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Produced by the Information Sharing Committee on behalf of Alberta Children and Youth Initiative (ACYI) and the Office of the Prevention of Family Violence and Bullying.

The ACYI is a collaborative partnership of government ministries working together on issues affecting children, youth, and families. Partners include:

- ◆ Alberta Children's Services
- ◆ Alberta Education
- ◆ Alberta Health and Wellness, including:
  - ◆ Alberta Alcohol & Drug Abuse Commission (AADAC)
  - ◆ Alberta Mental Health Board
- ◆ Alberta International, Intergovernmental and Aboriginal Relations
- ◆ Alberta Seniors and Community Supports
- ◆ Alberta Employment, Immigration & Industry
- ◆ Alberta Solicitor General and Public Security
- ◆ Alberta Justice and Attorney General

With assistance from Christie Communications, Edmonton, AB, Canada.



## *Course Objectives*

What you will learn:

- ◆ Information sharing goal, general principles and steps.
- ◆ Purpose of the Information Sharing Guideline and Overview Document.
- ◆ What primary legislation guides how public and private sector organizations manage privacy and access in Alberta.
- ◆ The types of organizations that share information.
- ◆ Information sharing in common programs/integrated services.
- ◆ The requirements and process of consent-based information sharing.
- ◆ The entry points for integrated services/common programs.
- ◆ The main considerations for developing a terms of reference.
- ◆ Information sharing myths and facts.

## *An Overview of Information Sharing*

### **Why Share Information?**

Family issues cross many government ministries and organizations. Public bodies and agencies providing care and support to children, youth and their families need to be able to share client personal information with other public bodies and agencies. This serves to enhance and more effectively deliver those services in a collaborative and integrated fashion.

Other benefits include:

- ◆ Services delivered by organizations in isolation of each other may be less effective.
- ◆ Limited resources require working together.
- ◆ Working together increases the support network for the child, youth and their family.
- ◆ Collaboration, including collaboration with the family, improves continuity of care.



## A Misconception

Many staff working with children, youth and families have expressed that they are reluctant to share information regarding these families with staff from other sectors because they perceive that existing privacy legislation prevents them from doing so.

Although information sharing across ministries, organizations and mandates is complex, current privacy legislation allows for information sharing within clearly defined boundaries.

## Overall Goal

The overall goal of information sharing is to support positive outcomes for children, youth and families within the context of integrated, coordinated and effective service delivery.

## Principles of Information Sharing

The following principles provide direction for sharing information related to providing services and supports to children, youth and families:

- ◆ **Respect for Privacy** - The right to individual privacy of children, youth and families will be respected. Only the minimum amount of personal information necessary may be shared within the requirements of existing legislation.
- ◆ **Clarity** - Children, youth and families will understand why and how their information will be shared, how much information will be shared and how services will be provided as a result of the information being shared.

- ◆ **Consent-Based** - Informed consent from the parent/guardian, or child/youth, where appropriate, is the preferred method of enabling the sharing of information among professionals and service providers.
- ◆ **Coordinated Services and Supports** - Children, youth and families are better served when services and supports are provided in a holistic manner that considers the needs and resources required to meet those needs in an integrated approach, rather than in isolation.
- ◆ **Balance** - There needs to be a balance between disclosure of personal information and protection of privacy within the context of existing legislative requirements.

Relevancy is an important consideration. What information is necessary to be collected? What information needs to be shared? Information sharing should only be on a need to know basis. However, this can only be determined if there is an understanding of each other's roles and mandates. Under the *Health Information Act* (HIA), relevancy considerations include:

- ◆ **Least Amount of Information** - Determine exactly what information is required/necessary for the specific task/purpose.
- ◆ **Highest Level of Anonymity** - What degree/level of information is required?
- ◆ **Need to Know** - Depending on the role/duties to complete a particular task, what information is required?



## Integrated Service Approach

Services to children, youth and families are not always effective or complete when delivered in isolation from other service providers and without involvement of the family and their natural supports. Services and plans may at best be successful in dealing with only a portion of the child's, youth's and family's needs. Those successes may not be sustainable in the long term if other issues are not addressed.

Service providers often work together in an integrated way by coordinating their service plans and working jointly with children, youth and families. These relationships may be formal or informal. A formal relationship is an "Integrated Service" under FOIP. As defined by the *Freedom of Information and Protection of Privacy Act* (FOIP), integrated service means the program or service has several distinct components, each of which may be delivered separately, but when considered together, comprise the complete program or service.

Under FOIP, participants within an integrated service can share information, with or without consent. Organizations who need to share information on an ongoing basis should formalize their involvement in an integrated service approach.

This integrated service approach does not however, prohibit the disclosure of personal information on a case-by-case basis provided that such disclosure is made in accordance with the relevant privacy legislation or governing legislation.

## Consent-Based Approach

A formal integrated service delivery approach may not satisfy all of the issues regarding information sharing in and of itself. This is especially true for organizations that are not covered under FOIP (e.g., a non-profit agency) or for organizations that are covered under HIA, when they need to access or share information. A consent-based approach should therefore be used whenever possible.

