



<p>Implementation: Jan 16 2017¹</p> <p>Last Revised / Approved:</p>	<p>Number BRD–Responsibilities-4</p>	<p>PRIVACY, CONFIDENTIALITY & DISCLOSURE</p>
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POLICY

CMHA S/M’s Board of Directors (the Board) is committed to ensuring that the ‘privacy² of all individuals’ Personal Health Information (PHI)³ and organizational confidentiality⁴ is protected through compliance with Ontario’s Personal Health Information Protection Act (PHIPA)⁵, Freedom of Information and Protection of Privacy Act, (FIPPA)⁶ and other pertinent legislation. The objectives of this commitment apply to all agents⁷ and are:

1. Meeting CMHA – S/M’s requirements as a Health Information Custodian under PHIPA, an act which governs the collection, use and disclosure, retention and disposal of PHI.
2. Correct response to requests for information such as treatment planning for individuals and personnel matters for employees. By ensuring that only information which is both factual, and properly authorized is disclosed, clients’ and Agent’ protection is ensured.
3. Compliance with information restrictions, in accordance with branch mandate and program needs.
4. Understanding that a breach of this Policy is subject to disciplinary action, including possible termination.
5. Ensuring non-disclosure. All agents have a duty of confidence not to disclose, or use for their own purpose, confidential information concerning CMHA S/M services, business and affairs.

CMHA S/M agents include: employees, consultants, health-care practitioners, volunteers including Board Directors, researchers, students, and independent contractors including physicians and third-party vendors who provide supplies or services.

This Policy serves as the branch-wide overarching Directive Document for Privacy & Confidentiality. Compliance with related operational Policies and Procedures is mandatory. Privacy responsibilities continue to apply even after employment/affiliation terminates.

PROCEDURE

The Board ensures the appointment of a branch lead for privacy matters or, “Privacy Officer”, and the compliance with operational Privacy, Confidentiality and Disclosure policies by all agents.

The following procedures are followed:

- A. Individuals receiving CMHA S/M services are informed of, and know their rights and choices pertaining to their PHI.
- B. All necessary action to ensure the protection of privacy and particularly, that of PHI is taken at all times, as per PHIPA and any CMHA S/M procedures.

¹ Replaces “CONFIDENTIALITY & DISCLOSURE”

² **Privacy:** right of individuals to determine for themselves when, how and to what extent personal information about the individuals is communicated, and to be secure from unauthorized use or disclosure of their personal information

³ **Personal Health Information:** identifying information about an individual in oral or recorded form, if the information : relates to the physical or mental health of the individual, including information that consists of the health history of the individual's family / relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual / is a plan of service within the meaning of the *Home Care and Community Services Act, 1994* for the individual / relates to payments or eligibility for health care, or eligibility for coverage for health care, in respect of the individual / relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance / is the individual's health number / or identifies an individual's substitute decision-maker. Also see in PHIPA: “personal health information” in section 4 “Part IV - Collection, Use And Disclosure Of Personal Health Information”

⁴ **Confidentiality:** holding information in strict confidence, where non-disclosure is ensured

⁵ <https://www.ontario.ca/laws/statute/04p03#BK3>

⁶ <https://www.ontario.ca/laws/statute/90f31>

⁷ **Agent:** with the authorization of the custodian, acts for or on behalf of the custodian in respect of personal health information for the purposes of the custodian, and not the Agent’s own purposes, whether or not the Agent has the authority to bind the custodian, whether or not the Agent is employed by the custodian and whether or not the Agent is being remunerated (PHIPA: <https://www.ontario.ca/laws/statute/04p03#BK3>)

- C. All PHI in any format (paper or electronic, or verbal) is confidential and must be kept secure, while allowing for the effective delivery of health care. Where other legislation supersedes PHIPA, that legislation will apply. (8)
- D. All agents of CMHA S/M are required to adhere to this Policy and any related operational Policy or Procedure required by their function. Suggestions for Quality Improvement pertaining to these documents are to be shared with the Board, CEO or Privacy Officer.
- E. Policies and Procedures are in place which direct the collection, retention, use, disclosure and disposal of PHI.
- F. Procedures are in place to address Risk Management and breaches of privacy.
- G. Adherence to this Policy is a condition of employment/affiliation. Privacy responsibilities continue to apply even after employment/affiliation terminates.
- H. A Public-friendly version of this Policy is posted on CMHA S/M's website.

Additional / Board-specific:

- I. Board Directors sign a yearly confidentiality agreement.
- J. Directors familiarize themselves with privacy legislation, and refer any requests for information to the CEO.
- K. Directors maintain confidentiality regarding policy or operating issues before the Board.
- L. All meeting minutes and materials provided to Directors is confidential and all information within is confidential until discussed and approved by the full Board. Minutes could be made public, while discussion or dialogue is not.
- M. Directors maintain confidentiality of any business discussed while the public is excluded from a meeting, and/or information for which reasons exists (under law or policy) for it to be withheld from the public, unless the Board decides by motion to make such information public.
- N. The Board will hold in the strictest confidence and discuss in a closed session, all matters including labour relations, litigation, personnel matters, proposed or pending acquisitions of property and any matters determined by the Board to be confidential. A Closed Session Policy is in place to provide further direction.
- O. The President and CEO or agent(s) designated by the Board may act as spokesperson. Directors must respect the confidentiality of matters before the Board.

Formal Request for Information and Disclosure

- A. The Board ensures that all PHIPA, FIPPA and Consent legislation requirements are met before the release of PHI by any agent of CMHA S/M.
- B. While individuals may withdraw consent, informed consent by a person or entity must be sought before PHI is exchanged between the CMHA S/M and third parties.
- C. If disclosure of confidential Information is required by a Board Director pursuant to a requirement or request of a government organization or by subpoena, or civil or criminal disclosure processes, immediately upon such requirement or request, and prior to such disclosure, the Board Director must notify the President, who informs the CEO. Other agents facing such requests will notify the CEO or Privacy Officer directly.
- D. The Director co-operates with the CEO or designate in any application made to obtain a Protective Order⁹ or other similar protective arrangement.
- E. Where CMHA S/M is attempting to, and unsuccessful in obtaining a protective order or similar protective arrangement, the Board Director or other agent will disclose only such confidential information as he/she is compelled to disclose.
- F. In the event of disclosure required related to a Patient Safety Incident, the CPSI Canadian Disclosure Guidelines are followed, with the process being managed by the CEO, with reporting to the Board.¹⁰
- G. Certain organizational information (e.g.: the Multi-Sectoral Service Accountability Agreement) may be subject to disclosure in accordance with FIPPA.

⁸ E.g.: rules about community treatment orders in the Mental Health Act prevail where conflict with PHIPA's occurs.

⁹ **Protective Order:** order made by justice official or body, directing that information not be disclosed. See FIPPA

¹⁰ <http://www.patientsafetyinstitute.ca/en/toolsresources/disclosure/pages/default.aspx>