



Yukon
Information
and Privacy
Commissioner

CONSIDERATION REPORT

**Pursuant to section 99 of the
*Health Information Privacy and Management Act***

Department of Health and Social Services

File: HIP-ADJ-2026-07-126

Sean LaPrairie, Adjudicator

October 1, 2026

Summary

The Complainant requested complete access to unredacted health records concerning a deceased individual for whom the Complainant is the personal representative.

Under the *Health Information Privacy and Management Act* (“HIPMA”) a personal representative is the person responsible for a deceased’s estate, including an executor, administrator, or trustee.

The Custodian disclosed the responsive records to the Complainant but withheld some information, relying on subsections 27(1)(a)(ii) and 27(1)(b) of the HIPMA.

The Complainant requested that the Information and Privacy Commissioner review the refusal. Informal case resolution failed to resolve the matter and it proceeded to consideration.

The adjudicator found that although the Custodian improperly applied the section 27(1)(a)(ii) exception to disclosure, the redactions in the responsive records were properly applied under section 27(1)(b). Therefore, no recommendations were made.

Table of Contents

Summary	2
Table of Contents	3
Complaint	4
Jurisdiction	4
Explanatory Note.....	4
Burden of Proof	4
Sections Cited.....	5
Statutes and Regulations Cited	5
Cases, Orders and Reports Cited	5
Background	5
Issues.....	6
Records at Issue	6
Submissions.....	7
Discussion of the Issues	7
<i>Issue 1 – Was the custodian required to refuse access to responsive information under section 27(1)(a)(ii) of the HIPMA?</i>	7
<i>Issue 2 – Was the custodian required to refuse access to responsive information under section 27(1)(b)?</i>	
11	
Conclusions	15
Recommendations	15
Consideration Report.....	15
Publication of the Consideration Report	16

Complaint

On May 11, 2026, an individual (Complainant) made a complaint alleging that, contrary to the *Health Information Privacy and Management Act* (HIPMA), the Department of Health and Social Services for the Government of Yukon (Custodian) had improperly withheld records responsive to Access Request H-1017.

The Complainant is the executor of a deceased person's estate and requested the release of information from the deceased's health records. The records were released in part, with some information redacted under section 27(1)(a)(ii) and section 27(1)(b) of the HIPMA.

The Complainant is seeking full access to the responsive records.

The Complainant asked the Information and Privacy Commissioner (IPC) to review the Custodian's decision to withhold information. Both parties provided submissions in this inquiry.

Jurisdiction

This is a complaint under section 99. The IPC has the necessary jurisdiction, as set out in section 104.

Explanatory Note

All sections, subsections, paragraphs and the like referred to in this investigation report are to the HIPMA, unless otherwise stated.

All references to an act refer to the HIPMA, unless otherwise stated.

All references to a 'Custodian' mean a Custodian as defined in the HIPMA.

Burden of Proof

Section 106 sets out the burden of proof relevant to this Investigation. It states that where the complaint relates to the Complainant's access to or correction of their personal health information, it is up to the Complainant to prove that they have complied with the relevant requirements under this Act and it is up to the Custodian to prove that they have acted in accordance with it. It also states that, if the review relates to the Custodian's exercise of any discretion under this Act, then it is up to the Custodian to prove that they exercised the discretion in good faith.

Sections Cited

HIPMA section 27, 35, 47, 106

HIPMA Regulations section 1

ATIPPA section 1

Statutes and Regulations Cited

[Access](#) to Information and Protection of Privacy Act, SY 2018, c.9

[Health](#) Information Privacy and Management Act, SY 2013, c.16

[Health](#) Information General Regulation, Order-in-Council 2016/159

Cases, Orders and Reports Cited

Order

[Order F22-62](#), Interior Health Authority (Re), 2022 BCIPC 70

Background

[1] On March 1, 2026, the Complainant made a request for access to information (Access Request) in the custody and control of the Department of Health and Social Services (Custodian). The Complainant's access request pertains to records for a deceased family member for whom they are acting as the executor.

[2] The Access Request related to two records.

[3] On March 2, 2026, the Custodian activated the request and assigned it reference number H-1017 with a final response due date of March 31, 2026.