A consent-based approach within the integrated service delivery will also ensure that children, youth and their families are provided with better information about the services they will be provided. This will include information on how their personal information will be used and disclosed and which service providers will be involved in the delivery of services, allowing them to be a part of the process from the outset.

Although organizations that fall under HIA may participate in an integrated service approach, consent is generally required before health information can be disclosed. (Note that lack of consent does not preclude clients from being present during discussions.)

Consent is a requirement in many situations under the FOIP legislation, and in most situations under HIA.

Consent does not authorize collection under FOIP or HIA.

A consent-based approach helps to ensure that families are well informed and involved.



## General Approach to Information Sharing

- ◆ **Identify the Issues** - Service providers need to discuss what information is needed and who has it. Information should be shared on a "need to know" basis. What do you need to know or disclose to best serve the child, youth or family?
- ◆ **Network** - Build relationships. Develop an understanding of each other's roles and mandates and how they interrelate with your own.
- ◆ **Check Assumptions** - Sometimes people disagree on what information needs to be shared. Discuss why you need to know and what you hope to accomplish for the child, youth or family. Be open to other's perspectives.
- ◆ **Determine Necessary Information** - If there are disagreements among service providers and/or with the family, develop an understanding of what information is necessary from the perspective of the organization and individual you are working with.
- ◆ **Ensure a Common Understanding** - Make sure involved service providers and the family have a common understanding about information sharing including what information can be disclosed, how much information can be disclosed and the best mechanism for doing that. Try to understand and reach agreement. Reaching an agreement on why information is needed to enable better service delivery and what information should be shared will require ongoing communication, patience and trust.

- ◆ **Use Available Tools** - Many tools are available to assist you with information sharing. These tools include a consent form, the Information Sharing Guideline, a one page information sharing overview document, legislation, terms of reference and protocols. This course will provide more information about these tools.
- ◆ **Document Information** - Document information that you requested or shared including what information was disclosed, to whom, when it was disclosed and the subsection(s) of Section 40 in the FOIP Act that authorized the disclosure. When disclosing a record under HIA, a custodian must make note of the disclosure in compliance with section 41 of the Act.

## Questions

When a request for information is made, ask:

- ◆ Who is making the request?
- ◆ What information is being requested?
- ◆ What is the purpose of the request?

The answers to these three questions will help determine how to respond to the request.



## The Information Sharing Guideline

The primary purpose of the Information Sharing Guideline is to enhance collaborative and holistic service delivery to children, youth and their families in a community-based environment. The Guideline supports the delivery of integrated services to meet the needs of children, youth and families. It is approved and supported by the Government of Alberta and discusses information sharing in a manner that is in compliance with existing privacy legislation (FOIP Act and HIA). As such, the guideline:

- ◆ Enables sharing of necessary information about children, youth and families among service providers, and minimizes real or perceived barriers to information sharing.
- ◆ Promotes a common understanding of information sharing parameters.
- ◆ Supports an integrated approach to service delivery by strengthening the ability to share information about children, youth and families based on consent.
- ◆ Is approved by the Government of Alberta and meets requirements under FOIP and HIA.

The Information Sharing Guideline includes important sections of FOIP and HIA:

- ◆ Appendix 2: Sections 37.1(1) - 45 of the *Freedom of Information and Protection of Privacy Act*
- ◆ Appendix 3: Sections 29-50 of the *Health Information Act*

## Overview Document

The purpose of the Overview Document, entitled "Information Sharing Overview for Children and Youth in Alberta," is to provide a quick reference guide for service professionals to help them make decisions on how and when to share information about children, youth and families.

The Overview document is a companion document to the Information Sharing Guideline and Appendices, and was created by the partnering Ministries of the Alberta Children and Youth Initiative (ACYI).

The Overview Document is approved by government and provides guidelines on information sharing in a manner that is compliant with the FOIP Act and HIA.



## Privacy Legislation

### Alberta Privacy and Access Legislation

Privacy legislation guides how both public sector and private sector organizations manage privacy and access to information in Alberta.

Alberta public sector legislation:

- ◆ *Freedom of Information and Protection of Privacy Act (FOIP)*
- ◆ *Health Information Act (HIA)*

Alberta private sector legislation:

- ◆ *Personal Information Protection Act (PIPA)*

While AADAC is a public body and subject to FOIP, AADAC's legislation (the *Alberta Alcohol and Drug Abuse Act*) prevails with regard to the disclosure of client information. As such, the ability to disclose personal information is limited and requires client consent in most instances although it can also be disclosed for health and safety reasons.

Some services delivered by First Nations, either directly or through contracted agencies, may not be covered under the FOIP Act. These services need to be examined in greater detail in order to determine how they fit within an information sharing process.

Some organizations may not fall under provincial privacy legislation. These organizations may include independent agencies (profit and not for profit), and the RCMP.

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

FOIP contains a set of requirements that a public body must abide by. These guide how the public body should be providing access to information or protecting the privacy of a third party's personal information that is in its custody and/or under its control. (Personal information includes health information under FOIP, for public bodies.)

