

## Information Privacy and Disclosure Legislation<sup>1</sup>

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### *Background*

Occupational therapists (OTs) are required to *safeguard client information from unwarranted disclosure* (Code of Ethics indicator 1.6). They are also required to *communicate screening and assessment results and outcomes of the occupational therapy process with key participants/appropriate parties with consideration of confidentiality* (Standards of Practice indicators 2.9, 4.5, 7.4).

There are five pieces of provincial information privacy and disclosure legislation relevant to occupational therapy practice in Alberta and one piece of federal legislation applicable to occupational therapists providing services to clients that are physically located outside of Alberta (and possibly on First Nation reserves – see below). Each piece of legislation establishes rules regarding the collection, use, disclosure of, and access to information.

As there are differences between each of the Acts, it is important to be aware which govern your practice setting. In some settings, more than one may apply.

This practice guideline outlines the:

- *Health Information Act*
- *Personal Information Protection Act*
- *Freedom of Information and Protection of Privacy Act*
- *Personal Information Protection and Electronic Documents Act*
- *Children's First Act* (and *Child, Youth and Family Enhancement Act*)
- *Protection of Persons in Care Act*

Examples of when/how each may apply are provided as it is dependent on your employer/who you are contracted by, your client population and/or which province your client is physically located in when occupational therapy services are delivered.

**NOTE:** This guideline has been prepared for guidance and convenience of reference only. The official Acts and Regulations referred to in this document should be consulted for all purposes of interpreting and applying the law.

### *Health Information Act (HIA)*

The [\*Health Information Act\*](#) (HIA) governs the collection, use, disclosure, and access to health information

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<sup>1</sup> ACOT would like to acknowledge Physiotherapy Alberta College + Association for sharing content for this practice guideline from Appendices A and F of their **Privacy Guide for Alberta Physiotherapists** (March 2019).

collected, used and disclosed in conjunction with the provision of health services by custodians and/or affiliates. Custodians are listed in both the HIA and the [Health Information Regulation](#) (HIR).

HIA requires that health information collected, used and disclosed be limited to only the amount essential to carry out the intended purposes.

## When Does HIA Apply?

HIA applies to health information including registration information (such as name, personal health number, gender, and date of birth) and diagnostic, treatment and care information. It governs health information collected in connection to the provision of a health service (defined under the HIA) by an occupational therapist if/when the occupational therapist is employed or contracted by a custodian or affiliate.

Custodians in the HIA/HIR include (see the HIA/HIR for the full listing):

- Alberta Health Services (AHS)
- Covenant Health
- Any continuing care facility owned, operated or contracted by AHS
  - This includes wholly-owned subsidiaries such as Capital Care, Carewest and for- or not-for-profit supportive living or long-term care operators (such as Good Samaritan Society, Bethany Care, Shephard's Care, and many others – see here for [full listing](#))
- Regulated chiropractors, optometrists, pharmacists, dentists, registered nurses, denturists, midwives, opticians, physicians and surgeons, podiatrists, dental hygienists

Affiliates in the HIA/HIR include (see the HIA/HIR for the full listing):

- Any employee of a custodian
- A person that performs a service for a custodian as a volunteer or student
- A custodian that wishes to be an affiliate of another custodian for the ease of information sharing

At this time, the majority of OTs in Alberta would be considered affiliates in relation to the health and personal information they collect during service delivery. They are required to follow and adhere to the information and privacy policies and procedures set out by the custodians/affiliates they are employed by.

NOTE: As OTs are not listed as direct custodians of health information, OTs in private practice do not have obligations under the HIA unless they are contracted by a custodian or affiliate or they are providing services under the [Diagnostic and Treatment Protocols Regulation](#) - DTPR (HIA applies to DTPR records). The requirements outlined in the *Personal Information and Privacy Act* (PIPA) are to be adhered to instead.

## Information Storage and Retention Under HIA

Section 60 of the HIA outlines a custodian/affiliate's responsibility to protect the confidentiality and security of health information throughout the "entire record lifecycle." HIA does not prescribe how the records should be stored or for how long so refer to your employer's record storage and retention policies for guidance.

## Consent for Information Disclosure Under HIA

Under HIA, client/guardian consent is not required before a custodian or affiliate can disclose health information to another custodian or affiliate for the purpose of continuity of care or client safety. Consent is

required however to disclose information to a third-party (e.g. other non-HIA custodian or affiliate health care providers, persons/lawyers working on a client's behalf, or insurers, etc.).