[4] On March 16, 2026, the Custodian provided its final response to the Complainant and provided 3 pages of responsive records. The Custodian's final response letter indicated that access to some information had been refused pursuant to the following provisions of the HIPMA:

- 27(1)(a)(ii)
- 27(1)(b)

[5] On May 10, 2026, the Complainant submitted a complaint to the IPC in accordance with section 99 of the HIPMA about the Custodian's decision to refuse access to some information in the responsive records.

[6] The Commissioner decided to investigate the matter in accordance with his authority under section 100 of the HIPMA. Settlement was attempted through the informal case resolution process outlined in section 102 of the HIPMA.

[7] A resolution could not be reached so, on July 7, 2026, the Commissioner escalated the matter from informal resolution to formal consideration, as per section 103.

[8] On July 9, 2026, the Commissioner issued the Custodian and the Complainant a 'Notice of Written Investigation' informing them that a formal written consideration would be conducted, pursuant to section 103(1) of the HIPMA.

[9] On July 24, 2026, the Custodian provided their initial submissions as well as a copy of the records at issue.

[10] The Complainant provided their responding submissions on July 28, 2026.

[11] The Custodian provided their final reply submissions on August 4, 2026.

Issues

[12] There are 2 issues as follows.

- 1) *Was the custodian required to refuse access to responsive information under section 27(1)(a)(ii) of the HIPMA?*
- 2) *Was the custodian required to refuse access to responsive information under section 27(1)(b)?*

Records at Issue

[13] There are two records at issue in this report, collectively referred to herein as the "records at issue", and identified separately by number:

Record 1 – two-page case note, dated January 17, 2017. The Custodian made eight redactions pursuant to section 27(1)(b).

Record 2 – one-page case note dated May 26, 2023. The Custodian made five redactions pursuant to sections 27(1)(a)(ii) and 27(1)(b).

[14] One section of Record 2 is redacted under both section 27(1)(a)(ii) and 27(1)(b). The remaining redactions all fall under section 27(1)(b).

[15] I have reviewed the records at issue. Record 1 contains case notes of a telephone call between a social worker for the Custodian, the Complainant, and a third party. The phone call was to discuss the deceased's care plan as well as housing, financial, and legal needs.

[16] Record 2 contains notes of a voicemail from and return call to the third party from the Custodian. More than half of the details of the phone call were withheld from the Complainant.

[17] As part of its burden of proof, the Custodian must establish that an applicant has no right of access to any of the redacted information. Before severing information under section 27(1)(a)(ii) or 27(b), the Custodian must first establish whether any of the responsive information constitutes personal information or personal health information of a third party. If yes, then the Custodian must withhold this information. Finally, the Custodian must grant access to as much of the requested records as can reasonably be provided without disclosing third party personal health information. This is a mandatory obligation under section 27(3).

Submissions

[18] The submissions of the parties will be set out as they are relevant to each issue.

Discussion of the Issues

Issue 1 – Was the custodian required to refuse access to responsive information under section 27(1)(a)(ii) of the HIPMA?

Custodian's Submission for Issue 1

- [19] The Custodian submitted that the first step in the analysis is determining if the Complainant had a right of access to the requested information, stating:

Section 47 of the HIPMA provides that the personal representative of a deceased individual may exercise the rights and powers of the deceased person under the Act.

Section 47 of the HIPMA does not authorize the disclosure of personal health information that a custodian must refuse under section 27¹.

- [20] The Custodian then addressed whether they had grounds to refuse access to the requested information under section 27(1)(a)(ii). They asserted the following.

Section 27(1)(a)(ii) of the HIPMA requires a Custodian to refuse access to an individual's personal health information where the custodian has reasonable grounds to believe that disclosure would identify a third party who supplied the information in circumstances where confidentiality could reasonably be expected.

For the purposes of this decision, a third party was determined to be any person other than the Applicant or the Custodian.

The Custodian determined that disclosure of certain portions of the records would identify one or more third parties. As the third party(ies) have not consented to the release of their information to the Applicant, and it is reasonable to conclude that the information was provided with an expectation of confidentiality, those portions of the records were withheld pursuant to section 27(1)(a)(ii) of HIPMA².