FOIP applies to "public bodies" as defined in Section 1(p) of the Act. Generally speaking it applies to provincial government departments, agencies, boards and commissions. It also applies to municipalities, school boards, police, post secondary institutions, housing management bodies and, through extension, contracted agencies of public bodies.

The purpose of FOIP is to provide a right of access to records held by public bodies and to protect the personal privacy of Albertans by controlling the manner in which a public body may collect, use and disclose personal information.

While the FOIP Act is often perceived as having the effect of limiting the disclosure of personal information, it is also enabling legislation in that it outlines many circumstances under which public bodies can share and disclose personal information.

FOIP limits sharing to only the information which is needed to do the job.

It is important to not lose sight of the need to protect the privacy of the individuals whose information you manage.



Protecting that privacy while deciding what can be shared in order to better provide services to your clients is a critical balancing act.

### ***The Health Information Act (HIA)***

The *Health Information Act* (HIA) applies to health information held by custodians and provides the rules for the collection, use, disclosure and protection of health information primarily within the public funded health system. The purpose of HIA is to provide a right of access to health information and to protect the privacy of health information for Albertans.

Under HIA, health information means any of the following: diagnostic treatment and care information; health and services provider information; and registration information.

HIA is based on principles similar to FOIP, but differs from FOIP in several key areas. At the heart of HIA is a firm understanding that custodians require personal health information in order to provide and manage health services. The concept of controlled sharing means that custodians are permitted to obtain and use the amount and type of health information that is necessary for them to perform their mandate. HIA creates a "controlled arena" around those custodians who are subject to HIA. Disclosure outside of this arena can only be done within limited circumstances, including consent, care and treatment and for health and safety reasons or as required by other legislation.

Custodians of health information are individual health services providers or organizations that are primarily in the publicly funded health sector who have health information in their custody or under their control (e.g., Alberta Health and Wellness, regional health authorities, physicians who bill Alberta Health Care, etc.).

HIA is primarily consent-based but does authorize limited and specific disclosures without consent (e.g., to persons responsible for the care of individuals; for health and safety reasons).

Some organizations may be subject to both FOIP and HIA.

### ***The Personal Information Protection Act (PIPA)***

PIPA is provincial private sector privacy legislation substantially similar to the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) that captures most other private sector organizations not subject to PIPEDA in Alberta.

The purpose of PIPA is to govern the collection, use and disclosure of personal information by private sector organizations in a manner that recognizes the right of an individual to have his or her personal information protected and the need of organizations to collect, use and disclose personal information for purposes that are reasonable.



PIPA generally applies to all organizations in the private sector (other than non profit organizations) and covers the personal information of identifiable individuals, including employee information. PIPA applies to the collection, use or disclosure of personal information by certain non-profit organizations if done in connection with a commercial activity.

PIPA Does NOT apply to a public body or to any information that is under the control of a public body.

### Parent Legislation

Many programs and services are governed by parent legislation that also addresses confidentiality and information disclosure.

Parent legislation is legislation that guides or provides the mandate for the different government organizations.

Examples of this legislation that are relevant to an information sharing process include:

- ◆ *Alberta Alcohol and Drug Abuse Act*
- ◆ *Child, Youth and Family Enhancement Act*
- ◆ *Hospitals Act*
- ◆ *Mental Health Act*
- ◆ *Protection Against Family Violence Act*
- ◆ *Protection of Children Involved in Prostitution Act*
- ◆ *School Act/Student Record Regulation*
- ◆ *Income and Employment Supports Act*
- ◆ *Youth Criminal Justice Act (Federal).*

### Other Privacy Legislation

The Federal Government has also enacted privacy legislation that may impact information sharing within Alberta. This legislation includes:

- ◆ ***Access to Information Act (Federal)*** - Allows access to personal information held by federal public sector organizations (e.g., RCMP, federal government ministries).
- ◆ ***Privacy Act (Federal)*** - Controls the protection of information by federal public sector organizations (e.g., RCMP, federal government ministries).
- ◆ ***Personal Information Protection and Electronic Documents Act, PIPEDA (Federal)*** - Currently in place for the federally regulated private sector. PIPEDA impacts the rest of the private sector unless covered under PIPA.

The purpose of PIPEDA, a federal enactment, is to protect personal privacy and provide access to personal information in the private sector. It also allows for the use of electronic signatures for commercial transactions and the correction of personal information. PIPEDA applies to federally regulated businesses and to Alberta organizations that collect, use and disclose personal information across provincial or international borders. PIPEDA does not apply to employee information of provincially regulated businesses. PIPEDA Does NOT apply to a public body or to any information that is under the control of a public body.



## Legislation is Enabling

Privacy legislation (FOIP, HIA, PIPA) is enabling and allows for information sharing in certain situations. The key is defining the parameters under which information sharing can take place.

The following Acts and sections allow for sharing:

- ◆ FOIP (section 40) even where other legislation is silent.
- ◆ HIA (section 35).
- ◆ PIPA (section 20).

