

DDO is already assisting hospitals with Phase 2. If you have not begun Phase 2, we can streamline the process for you.

PHASE 3: SEPTEMBER TO DECEMBER 2011 – FINAL IMPLEMENTATION

This phase focuses on documentation of processes and shifting toward a FIPPA-friendly culture. It involves the following:

- **Access Process:** Developing a strategy to manage FOI requests, with access policies, procedures and forms (that is, a strategy with tools to manage FOI requests).
- **Notices:** Updating/establishing public notices about your hospital’s information management practices (updating the *Personal Health Information Protection Act, 2004* (PHIPA) notices, posters and brochures to include FIPPA requirements).
- **Training:** Training the Board, senior management, and staff on FIPPA issues.
- **Proactively Making Information Public:** Identifying records that can be proactively made available to the public, with the goal of decreasing FIPPA requests.
- **Fees:** Establishing processes for enforcing and collecting FIPPA fees.
- **Reporting:** Implementing a FIPPA Case Management Tool to track FIPPA statistics that are required to be reported annually to the Information and Privacy Commissioner/Ontario.
- **Vendor Relations:** Revising contracts and procurement documentation.

Phase 3 lays the ground work for operating successfully within the legal constraints of FIPPA. DDO is committed to helping its clients build their own capabilities, in this case, FIPPA systems that are clear

and precise enough to function without undue external legal fees. We would be happy to assist you implement and manage the significant changes necessary to do that.

What can hospitals learn from other organizations that have implemented FIPPA?

Universities became subject to FIPPA in 2006. Some universities have extensive records management, policies and FIPPA resources available to the public on their websites. The most important lesson is the length of time it takes to become FIPPA compliant. In 2010, Cancer Care Ontario (CCO) was required to comply with FIPPA. A representative from CCO recently told the OHA FIPPA conference attendees that the six months they had to prepare for FIPPA made the compliance process intense, particularly regarding records management.

Should we wait until September to start our FIPPA implementation?

In view of the timeline for compliance and based on the OHA's FIPPA Primer released last week, DDO recommends hospitals start their FIPPA compliance efforts now. DDO's three phases to implementation cover all the elements included in the Primer and will put you in the best shape to be FIPPA compliant before the deadline of January 1, 2012.

Why should I choose DDO to assist with FIPPA compliance?

DDO has years of experience dealing with FIPPA and assisting hospitals with implementation of new legislation (including health privacy rules under the *Personal Health Information Protection Act, 2004*, quality initiatives under the *Quality of Care Information Protection Act, 2004* and workplace violence provisions under the *Occupational Health and Safety Act*).

Given DDO's collective experience of acting as in-house counsel to hospitals, we have intimate knowledge of how hospitals operate, the kinds of records hospitals hold and their internal communication styles.

DDO has ready-made FIPPA solutions that can be tailored to your specific needs.

Given its scope and complexity, FIPPA implementation will not be stress free. However, DDO can assist by helping to make sense of what has to be done, prioritizing the tasks, and providing customized solutions for your board, senior management and staff, including training, records management, governance models, strategies and policies.

Please feel free to contact us for further information about FIPPA or to discuss how we can help with the implementation of FIPPA policies and procedures.

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