## *Personal Information Protection Act (PIPA)*

The [Personal Information Protection Act](#) (PIPA) is Alberta's private sector privacy law. PIPA allows organizations to collect, use and disclose personal information for reasonable purposes

### When Does PIPA Apply?

PIPA applies to the personal and employee information collected, used and disclosed by OTs in private practice (sole proprietor or group/clinic) or those employed/contracted by a private organization or agency.

### Information Storage and Retention Under PIPA

Section 35 of the PIPA indicates that *"an organization may retain personal information only for as long as the organization reasonably requires the personal information for legal or business purposes."*

An example of a "legal purpose" to retain records would be if a client/parent/guardian disagrees with the results or recommendations of an assessment and decides to file a lawsuit. In Alberta, there is a limit to when a civil action can be filed according to the *Limitations Act*.

ACOT has aligned record retention requirements with the timeframe noted in the *Limitations Act* and thus recommends that: OTs must store records for at least 11 years and three (3) months after the last date of service provided or 11 years and three (3) months after the client turns 18 (if they were a minor when services were delivered).<sup>2</sup> If your employer/contracting organization requires storage for a longer period, adhere to whichever time period is longer.

### Consent for Information Disclosure Under PIPA

PIPA requires that client/guardian consent be obtained for the collection, use and disclosure of client or employee personal information. PIPA does not specify the form of consent required (verbal versus written). Under PIPA, you must have reasonable purposes for the collection, use or disclosure of personal information, and you must limit the amount of information to what is reasonable to meet the intended purposes.

## *Freedom of Information and Protection of Privacy Act (FOIP)*

The [Freedom of Information and Protection of Privacy Act](#) (FOIP) establishes the rules for collecting, using, disclosing and accessing information/records in the possession of a "public body" defined as:

- Alberta government department, branch or office.
- Agency, board, commission, corporation, office or other body designated as a public body (e.g. Workers' Compensation Board - WCB<sup>3</sup>).

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<sup>2</sup> ACOT has updated the guidance on record retention based on recent legal advice. See ACOT's **Standards for Documentation** practice guideline for an explanation of this retention period

<sup>3</sup> Occupational therapists or employers with WCB contracts are also governed by the [Workers' Compensation Act](#), which gives the WCB a right of access to information in a patient's file. FOIP may also apply to records related to WCB claims, depending on the circumstances.

- Local public body (e.g. school boards/districts, regional health authority, universities/colleges/technical institutes, municipality or a municipal board).

FOIP applies to all records in the public body's custody/control and is broadly defined to include "information in any form," and can include information stored in any manner.

### When does FOIP apply?

FOIP applies to information collected, used and disclosed when an occupational therapist is employed or contracted by a school/school board/district. FOIP can also apply to occupational therapists employed or contracted by a HIA custodian or affiliate for the handling of information that does not fall under the definition of health information (e.g. employment records or contracts).

### Information Storage and Retention Under FOIP

Section 38 of the FOIP Act indicates that public bodies "must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction." It is up to each public body to determine records retention disposition schedules. Your employer should have record storage and retention policies in place that you can refer to (or written in your contract if you are contracted, not directly employed, by a public body).

NOTE: For OTs employed or contracted by school boards/districts, private schools or private operators of early childhood services (ECS) programs, there is additional guidance on record retention and disclosure in the [Student Records Regulation](#) that your employer/contracting organization need to be familiar with.

### Consent for Information Disclosure Under FOIP

The FOIP Act requires that consent for release of personal information be obtained in writing, in electronic form or provided orally. If oral consent is granted, the identity of the individual giving consent must be verified and the consent documented so that *"the consent is accessible and capable of being retained by the public body so as to be usable for subsequent reference."*

## *Personal Information Protection and Electronic Documents Act (PIPEDA)*

The [Personal Information Protection and Electronic Documents Act](#) (PIPEDA) is federal legislation that establishes the rules for the collection, use, disclosure of, and access to personal information for *"commercial activities."* Personal information is broadly defined as *"information about an identifiable individual"*.

### When Does PIPEDA Apply?

PIPEDA applies to occupational therapists where client information is being transferred across provincial/territorial boundaries in Canada. This includes, communicating and/or delivering occupational therapy services to clients who are physically located in a different province/territory or communicating with a third-party insurer in another province/territory.