Parent legislation such as the *Child, Youth and Family Enhancement Act*, the *School Act*, and the *Youth Criminal Justice Act* (Canada) all allow for the sharing of information in certain situations.

### FOIP

The ability to share and/or disclose personal information is restricted by the provisions of FOIP. There are, however, a number of enabling provisions that allow for the disclosure of personal information including:

- ◆ Disclosure for the purpose for which the information was collected or compiled, or for a use consistent with that purpose,
- ◆ If the individual the information is about has consented to the disclosure,
- ◆ Disclosure to an employee of the public body if the information is necessary for the performance of the duties of the employee,
- ◆ Disclosure to an employee of a public body if it is necessary for the delivery of a common or integrated program or service and for the performance of the

duties of the employee or member to whom the information is disclosed,

- ◆ Disclosure for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit,
- ◆ Disclosure for the purpose of complying with an enactment of Alberta or Canada, or with a treaty, arrangement or agreement under an enactment of Alberta or Canada.

It should be noted that any disclosures of personal information under section 40 of FOIP are limited to only that which is necessary for the stated purpose.

### HIA

The ability to share personal health information under HIA is largely dependent on informed consent. Exceptions to the disclosure of health information without consent are specific and limited. Examples include for care and treatment purposes, disclosure for the purpose of health and safety, audits, or compliance with another piece of legislation.

### Third-Party Oversight Process

All privacy legislation contains provisions that recognize a third party oversight process, should an individual not be satisfied with information sharing decisions made or actions undertaken by the organization.

The Commissioner's office, should they receive complaints, work with organizations in a learning/best practice approach – not in a punitive manner. Fines and penalties only apply if there is a willful disregard.



## Green, Yellow and Red Light Considerations

The Overview Document uses the concept of green light, yellow light, and red light considerations for sharing information.

### Green Light

Generally speaking, pursuant to FOIP, Personal information CAN be shared under any one of the following circumstances:

- ◆ With written consent.
- ◆ To avert or minimize imminent danger to the health or safety of any person.
- ◆ To report a child who might need intervention under the *Child, Youth and Family Enhancement Act* and to report concerns on an ongoing basis.
- ◆ Where organizations that are subject to FOIP are involved in a common program or integrated services.
- ◆ By Order of the Court.
- ◆ As under the *Youth Criminal Justice Act* (Canada) to facilitate the rehabilitation of a young person.
- ◆ To cooperate with a police and/or child protection investigation.

Generally speaking, pursuant to the HIA, Health information CAN be shared if the situation meets at least one of the following:

- ◆ With written consent.
- ◆ To a person who is responsible for providing continuing treatment and care to the individual (need not be a formal health services provider).
- ◆ To avert or minimize imminent danger to the health or safety of any person.

- ◆ To report a child who might need intervention under the *Child, Youth and Family Enhancement Act* and to report concerns on an ongoing basis.
- ◆ By Order of the Court.

For additional disclosure provisions see Section 40 of FOIP and Section 35 of HIA.

### Yellow Light

In the following circumstances obtain more information and/or get advice from a supervisor, consultant or lawyer:

- ◆ Consent is not provided or refused but where there may be a health or safety issue for any individual or groups.
- ◆ To report criminal activity to police (pursuant to FOIP).
- ◆ Where there is a demand or request to produce information for a legal proceeding.
- ◆ When a professional code of ethics may limit disclosure.

### Red Light

Information can NEVER be shared if there is:

- ◆ A legislative requirement barring disclosure.
- ◆ No consent and no need to know nor overriding health/safety concerns.
- ◆ Consent but no need to know nor overriding health/safety concerns.



## *Information Sharing With Other Organizations*

### **Types of Organizations that Share Information**

#### **Public Bodies Under FOIP**

Public bodies under FOIP include government departments, agencies, boards and commissions as designated in the FOIP Act and Regulations.

#### **Custodians Under HIA**

Custodians under HIA include health care organizations such as Alberta Health and Wellness, the Regional Health Authorities, health service providers paid under the Alberta Health Care Insurance Plan, pharmacies and pharmacists. The provisions to share health information under the HIA differ from the provisions to share personal information under FOIP, particularly to organizations that are not covered by HIA.

#### **Non-legislated Organizations**

Non-legislated organizations are not subject to public sector privacy legislation. This group includes organizations such as independent agencies (profit and not-for-profit).

Organizations and entities that have entered into contracts or agreements with public bodies to deliver services on their behalf may or may not be contractually bound to some or all of the requirements under FOIP, HIA and/or PIPA.

Some of these organizations and agencies may be impacted by one or more (or all) of these privacy Acts, depending on their contractual and funding arrangements.

Contractually binding an organization to FOIP, HIA or PIPA will be dependent on several factors including the need for the public body to have access to the information collected by the contracted organization, the potential for individuals to have a right of access to their own personal information and the nature of the service provided on behalf of the public body.