- [21] The Custodian then considered the requirements and considerations to refuse access under 27 and argued the following.

In accordance with section 27(3) of the HIPMA, the Custodian made every reasonable effort to provide access to all information relating directly to the Applicant, as well as any broader information was communicated to the Applicant during the telephone call referenced in Record 2, while protecting the personal health information of other individuals and third parties³.

¹ Custodian's initial Submissions, at p. 2.

² *Ibid.*, at pp. 2 and 3.

³ *Ibid.*, at p. 3.

Complainant's Submission for Issue 1

[22] The Complainant submits that the Custodian is required to release the information redacted under section 27(1)(a)(ii) because the information does not identify third parties who supplied information in confidence⁴.

[23] They submit that the unredacted information in the records at issue inadvertently identifies third parties. They state that "the key identity element is therefore already disclosed on the face of the record(s) even after the redactions"⁵.

[24] The Complainant further submits that information the Custodian "intentionally and actively communicated to the [deceased] during [their]⁶ lifetime cannot retain an expectation of confidentiality"⁷. The Complainant did not submit further arguments to support this claim or explain how this relates to a section 27(1)(a)(ii) redaction. If information that was provided to the deceased is found to be third party personal health information that was supplied in confidence, as per the requirements of section 27(1)(a)(ii), then there is an expectation of confidentiality. The requirement to keep this information confidential does not expire due to the passage of time.

Analysis

[25] The Custodian is correct in their assertion that the first step in determining the Complainant's request for release of complete, unredacted records is determining whether the Complainant has a right to access the deceased's information. This analysis applies to both issues and will therefore not be repeated in the analysis for Issue 2.

Right of Access to Deceased's Records

[26] Section 47 of the HIPMA permits the disclosure of personal health information about a deceased individual to a personal representative if the request for access:

- a) relates to the administration of the deceased's estate; or
- b) relates to a claim under a policy of insurance in which a benefit is payable upon the death of the deceased.

⁴ Complainant's Response Submissions, at p. 4.

⁵ *Ibid.*

⁶ Redacted to protect anonymity.

⁷ *Ibid.*, at pp. 4 and 5.

[27] Under the HIPMA regulations⁸, a personal representative of a deceased individual includes an executor, administrator or trustee of the deceased's estate.

[28] The Custodian did not challenge the Complainant's right to access the requested information under section 47.

Access Refusal under Section 27(1)(a)(ii)

[29] After determining that the Complainant has a right of access to the requested records, the next step is a section 27 analysis to determine if all or part of the records must be withheld.

[30] Section 27 requires Custodians to refuse to disclose personal health information in the Custodian's custody or control in specific circumstances. Section 27 is mandatory, meaning the Custodian has no discretion and is required by law to refuse to disclose the information.

[31] Section 27(1)(a)(ii) requires the Custodian to refuse to grant access to any individual's personal health information if they have reasonable grounds to believe that disclosing would identify third parties who supplied the personal health information in confidence.

[32] The threshold question is whether the records contain personal health information supplied in confidence by third parties.

[33] The HIPMA defines personal health information as health information of an individual and, except as prescribed, prescribed registration information and prescribed provider registry information in respect of the individual.

[34] The Custodian applied section 27(1)(a)(ii) to information withheld in record 2, arguing that full disclosure of record 2 would identify one or more third parties who did not consent to the release of information to the Complainant.

[35] The Complainant's submission on this issue focuses on whether disclosure would identify any third parties. They submit that the unredacted portion of record 2 discloses the identity of third parties and therefore the redactions do not protect their identity.

[36] The questions that must be answered in the affirmative to support withholding the requested records are therefore:

⁸ Health Information General Regulation, Part 1 Interpretation.

- a) Would disclosure identify a third party;
- b) Did the third party supply personal health information; and
- c) Was the personal health information supplied in confidence.

[37] After reviewing record 2 I find that the redacted sections would identify a third party. This portion of the records contain sufficient details to identify the third party if released in full. It is irrelevant that the Complainant believes they can deduce the identity of the third party from the information provided.