It also applies to First Nation communities as they are under federal jurisdiction. If you hold a contract with a First Nation, you will want to check the details within your contract to see which privacy legislation you are to follow. PIPA is considered "substantially similar" to PIPEDA, so any of the information privacy practices you have in place for PIPA will suffice to adhere to PIPEDA as well.

## Information Storage and Retention Under PIPEDA

PIPEDA requires information holders to “protect all personal information (regardless of how it is stored) against loss, theft, or any unauthorized access, disclosure, copying, use or modification.” As PIPEDA does not specify how long records should be retained, follow the guidance described above for PIPA

## Consent for Information Disclosure Under PIPEDA

PIPEDA requires consent to be obtained for the collection, use and disclosure of personal information. As with PIPA, the collection, use or disclosure of personal information should be limited to what is reasonable to meet the intended purposes.

### *Children First Act (CFA)*

Section 4 of the [Children First Act](#) (CFA) expands on the collection, use and disclosure requirements listed in the HIA, FOIP and the [Child, Youth and Family Enhancement Act](#) (CYFEA) to allow for the appropriate sharing of information between individuals and organizations planning or providing services for children.

The CFA includes “service providers” in addition to custodians/affiliates as being able to collect, use and disclose personal and health information relating to a child.

Service providers listed in the CFA include (see the CFA for the full listing):

- Government ministries
- Educational bodies
- An individual or organization that provides programs or services for children under an agreement with a public body as defined in the FOIP (i.e. early childhood services program private operators)

### When Does CFA Apply?

CFA applies to OTs that are contracted or employed by schools or agencies/organizations that receive funding from Alberta Education or Children’s services, or OTs that receive funding through Family Supports for Children with Disabilities (FSCD).

## Consent for Information Disclosure Under CFA

Personal information relating to a child or guardian, or health information relating to a child may be released without consent if the disclosure is in the best interest of the child (and safety of the child in the case of child abuse per the CYFEA). More information on who, when and for what purpose a child’s personal health information can be released can be found in the [Guide to Information Sharing under the Children First Act](#). Information on how to recognize and report child abuse can be accessed [here](#).

### *Protection of Persons in Care Act (PPCA)*

The *Protection for Persons in Care Act* (PPCA) requires the reporting of abuse, and promotes the prevention of abuse, involving adult clients who receive publicly funded care or support services.

## When Does PPCA Apply?

The PPCA applies to OTs that work with adult clients who receive care or support services in hospitals, long-term-care or supportive living settings, home care, group homes, shelters, mental health or addiction treatment centres, or Persons with Developmental Disabilities (PDD) funded supports and services.

## Consent for Information Disclosure Under PPCA

Personal or health information can be released without a client or guardian's consent if an OT is aware that a client in care is being abused or is at risk of abuse. More information on what is defined as abuse as well as reporting responsibilities can be found in the [Guide to Understanding the \*Protection of Persons in Care Act\*](#).

## *Release of Information Process*

As OTs are required to safeguard client information from unwarranted disclosure, ACOT often receives calls about when and what information can and cannot be released and what type of consent is required prior to doing so. See **Appendix A** on page 7 of this document for a flow diagram that outlines the process for information release.

The Government of Alberta has also prepared an [Information Sharing Decision Tree](#) to assist in determining when consent to release information is required according to the various legislation.