#### **Other**

There are other organizations, programs and initiatives that do not fit neatly into one of the other categories:

- ◆ **AADAC** – While AADAC is a public body and subject to FOIP, AADAC's legislation (the *Alberta Alcohol and Drug Abuse Act*) is paramount to FOIP with regard to the disclosure of client information. As such, the ability to disclose personal information is very limited and requires client consent in most instances. As well, AADAC is exempt from the application of HIA.



- ◆ **Aboriginal Agreements** – While child intervention services delivered by First Nations delegated agencies are subject to FOIP by agreement, other services delivered by First Nations and other Aboriginal organizations either directly or through contracted agencies may not be covered under FOIP. These services need to be examined in greater detail in order to determine how they fit within an information sharing process.
- ◆ **Youth Criminal Justice Act (Canada)** – While Alberta Solicitor General and Alberta Justice are subject to FOIP, the *Youth Criminal Justice Act* is paramount to FOIP. This legislation is permissive in that it permits disclosure of young offender records to other professionals (including school representatives) or persons involved in the care and supervision of the young person, in order "to facilitate the rehabilitation of the young person."

### When is it Appropriate to Share Information?

There are differing sets of rules that guide the disclosure of personal information. Organizations can disclose or share personal information in several ways.

- ◆ Parent Legislation.
- ◆ Common Program/Integrated Services (with or without consent).
- ◆ Consent-Based Disclosure.

### Parent Legislation

The term 'parent legislation' refers to legislation that guides or provides the mandate for different government organizations. Legislation may include provisions that allow for, or compel the production of personal information. It may also govern the ability to disclose such information, either in keeping with, or despite privacy legislation.

Parent legislation may also create impacts on the provision of collaborative and integrated services with other organizations that need to be considered.

### Common Programs/Integrated Services

Services to children, youth and their families can be more effective when they are delivered collaboratively by service providers that are dealing with the same clients.

In order to develop an integrated service delivery process, it is important to recognize that services provided by various organizations do not always address all of the needs of the child, youth and family. Services offered in isolation of other services, without a more comprehensive case-plan, or at least without knowledge of other case-plans and goals that have been developed in the other areas, may not always serve the best interests of the child, youth or family. Outcomes achieved in such situations may not be sustainable in the long term if other issues are not addressed.



The delivery of services to children, youth and their families in a holistic community-based environment supports the development of an integrated information sharing service delivery process. This process can help service providers work together to meet the needs of the children, youth and their families, as well as ensure compliance with existing privacy legislation.

### **Common Programs/Integrated Services Under FOIP**

FOIP allows for the disclosure of personal information for a number of reasons including "to another public body if the disclosure is necessary for the delivery of a common or integrated program or service."

Public bodies are government organizations such as departments, boards and agencies. (Note: this does not refer to contracted agencies, such as service providers.)

A "common program" is defined as a single program or service delivered by two or more public bodies.

"Integrated" means a program or service which has several distinct components, each of which may be delivered separately, but when put together comprise a complete program or service.

In order to allow for disclosure under this provision, public bodies must be able to demonstrate the following:

#### **Involvement in a common program or integrated service**

- ◆ Public bodies must be able to demonstrate evidence of a common or integrated program or service which could include terms of reference, agreements or a memorandum of understanding. While preferred, such documents may not always be necessary in an informal relationship.
- ◆ The working relationship between the public bodies involved in the program or service is identified.
- ◆ Administrative processes are identified that support the operation of the program or service, including the management of common records, a process to respond to access requests and record retention schedules.

#### **Authority to collect information**

- ◆ Public bodies must be able to demonstrate they have the authority or mandate to collect personal information (linked to the services being delivered).
- ◆ The collection of personal information is governed by section 33 of FOIP and is limited to only that which relates directly to and is necessary to allow for the program or service to be carried out.



### Manner of collection

- ◆ Public bodies are limited by section 34 of FOIP to collect personal information directly from the individual it is about unless an exception applies. Examples of such exceptions include:
  - ◆ Information is necessary to determine eligibility for benefits and services.
  - ◆ Information is collected for the purpose of a law enforcement investigation.
  - ◆ Information is collected in a health and safety emergency.

### Limited disclosure

- ◆ Disclosure of information is limited to that which is necessary to operate a common or integrated program or service in a reasonable manner.
- ◆ Details of the disclosure are documented.

### What is Allowed?

Common programs and integrated services allow sharing of personal information where it is needed to deliver the program/service.

It does not allow sharing of:

- ◆ Health information under HIA.
- ◆ Personal information to non-public bodies (unless they are operating under a contract with the public body).
- ◆ More personal information than is required.

### Consent-Based Disclosure

The application of the provisions of FOIP for a common program or for integrated services will not result in a complete disclosure or sharing of personal information by all service providers.

This FOIP provision does not extend to:

- ◆ Health information collected pursuant to HIA.
- ◆ Organizations that are not covered by FOIP.
- ◆ Organizations that have subsections within their parent legislation which are paramount to the disclosure provisions of the FOIP Act.

In these cases, a consent-based disclosure may be necessary.

### Consent-Based Disclosure Requirements

In FOIP and HIA, consent-based information sharing has several requirements. In order for consent to be valid, section 40(1)(d) of the FOIP Act, section 6 of the FOIP Regulations, and section 34 of HIA must be complied with.