[38] The third party supplied personal information to the Custodian during a private phone call discussing the deceased and included personal opinions and discussions of the third party's feelings regarding the relationship between the third party and the deceased. During the call they also discussed the third party's work history. Record 2 contains the notes from this phone call. The information that was redacted does not directly impact the care the deceased received or relate to the deceased's health. When assessed in its totality it is clear that the call was of a personal nature.

[39] After reviewing the unredacted records I did not find any instances of a third party supplying personal health information. The information did not include specific references to health or healthcare, however, the information constitutes personal information of a third party.

[40] Consequently, I do not find that section 27(1)(a)(ii) applies to the redactions in record 2 as it does not meet the three-prong test.

Conclusion Issue 1

[41] The Custodian is not authorized to rely on s. 27(1)(a)(ii) to withhold information in record 2.

Issue 2 – Was the custodian required to refuse access to responsive information under section 27(1)(b)?

Custodian's Submission for Issue 2

[42] The Custodian relied on the same section 47 analysis as in issue 1 to determine that the Complainant does have a right of access to the information requested, subject to the mandatory restrictions under section 27⁹.

[43] The Custodian then addressed whether they are required to refuse access under section 27 of the HIPMA and asserted the following.

The Custodian determined that disclosure of certain portions of the records would, if disclosed, reveal personal information or personal health information of another individual(s).

The Custodian determined that there was no record of express consent from the individual(s) whose personal information or personal health information could be revealed.

In accordance with section 27(3) of the HIPMA, the Custodian made every reasonable effort to provide access to all information relating directly to the Applicant, as well as any broader information was communicated to the Applicant during the telephone call referenced in Record 2, while protecting the personal health information of other individuals and third parties¹⁰.

Complainant's Submission for Issue 2

[44] Two paragraphs in the Complainant's submissions for Issue 2 discuss unredacted information in the records at issue. This submission is not relevant to this issue and will not be assessed in this report.

[45] The Complainant argues that nothing in the records at issue would reveal personal information of another individual who has not expressly consented to the disclosure.

[46] They argue the following:

In Record 2 the minutes of a collaborative conference call in which the Complainant (then the [deceased's]¹¹ legal representative) participated were authorised by the [deceased]¹² during his lifetime and were already communicated verbally. Treating the personal representative as a stranger under 27(1)(b) is inconsistent with section 47, which expressly permits the personal representative of a deceased individual to exercise

⁹ Custodian's Initial Submissions, at p. 3.

¹⁰ *Ibid.*, at p. 4.

¹¹ Redacted to protect anonymity

¹² *Ibid.*

*the deceased's access rights when the records relate to the administration of the estate*¹³.

[47] The Complainant also submits that a clinical record maintained for an individual should contain the personal health information of that individual. They submit that "it is not a proper repository for the personal information or personal health information of other individuals"¹⁴.

Analysis

[48] As discussed above, section 27 is a mandatory exclusion provision. Subsection (b) requires a Custodian to refuse access to an individual's personal health information in the Custodian's care and control if the disclosure would reveal personal information or personal health information of another individual who has not expressly consented to the disclosure.

[49] Under HIPMA, Personal Information has the same meaning as in the *Access to Information and Protection of Privacy Act* (ATIPPA) and refers to recorded information about an identifiable individual. This includes, for example, their name, other individual's opinion or views about them, and information about their family status¹⁵.

[50] The Complainant's position that the record should not contain personal information about a third party is not relevant. The records at issue contain notes of conversations regarding the deceased and during those conversations personal information was relayed. This information was recorded as part of standard record keeping practices.

[51] The questions to be addressed in this issue are:

1. Does the withheld information contain third party personal information or third-party personal health information as defined by the HIPMA?
2. Has the third party expressly consented to the disclosure of this information?

[52] I have assessed the records at issue and determined the redacted information to be of a personal nature. Some of the withheld information contains the name of a third party. The remaining redactions do not identify a third party by name but, given the context, it is

¹³ Complainant's Response Submissions, at p. 5.