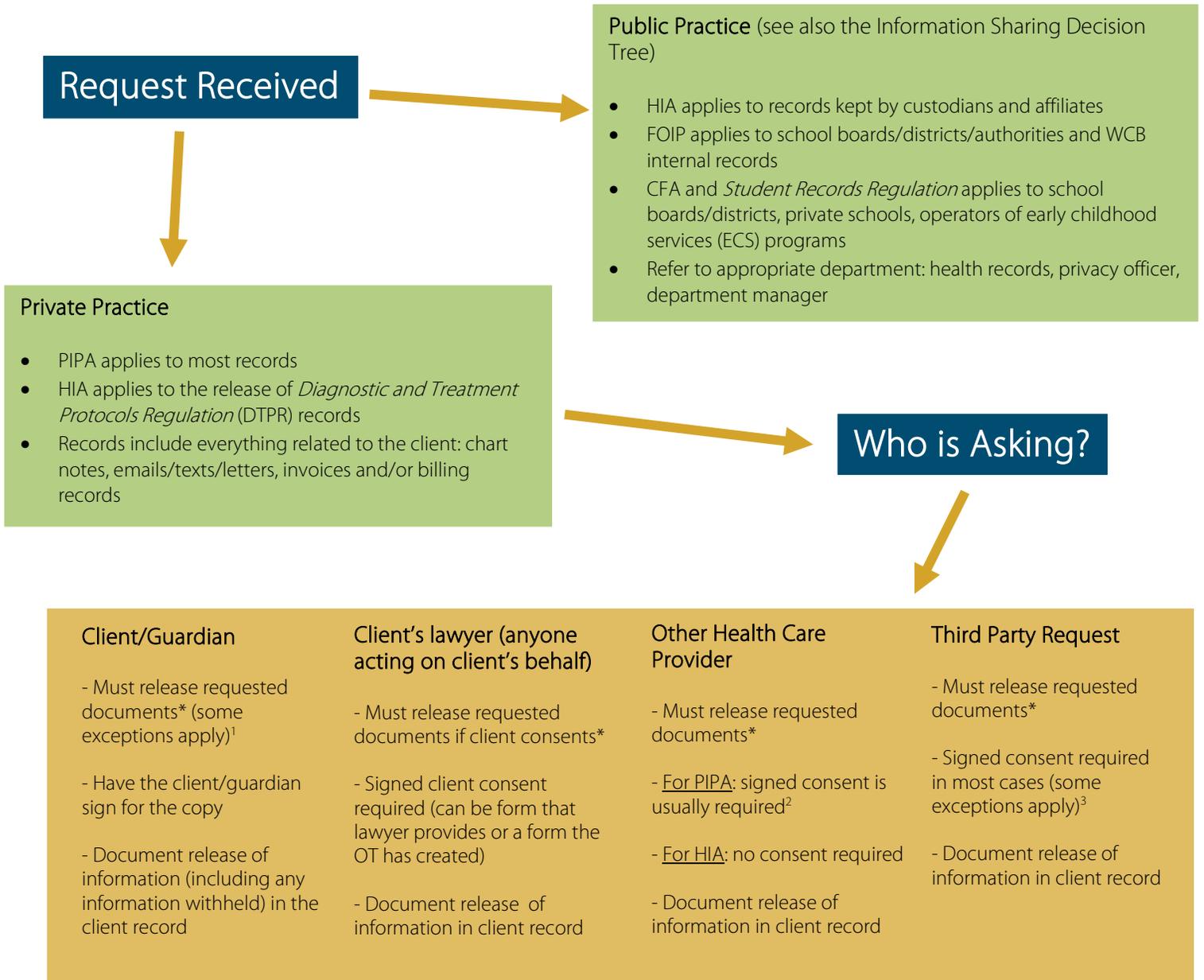
## *Additional Resources*

- Physiotherapy Alberta College + Association (PACA) - [Privacy Guide for Alberta Physiotherapists](#) (March 2019)
- [Disclosing personal information](#) (Government of Alberta)
- The Office of the Information and Privacy Commissioner has also prepared [Guidelines for Obtaining Meaningful Consent](#) which includes a checklist of considerations for informing your clients about the information you are collecting and potentially disclosing.
- The Government of Alberta has free e-courses on the topic of information sharing that may be applicable to your practice. Topics include:
  - Information Sharing
  - Information Sharing Under the *Children First Act*
  - Information Sharing in Practice

Information on these e-courses can be accessed from: [Information Sharing Strategy – Courses & Training](#)

# Appendix A: Release of Information Process

(Adapted from Appendix F of PACA's Privacy Guide)



\* **NOTE:** PIPA allows for reasonable fees to be charged for preparing records for release (e.g. for printing electronic records or copying paper records); if a request for information is not addressed within 45 days, a client/guardian may file a complaint to the Office of the Information and Privacy Commissioner.

<sup>1</sup> You can redact portions of a record if the information would reveal personal information about another individual or could threaten the life or security of another individual. PIPA Section 24(2); HIA 11(1).

<sup>2</sup> PIPA includes provisions that allow for release of information without consent if the disclosure is in the interests of the client and consent cannot be obtained in a timely way, or if the individual would not be reasonably expected to withhold consent.

<sup>3</sup> PIPA allows for the disclosure of information when required by a statute or regulation of Alberta. For example, the *Health Professions Act* does not require client consent if client records are requested by a regulatory body; HIA applies to DTPR records; and the *Workers' Compensation Act* and FOIP apply to WCB records.