The individuals who are being asked to consent to the disclosure of their personal/health information must identify the information to be disclosed, the purpose for which it may be disclosed, to whom it may be disclosed, an acknowledgement of the risks and benefits of the disclosure and the effective date of the consent.



The consent must be in writing and be voluntary. In the case where individuals can exercise consent, it can be an empowering tool that provides them with control over their personal/health information.

In some cases there is a legal requirement to disclose personal/health information even if consent is withheld. In these cases, the individual should be made aware that refusal to consent does not necessarily mean that no information will be shared.

If you determine that you have the authority to disclose, and will do so, do not ask for consent, as you will be bound to heed it. Note that obtaining consent is still the preferred option.

Individuals should be advised of the consequences of either providing or not providing their consent. The outcome of providing choice will mean that in some situations individuals will choose 'to repeat their story more than once.' In other situations it could mean that they will not be eligible for the programs or services they require or that in some cases, services will be limited due to a refusal to provide consent and a lack of information to provide the service.

## Consent of Minor Children

Consent also has to be considered in the context of minor children and their rights. Children are individuals in their own right, and as such may be able to agree or refuse to provide consent.

Section 84(1)(e) of FOIP deals with the ability of the guardian of a minor (an individual under the age of 18) to exercise the rights of the minor. This includes the right to give or refuse consent. The person requesting the consent from the parent or guardian must assess whether the exercise of this power by the parent or guardian would be an unreasonable invasion of the minor's privacy. A major factor in forming this opinion is to assess whether a particular minor child or youth is capable of providing informed consent.

The ability to provide informed consent has to be judged on a number of factors for each child including his/her age, level of maturity, level of understanding, and the degree of involvement and influence of the guardians.

## Consent Forms

Consent Forms should include:

- ◆ Authority to disclose.
- ◆ Purpose for which information will be disclosed.
- ◆ What information will be shared and with whom.
- ◆ The length of time the consent is valid.
- ◆ Who the client can contact for further information.



Consent can be revoked at any time (prevents further disclosure).

HIA (section 34) Consent Form requires the following:

- ◆ Authority to disclose health information specified in the consent.
- ◆ Purpose for which the health information may be disclosed.
- ◆ Identity of the person to whom the information may be disclosed.
- ◆ An acknowledgement that the individual providing the consent has been made aware of the reasons why the health information is needed.
- ◆ The risks and benefits to the individual of consenting or refusing to consent.
- ◆ The effective date, expiry date (if any) and a statement that the consent may be revoked at any time.

### ABC's of Disclosing Personal Information Under FOIP

Here are the ABC's of disclosing personal information under FOIP:

**A:** Check your parent legislation and program policies to see if the disclosure is authorized.

The term 'parent legislation' refers to legislation that guides or provides the mandate for the different government organizations. Legislation may include provisions that allow for, or compel the production of personal information. It may also govern the ability to disclose such information, either in keeping with, or despite privacy legislation. Parent legislation may also limit the ability to

provide collaborative and integrated services with other organizations.

A disclosure of personal information under your parent legislation should only be made in the administration of the legislation. Always exercise good judgment by only disclosing the information that is required to administer the legislation. This would require that you have an understanding of roles and mandates of other organizations and why they require the information.

**B:** If you do not have parent legislation, or if it does NOT authorize a disclosure of personal information, then check Section 40 of the *Freedom of Information and Protection of Privacy Act* to see if it authorizes the disclosure. Also check your program policies to see if there is a policy or procedure that relates to the disclosure.

If Section 40 of the FOIP Act does not authorize the disclosure, DO NOT disclose the personal information. Unauthorized disclosures of personal information may result in a privacy breach complaint by the individual to whom the information pertains. FOIP Coordinators and the Office of the Information and Privacy Commissioner routinely investigate these types of complaints.

**C:** Check the with your organization to ensure that you are the person authorized to make the disclosure.

Note: All disclosures of personal information must be authorized by legislation.

If your parent legislation authorizes a disclosure of personal information, Section 40(1)(f) of FOIP supports that disclosure. FOIP will normally be used for disclosures



of personal information where you are Not administering your parent legislation.

Section 40 enables, or allows for, the disclosure, rather than requiring it. However, in cases such as a Court Order, or where another piece of legislation requires the disclosure, then disclosure **may** be mandatory.

### Entry Points

The rationale that supports the need for integrated services also supports the mechanisms by which individuals may be identified as potential clients of that process. This deals with the issue of determining how to refer someone to a service without knowing if it is the appropriate one.

There are at least three potential routes that can be taken:

#### 1. Direct referral

Direct referrals to the integrated services may be the appropriate process if the referral agent is aware of the services that would be available and determines that the child, youth or family member would benefit from them. This process will work where there is a requirement for consent from the client to allow the disclosure of his/her information.

Organizations that are bound by the need for consent to disclose information could be captured in this process (e.g., custodians under HIA, AADAC, private sector organizations).

