

LIMITED AUTHORITY TO MAKE A DETERMINATION THAT A REQUEST FOR ACCESS HAS BEEN ABANDONED – [SECTION 10.1 of PHIA]

Summary: *PHIA provides individuals with a right of access to their personal health information and the exercise of that right should not be infringed upon without justification in limited and specific circumstances. Section 10.1 of PHIA enables a trustee to consider a request for access to personal health information to be abandoned if the individual fails to respond in a timely manner when the trustee gives them a fee estimate or a request to provide further information in relation to an access request. A determination by a trustee to consider a request abandoned pursuant to section 10.1 must be made on a case-by-case basis. As with all decisions by trustees, there should be documentation supporting the determination and setting out the underlying rationale for the determination that a request for access has been abandoned. If a trustee determines that a request for access to personal health information has been abandoned under section 10.1 of PHIA, the trustee must notify the individual in writing of the determination and the reasons for it, and of the individual's right to make a complaint about the determination to the Ombudsman.*

A trustee may require an individual to provide additional information in relation to their request [clause 10.1(1)(a)]

A trustee may require an individual to provide additional information in relation to their access request, including additional information that is necessary to respond to the request. This would apply, for example, where an individual submits an incomprehensible access request. In such case, the trustee is obliged to ask for more information to determine what the person is asking for. If the individual does not provide the additional information requested within 30 days from the date the request is given, the trustee can proceed with the determination that a request for access has been abandoned.

A trustee may require an individual to indicate if they accept the fee estimate, or want to modify their request [clause 10.1(1)(b)]

Under PHIA, a trustee may charge a reasonable fee for permitting examination of personal health information and/or providing a copy of the information.

For clarity, PHIA does not require that the trustees charge a fee; it only permits trustees to charge a reasonable fee if they so choose.

When estimating fees, the trustee:

- must determine, on a case by case basis, the best approach to estimating any costs associated with, including how much time will be needed to facilitate examination and provide copies of personal health information. Estimating time and costs on the basis of a sample of the records containing personal health information requested is a good practice;
- should carefully document how the time and estimated fees were calculated.

When determining a fee, a trustee should consider the overall purpose of PHIA, which includes the ability of individuals to access their own personal health information. The fee should not be a barrier to access. If the fee estimate is high or the individual objects to the estimate, the trustee should work with the individual to determine if their request could be modified and narrowed. Further, there may be situations in which a trustee decides not to charge a fee.

A fee estimate is binding on the trustee. If the trustee has under-estimated the costs, it cannot charge the individual for the difference. Further, a trustee must give an individual a fee estimate

that is reasonable, meaning a trustee should be fair in determining the amount of the fee, based on the time and resources required to provide access to the information requested

Also, a trustee's decision to issue a fee estimate can be the subject of a complaint to the Ombudsman [**clauses 39(1)(a.1) and(d)**].

It is good practice to send a cover letter to the individual with the fee estimate explaining how the costs were determined.

A request made by a trustee under subsection 10.1(1) must be given in writing [subsection 10.1(2)]

The trustee's request under subsection 10.1(1) must be given to the individual in writing, except in relation to a request for information about health care currently being provided to a hospital in-patient.

The trustee's request should include the following information:

- that the trustee needs additional information to respond to the access request, OR
- that the trustee is issuing a fee estimate under section 10 of PHIA,
- that the individual has up to 30 days from the day the request is given to provide the additional information or accept the estimated fee; and
- that if the additional information or acceptance is not provided by the individual within that time, the trustee may determine that the request has been abandoned.

Information to be provided within 30 days [subsection 10.1(3)]

An individual has up to 30 days from the day the request is given to provide the additional information, accept the estimated fee or to modify the request in order to reduce the fee. If the additional information or acceptance is not provided within that time, the trustee may determine that the request has been abandoned.

Time for responding suspended if request given under this section [subsection 10.1(4)]

If a trustee requests additional information or provides a fee estimate in relation to an access request, the time within which the trustee is required to respond to the access request under section 6(1) is suspended until the individual provides the required information or accepts the fee estimate.

If the individual does not provide the additional information requested by a trustee or accept a fee estimate within 30 days from the date the request or fee estimate is given, the trustee may consider the access request to have been abandoned [**subsection 10.1(5)**].

The trustee must notify the individual in writing [subsection 10.1(5)]

The trustee's response to the access request must be given to the individual in writing and must state:

- that the trustee has determined that the access request has been abandoned,
- the reason for the determination. The reason must be one of the reasons set out in section 10.1 of PHIA; and
- that the individual may make a complaint to the Ombudsman about the determination [**clause 39(1)(a.1)**].