8
PERSONAL HEALTH INFORMATION PROTECTION ACT, 2004

The Health and Emergency Medical Services Committee recommends the adoption of the recommendations contained in the following report, October 14, 2004, from the Commissioner of Health Services and Regional Solicitor:

1. RECOMMENDATIONS

It is recommended that:

1. Health and Emergency Medical Services Committee and Regional Council approve the Privacy and Information Practices Policy *(Attachment 1)* and Written Public Statement *(Attachment 2)* developed to ensure compliance with the *Personal Health Information Protection Act, 2004* ("the *Act*").

2. Health and Emergency Medical Services Committee and Regional Council approve the actions taken by staff outlined in this report to ensure compliance with the *Act* including the designation of "contact persons" for purposes of the *Act*.

2. PURPOSE

The purpose of this report is to provide an overview of the *Act* and its implications on The Regional Municipality of York ("the Region").

The purpose of this report is also to seek approval of Health and Emergency Medical Services Committee and Regional Council of the Privacy and Information Practices Policy and Written Public Statement and all other actions taken by Regional staff to ensure compliance with the *Act* by November 1, 2004.

3. BACKGROUND

The *Act*, which was introduced by the Minister of Health and Long Term Care, received Royal Assent on May 20, 2004 but did not come into effect until November 1, 2004.

The purpose of the *Act* is to establish rules for collection, use and disclosure of "personal health information" by entities defined as "health information custodians" and to provide individuals with a right to request access to and correction of their own personal health information subject to limited exceptions set out in the *Act*.

3.1 Personal Health Information

Personal health information is information in any form that identifies an individual and that relates to his or her health or health care including health history, health programs or services, payments or eligibility for health care, health care providers, substitute decision makers and health card number.

Personal health information does not include identifying information about employees maintained for purposes other than the provision, or assistance in the provision, of health care. That is, in general terms, employee health information is not governed by the *Act*.

Employee health information would only be governed by the *Act* when it relates to the provision of health care, for example, if York Region Emergency Medical Services collects personal health information about an employee as a result of the provision of health care during an ambulance call that information would be governed by the *Act.*

3.2 Health Information Custodians

Health information custodians are defined to include a Medical Officer of Health and board of health within the meaning of the *Health Protection and Promotion Act*, a home within the meaning of the *Homes for the Aged and Rest Homes Act*, an ambulance service within the meaning of the *Ambulance Act* and programs or services for community health or mental health whose primary purpose is the provision of health care.

Given the Region operates two homes under the *Homes for the Aged and Rest Homes Act* (Newmarket Health Centre and Maple Health Centre) and an ambulance service pursuant to the *Ambulance Act*, and given the Region is a board of health within the meaning of the *Health Protection and Promotion Act* and provides early identification and intervention services to special needs children through Early Intervention Services of the Community Services and Housing Department, the Region is comprised of five "health information custodians" for purposes of the *Act*.

4. ANALYSIS AND OPTIONS

There are two types of obligations imposed upon the health information custodians that form part of the Region pursuant to the *Act*: implementation and on-going obligations.

In meeting the obligations imposed pursuant to the *Act*, the Solicitor – Health Services, the Health Services Department and Early Intervention of the Community Services and Housing Department worked in consultation with an information and privacy consultant.

4.1 Privacy and Information Practices Policy and Written Public Statement

By November 1, 2004, the health information custodians that form part of the Region were required to implement a Privacy and Information Practices Policy and Written Public Statement in accordance with the provisions of the *Act*.

The Privacy and Information Practices Policy defines when, how and the purposes for which the health information custodians of the Region collect, use, modify, disclose, retain and dispose of personal health information and the administrative, technical and physical safeguards maintained with respect to personal health information.

The Written Public Statement provides the public with a description of the Privacy and Information Practices Policy and outlines the procedure by which members of the public may obtain access to or request correction of their own personal health information in the

custody and control of the health information custodians of the Region and the procedure by which members of the public may complain about the health information custodians' compliance with the Privacy and Information Practices Policy and the *Act*.

The Privacy and Information Practices Policy and the Written Public Statement are both located on the Health Services Department and Community Services and Housing Department website to ensure the public is aware of the commitment to protecting the privacy of their personal health information.

4.2 Designation of Contact Persons

By November 1, 2004, the health information custodians that form part of the Region were also required to designate "contact persons" to ensure compliance with the *Act*, to ensure staff are informed of their duties under the *Act*, to respond to complaints and inquiries about compliance with the Privacy and Information Practices Policy and the *Act*, to respond to requests from individuals for access to their own personal health information and to respond to requests from individuals for correction of their own personal health information, in consultation with health care professionals.

The Manager of Business Services of the Health Services Department and the Manager of Early Intervention Services of the Community Services and Housing Department have been designated as "contact persons" for purposes of the *Act*.

4.3 Duties Respecting Collection, Use and Disclosure of Information

Beginning on November 1, 2004, the *Act* provides that personal health information cannot be collected, used or disclosed without the consent of the individual to whom the personal health information relates unless the collection, use or disclosure is permitted or required by the *Act*.

For example, the *Act* permits health information custodians to disclose personal health information without consent in certain prescribed circumstances including:

- for providing health care to an individual where it is not reasonably possible to obtain consent in a timely manner, for example, the individual is seriously ill
- to the Minister of Health and Long-Term Care for monitoring payments for health care or for determining or providing funding for the provision of health care
- to the Chief Medical Officer of Health or local Medical Officer of Health
- where necessary to eliminate or reduce a significant risk of serious bodily harm
- for the purpose of complying with a summons, subpoena or court order
- to a person carrying out an investigation authorized by a warrant or by law
- if another Act permits or requires the disclosure

4.4 Training Initiative

To ensure employees were informed of their responsibilities under the *Act* prior to November 1, 2004, the Solicitor – Health Services held nine mandatory half day training sessions in various office locations throughout the Region in October. Additional training sessions will be held each year for new employees and for existing employees to remind them of their responsibilities under the *Act*.

4.5 Requests for Access or Correction of Personal Health Information

Individuals have the right to request access to and correction of their own personal health in the custody or control of the health information custodians of the Region subject to the limited exceptions set out in the *Act*.

The *Act* sets out detailed procedures to be used by "contact persons" for granting or refusing an individual's request for access to or correction of their own personal health information and the timelines for responding to such requests. An individual who disagrees with the decision is entitled to make a complaint to the Ontario Information and Privacy Commissioner.

5. FINANCIAL IMPLICATIONS

All costs related to the implementation of the *Act* and training of Regional employees on their responsibilities respecting the collection, use and disclosure of personal health information were accommodated in the 2004 Health Services Department Business Plan and Budget.

6. LOCAL MUNICIPAL IMPACT

The implementation of the *Act* will ensure that the personal health information of all residents is protected and their rights of privacy are respected.

7. CONCLUSION

It is recommended that Health and Emergency Medical Services Committee and Regional Council approve the Privacy and Information Practices Policy and Written Public Statement developed to ensure compliance with the *Act*.

It is also recommended that Health and Emergency Medical Services Committee and Regional Council approve all the actions taken by staff outlined in this report to ensure compliance with the *Act* including the designation of "contact persons" for the *Act*.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause was included in the Agenda for the November 4, 2004 Committee meeting.)