



Office of the Information and
Privacy Commissioner of Alberta

November 9, 2016

Honourable Sarah Hoffman
Minister of Health
423 Legislature Building
10800-97 Avenue
Edmonton, AB T5K 2B6

Re: Bill 28 – *Public Health Amendment Act, 2016*

Dear Minister Hoffman:

I am seeking clarification on certain provisions of Bill 28 – the *Public Health Amendment Act, 2016* (PHAA or the Bill) that was introduced in the Legislative Assembly on November 7, 2016.

Part of my mandate under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) is to comment on privacy implications of proposed legislative schemes or programs of public bodies and of using and disclosing personal information for record linkage. In addition, my mandate under the *Health Information Act* (HIA) includes commenting on the implications for access to and for protection of health information.

My office first saw the Bill when it was introduced and our review of the proposed amendments is continuing; however, our preliminary review has raised some questions. As Commissioner, I want to ensure the broader public health policy objectives of the Bill are appropriately balanced with Albertans' privacy interests.

Section 18.2 – provision of information by Minister of Education

Under section 18.1, the medical officer of health has the authority to require school boards and others to provide to the medical officer of health contact and demographic information for the purposes of contacting the parent or guardian of a student or child, or contacting an independent student, regarding voluntary health programs, including immunization, hearing, vision, speech and dental health programs, and for the purpose of communicable diseases control.

The proposed section 18.2 would allow the Minister of Health to require the Minister of Education to disclose to the Minister contact information and any other information prescribed in the regulations for the purposes of contacting the parent or guardian of a student, or contacting an independent student, regarding voluntary health programs, including immunization, hearing, vision, speech and dental health programs, and for the purpose of communicable diseases control.

It is not clear to me what is the purpose of section 18.2 given that the medical officer of health is able to collect the same information for the same purpose. In addition, it is not clear from whom the Minister of Education is collecting the information or the Minister of Education's authority to collect the information under the FOIP Act.

Section 18.3 – reporting re immunization, and section 18.4 – reporting adverse events

The proposed section 18.3 *requires* a health practitioner who performs an immunization, or conducts an assessment in respect of an immunization, to report information respecting the immunization to the Minister, in accordance with the regulations. The proposed section 18.4 requires a health practitioner to report any adverse event following immunization.

These are broad provisions that appear to affect any Albertan who receives an immunization, whether a child or adult, and, as such, the following issues arise:

- It is not clear from the provisions whether the information reported will be identifiable information. It may be that regulations will provide more detail about the information to be reported; however, if the information is identifiable, it would be in the interest of transparency for those details to be in the Act itself.
- Section 18.3 does not state the purpose of the report to the Minister, and for what purpose(s) the Minister will use or disclose this information. Section 18.4 does not state the purpose of the report or to whom the report is to be made. This raises questions about the use and possible secondary use of the information. For example, will this information be used for purposes such as planning and resource allocation, health services provider education, or health system management and policy development? Will the information be used to conduct public health surveillance? Will the information be data matched? Will the information be retained in identifiable form and for how long?
- Decisions about the collection of identifiable information affect the individuals receiving immunizations, as well as the health practitioners who perform the immunization and who may have obligations under other laws (including HIA) such as notifying affected individuals of the purposes for which their information is being collected. It is in everyone's interests that these information transactions be as transparent as possible. What steps have or will be taken to ensure Albertans and other stakeholders are aware of the disclosure and use of the information?¹

¹ For a discussion of the factors to be considered when evaluating the privacy consequences of government collection of identifiable information for public policy purposes, see *Deputizing the Private Sector*, May 2015 https://www.oipc.ab.ca/media/389574/Report_Deputizing_Private_Sector_May2015.pdf

Privacy Impact Assessment

If the information that is proposed to be collected by the Minister of Health includes demographic and diagnostic, treatment and care information related to immunizations, and assessments in respect of immunizations, it is important to consider related privacy risks and determine what reasonable steps must be taken to mitigate those risks. HIA requires that privacy impact assessments be completed and submitted to my office prior to the collection, use or disclosure of health information (section 64), and even when not legally required, I recommend this as a best practice.

Concluding remarks

Should regulations be developed to support the proposed new information disclosures, I would ask to be consulted in order to ensure the broader public health policy objectives of the Bill are appropriately balanced with Albertans' privacy interests.

I hope the above information is helpful. Please be advised that I will be posting this letter on my office's website as part of my mandate, as is my usual practice.

I will follow with interest the debate on this Bill, and my office will be ready to discuss risks to privacy and what may be done to reasonably mitigate those risks.

Sincerely,

[Original signed by Jill Clayton]

Jill Clayton
Information and Privacy Commissioner

cc: Mr. Carl Amrhein
Deputy Minister