#### 2. Initial screening/assessment/case conference

The second process is a mechanism where there is an identified need based on an initial discussion regarding a potential client.

In this case, a referral agent may not be comfortable in making the referral because of a lack of confidence in whether the service would be appropriate for the client. Public bodies under FOIP can use this process to enter into preliminary discussions as to the appropriateness of the referral with other service providers involved in the integrated service.

Organizations (or programs, activities) that could potentially be captured in this process include the Student Health Initiative, Early Intervention Initiatives.

It should be noted however, that while there may not be a need for consent, it still should be considered as part of the process. If there is a decision to use this process for assessment, there then needs to be a further decision as to whether there will be a need for consent at a later point.

It should also be noted that service providers who are bound by the need for client consent to disclose information under HIA or other legislation, are not necessarily restricted from participating in the initial assessment process for determining appropriateness (eligibility) of the referral where they have no prior knowledge or involvement with the child or the family, or where they are not providing any personal or health information, and where they are public bodies under FOIP.



### 3. Self-referral

A third process includes self-referrals.

### Terms of Reference

It is recommended that organizations who choose to formalize an integrated service approach develop a terms of reference that incorporates the following elements:

**Purpose** – A statement of what the integrated service will be.

Services to children and their families are more effective when integrated or when collaboration occurs between the involved service providers. This section should set out the requirements by which information can be shared within an integrated service model.

**Authority** –The authorities, policy, or legislation that authorizes information sharing with the integrated service.

A statement outlining the authority for the integration of services must be made. This may be a mandate statement for the integrated group of organizations, authorities for each of the participants or both. A separate document that briefly outlines the background and services offered for each of the integrated service providers should be added or made available.

**Integrated Service Providers** – Which ministries, bodies or agencies will be providing the integrated service.



The integrated service providers need to be identified to all potential clients in order to inform them as to who may be accessing their information and providing services. In addition to the listing of agencies, the reason for their involvement must also be available.

In situations where agencies are providing services under contract to a public body or a health information custodian, that relationship should also be identified. Contracts of this nature must contain conditions governing the access to the records by the public body; limits on collection; use; disclosure; and the disposition of personal information and records as well as consequences for failing to comply with these conditions.

Finally, the privacy legislation by which they are bound should also be identified so that the client knows under what conditions their personal information is protected.

**Statement of Use/Notification** – This will outline how personal information will be used and shared by the service providers.

A clear statement must be made regarding the type of personal information that will be collected, and the manner in which it will be used and disclosed in the integrated services program. This should also state who will have access to the information, and include a limitation statement that indicates that use of the information will be limited to the defined purposes. Any further disclosure would be subject to the consent of the individual to whom it pertains or limited by law (and in compliance with the appropriate privacy legislation). Given the premise that individuals have a right to know how their information is used, all disclosures must be documented.

**Consent** – Explaining the use of consent.

Informed consent not only serves as a mechanism that allows the sharing or disclosure of information, but also serves as a means of empowering clients by giving them control of their personal information. In situations where there are no provisions for sharing without consent, as defined by the legislation and the relationship with the integrated service providers, it should be clearly stated that consent is a requirement prior to the disclosure of the personal information, other than where required by law or as a condition of receiving service.



**Records** – A description of how personal information records will be kept and for how long.

A description of the types of records that will be created through the integrated services should be provided. Records may be kept on an individual program/service file basis or there may be rationale for the creation of common records. A statement as to the life expectancy of such records will inform the clients as to the retention schedule of their records.

**Access** – A process must be developed to allow individuals to access their own personal information.

Individuals whose personal information is collected and used have a legislated right of access to that information. A process should be outlined that can be easily followed by individuals seeking access to their information. Consideration should be given to the identification of one source where individuals can make their request for access.

The Terms of Reference may also include processes that are delivered individually, but are agreed to by the participating organizations as necessary to the delivery of services in a holistic and collaborative manner.

The Information Sharing Guideline contains a Sample Terms of Reference for Integrated Service.

## Glossary

- ◆ **Affiliate** – Under HIA, employees, agents, contractors and volunteers of a custodian. Physicians paid by a custodian or having privileges with a custodian are also affiliates of that custodian.
- ◆ **Age of Consent** – The age at which children and youth can give consent differs under various legislation but usually involves a determination as to whether he/she is mature enough to understand the nature of the information and the consequences of its disclosure. Age of consent takes into consideration the age of the child, maturity level and sensitivity of the information.
- ◆ **Bullying** – A conscious, willful, deliberate and repeated hostile activity marked by an imbalance of power, intent to harm, and/or a threat of aggression. When bullying escalates unabated, it may lead to a feeling of terror on the part of the individual being bullied. Bullying may include, but is not limited to: physical intimidation or assault; extortion; oral or written threats; teasing; putdowns; name calling; threatening looks, gestures or actions; cruel rumours; false accusations; and social isolation.
- ◆ **Child, Youth, and Family Enhancement Act (CYFEA)** – This Act provides the legislative mandate for family enhancement or protective services to be provided if it is believed that a child may be in need of intervention.