¹⁴ *Ibid.*

¹⁵ ATIPPA, section 1 Personal Information, subsection a, g, l.

reasonable to conclude that the Complainant or other members of the public may reasonably be able to identify a third party.¹⁶

[53] The Complainant submitted that the unredacted portion of the records do not explicitly mention consent and therefore, “in the absence of any visible indication that consent was sought” the Custodian cannot withhold the third-party information in accordance with their obligations under the Act¹⁷.

[54] This is a misinterpretation of the Act. The question is whether the third party “expressly consented” to the disclosure. The requirements for express consent are outlined in section 35 and state as follows:

- 1) Express consent need not be in writing, but where express consent is required under this Act and has been given, the custodian who receives it must record it.
- 2) Express consent and a record of express consent must satisfy the prescribed requirements, if any.

[55] As the Complainant has highlighted in their submissions, there was an absence of consent to release this information in the records at issue. There is no written consent in the records nor is there mention of verbal consent to release this information. In the absence of clear and express consent a Custodian is not authorized to release third-party personal information.

[56] I find the Custodian’s assertion that they do not have express consent to disclose the requested information to be well founded.

Conclusion Issue 2

[57] I am satisfied that the information in the records at issue that I am considering under s. 27(1)(b) is personal information, because it is about identifiable individuals, and that the release of the information was not expressly consented to by the third party.

[58] Therefore, I find the Custodian is authorized to rely on section 27(1)(b) to withhold the redacted information in the records at issue.

¹⁶ As stated in Order F22-62, 2022 BCIPC 70 (CanLII), at para. 16, an individual’s opinions and comments are personal information if the identity can be inferred.

¹⁷ Complainant’s Response Submissions, at p. 5.

Conclusions

[59] With respect to the Custodian's reliance on section 27(1)(a)(ii) to redact part of record 2, our office concluded that the Custodian improperly applied this section of HIPMA. The Custodian does not have the authority to withhold part of record 2 under this section.

[60] However, I have found that the Custodian is required to refuse the requested information in the records at issue under section 27(1)(b), therefore the redactions should remain. The Complainant is not entitled to the information being sought as it contains personal information of a third party who has not expressly consented to the disclosure.

[61] In summary, I make the following findings:

Issue 1

I confirm that section 27(1)(a)(ii) does not allow the Custodian to withhold the information in dispute.

Issue 2

I confirm that section 27(1)(b) requires the Custodian to refuse access to the information in dispute.

Recommendations

[62] I make no recommendations.

Consideration Report

[63] Subsection 109 (1) requires the IPC, after completing this Consideration, to prepare a report that sets out findings, recommendations and the reasons for them.

[64] Subsection 109 (3) requires the IPC, after completing this Consideration, to give a copy of the Consideration Report to the Complainant and the Custodian. The IPC must also give a copy of the Consideration Report to any person about whom the Report contains any comments or recommendations made by the IPC, unless by doing so the health or safety of any individual would be put at risk.

[65] Subsection 109 (4) enables the IPC to provide a copy of the Consideration Report to

- a) a person with statutory responsibility, in Yukon or another province, for the registration, licensing or discipline of, or the regulation of the quality or standards of health care provided by, a custodian about whom the report contains comments or recommendations made by the commissioner; or*
- b) any other person, if the commissioner considers that doing so may prevent or lessen a serious and immediate threat to the health or safety of any person.*

[66] Subsection 109 (5) states the following.

If the commissioner gives a copy of a report under subsection (1) to a person described in... subsection (4)

- a) the commissioner must inform the complainant and the respondent of the person's identity; and*
- b) where the person is described in paragraph (3)(c) but not in subsection (4), the person
 - i. must not disclose any personal information or personal health information contained in the report, except where the law would, if they were a custodian, allow or require them to do so, and*
 - ii. must securely destroy the personal information or personal health information as soon as the person no longer reasonably requires it.**

Publication of the Consideration Report

[67] In accordance with my authority in subsection 109 (6), I will publish this Consideration Report and the Custodian's response to my recommendations on my Office's website.

ORIGINAL SIGNED

Sean LaPrairie
Adjudicator
Office of the Information and Privacy Commissioner

Distribution List:

- Custodian
- Complainant