- ◆ **Common Program** – A single program or service delivered by two or more public bodies.
- ◆ **Continuity of Care** – A person's/persons' responsibility for the ongoing care, medical or otherwise, for a child.
- ◆ **Custodians** – Custodians of health information are individual health services providers or organizations that are primarily in the publicly funded health sector who have health information in their custody or under their control (e.g., Alberta Health and Wellness, regional health authorities, physicians who bill Alberta Health Care, etc.).
- ◆ **Employee** – Individuals and agencies who provide services on behalf of the public body that they have contracted or entered into an agreement with (Note: this definition of employee is solely for the purposes of FOIP.) Contractual obligations should include the necessary clauses to ensure that provisions of FOIP are properly addressed.
- ◆ **Family Violence** – The abuse of power within relationships of family, trust or dependency that endangers the survival, security or well-being of another person. It can include many forms of abuse including [spousal] abuse, [elder] abuse and neglect, child abuse and neglect, parent abuse, and witnessing abuse of others in the family. Family violence may include some or all of the following behaviours: physical abuse, psychological abuse, criminal harassment/stalking, verbal abuse, sexual abuse, financial abuse, and spiritual abuse.
- ◆ **FOIP** – *Freedom of Information and Protection of Privacy Act.*
- ◆ **Health Information** – Under HIA, means any of the following: diagnostic treatment and care information; health and services provider information; and registration information.
- ◆ **HIA** – *Health Information Act.*
- ◆ **HIA Coordinator** – In a larger organization, the responsible affiliate.
- ◆ **Imminent Danger** – A situation in which any individual or group or individuals may be at immediate risk of harm to their health and/or safety. See Section 40(1)(ee) of FOIP and Section 35(1)(m) of HIA.



- ◆ **Information and Privacy Commissioner (IPC)** – An officer of the Legislature who provides an independent review of decisions made regarding right of access to and correct or amendment of personal or health information. The Commissioner monitors compliance with applicable legislation and investigates complaints.
- ◆ **Integrated Service** – The program or service has several distinct components, each of which may be delivered separately, but when considered together, comprise the complete program or service.
- ◆ **Intervention Services** – Any service provided to a child or family under the *Child Youth and Family Enhancement Act (CYFEA)* including family enhancement services and protective services.
- ◆ **Minimum Amount of Information** – In order to respect the rights to individual privacy of children, youth and their families, only the minimum amount of personal information necessary may be shared.
- ◆ **Need to Know** – An organization should not collect, use or disclose information unless it is required to fulfill their roles and responsibilities.
- ◆ **Parent Legislation** – Legislation that guides or provides the mandate for the different government organizations.
- ◆ **Public Body** – Government organizations such as departments, boards and agencies. (Note: this does not refer to contracted agencies, such as service providers.)



## References

The following references were used in the creation of this series of training materials. They are also useful for further exploration of the content.

### **Information Sharing - An Executive Overview and Information Sharing in an Integrated/Collaborative Framework**

- ◆ *Freedom of Information and Privacy Act (FOIP)*, Province of Alberta
- ◆ *Health Information Act (HIA)*, Province of Alberta
- ◆ *Personal Information Protection Act (PIPA)*, Province of Alberta
- ◆ *Personal Information Protection and Electronic Documents Act (PIPEDA)*, Government of Canada
- ◆ Information Sharing Guideline, Information Sharing Working Committee, Alberta Children and Youth Initiative, Government of Alberta
- ◆ Information Sharing Overview for Children and Youth in Alberta, Information Sharing Working Committee, Alberta Children and Youth Initiative, Government of Alberta
- ◆ IPO Tip Sheet, Information and Privacy Office, Government of Alberta

### **Engaging Others in the Delivery of Integrated/Collaborative Programs**

- ◆ Partnership... A Way of doing Business, Nancy Reynolds, Partnership and Innovation Division, Alberta Children's Services

- ◆ Building Community Collaboration and Consensus, C.R. Pete Petersen, [www.communitycollaboration.net](http://www.communitycollaboration.net)
- ◆ Working Together, Safe and Caring Schools, Resource Manual for Students, Staff and Parents, Alberta Learning.

### **Information Sharing in the Context of the Prevention/Management of Family Violence**

- ◆ *Child, Youth and Family Enhancement Act*
- ◆ Taking Action on Family Violence, Government of Alberta
- ◆ Alberta Roundtable on Family Violence and Bullying, Finding Solutions Together, Government of Alberta
- ◆ Family Violence in Canada: A Statistical Profile 2004, Statistics Canada, Canadian Centre for Justice Statistics
- ◆ Working Together, Safe and Caring Schools, Resource Manual for Students, Staff and Parents, Alberta Learning
- ◆ Family Violence Protocol Template, Alberta Council of Women's Shelters and Alberta Children's Services
- ◆ Children Exposed to Family Violence: A Handbook for Alberta Shelter Workers, Centre for Children and Families in the Justice system / London Family Court Clinic. Peter G. Jaffe, Ph.D; Susan Loosley
- ◆ Elder Abuse, Edmonton Community Action Committee on Elder Abuse