



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2023-041

October 10, 2023

### Newfoundland and Labrador Health Services

#### Summary:

The Complainant requested that Newfoundland and Labrador Health Services (NLHS) provide copies of Operational Standards Compliance Reports for a named privately-run personal care home and for Pleasant View Towers, which is operated by NLHS. The Complainant was provided the Operational Standards Compliance Reports for the privately-run personal care home but NLHS stated that such reports do not exist for Pleasant View Towers or other publicly-run personal care homes, in general. The Complainant asserted that the reports do exist for Pleasant View Towers and alleged that NLHS was withholding or had not properly searched for the records. A review by this Office into the private and public personal care home system confirmed that Operational Standards Compliance Reports do not exist in the public system. This Office further confirmed that there is not a report akin to a Compliance Report under the publicly-run personal care home system, which addresses quality assurance in a different manner than private personal care homes.

#### Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, section 13(1), 29(1)(a).

[Patient Safety Act](#), SNL 2017, c. P-3.01, section 2(s), 10(1), 11, 15.

## BACKGROUND

- [1] The Complainant submitted an access request to what was previously known as Eastern Health. In April 2023, all health care boards in Newfoundland and Labrador were consolidated into the Newfoundland and Labrador Health Services (NLHS) and all outstanding ATIPP requests were carried forward to this new entity. The Complainant's request was as follows:

*Operational Standards Compliance Reports completed for long term care and personal care homes for 2018, 2019, and 2020 at Pleasant View Towers and Lanes Personal Care Home – Assisted Living, Airport Heights, St. John's.*

- [2] The search conducted by NLHS did produce responsive records for part of the request, which it provided to the Complainant with minor redactions that are not at issue. However, the search by NLHS did not produce any responsive records relating to Pleasant View Towers. NLHS advised the Complainant that Operational Standards Compliance Reports are only required for personal care homes operated by the private sector. Personal care homes operated by the public sector, like Pleasant View Towers, do not produce Operational Standards Compliance Reports. Therefore, such reports would not exist for Pleasant View Towers.
- [3] The Complainant requested that this Office review NLHS's final response and assess whether NLHS met its duty to assist and that it properly applied the relevant sections of *ATIPPA, 2015* and the *Patient Safety Act*.
- [4] As informal resolution was unsuccessful, the Complaint proceeded to formal investigation in accordance with section 44(4) of *ATIPPA, 2015*.

## PUBLIC BODY'S POSITION

- [5] It is the position of NLHS that it did perform a thorough search for documents related to the Complainant's request. NLHS asserts that they communicated regularly with the Complainant and that they thoroughly explained why no responsive records existed for Pleasant View Towers. As Pleasant View Towers is managed directly by NLHS, the manner of

oversight regarding operational standards and quality are different from those applied to personal care homes operated by the private sector. NLHS further asserts that even if such compliance reports did exist for Pleasant View Towers, they could not be released to the Complainant pursuant to section 10 of the *Patient Safety Act*.

## COMPLAINANT'S POSITION

- [6] The Complainant insists that Operational Standards Compliance Reports do exist for publicly-run personal care facilities. The Complainant's primary reason for believing such documents exist for the public personal care system is a comment alleged by the Complainant to have been made by the former Minister of Health and Community Services mentioning the Operational Standards Compliance Reports in relation to a public personal care home.

## DECISION

- [7] The sections of *ATIPPA, 2015* relevant to this matter is as follows:

*Section 7.(2) Notwithstanding subsection (1), where access to a record is prohibited or restricted by, or the right to access a record is provided in a provision designated in Schedule A, that provision shall prevail over this Act or a regulation made under it.*

...

*Section 13. (1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.*

...

*Schedule A (m.1) Section 10 and 15 of the Patient Safety Act.*

The provisions of the *Patient Safety Act* relevant to this matter are as follows:

*Section 2.(s) "quality assurance information" means information in any form*

- (i) provided to or generated for a quality assurance committee or a quality assurance activity,*
- (ii) provided to or generated for the purpose of carrying out a quality assurance activity,*
- (iii) generated for the purpose of producing patient safety indicators,*

- (iv) *generated in the course of carrying out a quality assurance activity,*
- (v) *contained in a report or notice made under section 4 or 7,*

*But does not include*

- (vi) *information contained in a record, such as a hospital chart or medical record, that is maintained for the purposes of documenting health services provided to a patient,*
- (vii) *the fact that a quality assurance activity committee met or that a quality assurance activity was conducted, and*
- (viii) *the terms of reference of a quality assurance activity committee.*

*Section 9. The Minister or the Provincial Health Authority may release information and any related recommendations made by a quality assurance activity committee that do not include personal information or personal health information.*

*Section 10.(1) The Access to Information and Protection of Privacy Act, 2015 does not apply to the use, collection, disclosure, release, storage or disposition or, or any dealing with, quality assurance information.*

...

*Section 11. A person shall not dismiss, suspend, discipline, demote, or harass or otherwise disadvantage or penalize*

- (a) *an individual where the individual has released information to quality assurance activity committee; or*
- (b) *a health care provider where the health care provider reported a close call or an occurrence.*

...

*Section 15. Quality assurance information collected by or for a quality assurance committee or a quality assurance activity committee continues to be quality assurance information after*

- (a) *The committee is no longer in existence or no longer being maintained or operated, or*
- (b) *The entity that established the committee no longer has the authority to establish or maintain the committee*

[8] This Office has established in numerous reports that the standard a public body must meet in conducting a search for responsive records is reasonableness, not perfection. A reasonable

search is one that is organized, conducted using appropriate search terms, carried out by individuals who would be in the best position to know if records exist and where they may be located, and supervised by the ATIPP coordinator.

[9] There were two components of the search for responsive records in this case. The first was the search for actual existing records and the second involved explaining why certain records did not exist. In general, NLHS met its obligations to the Complainant. Various subject matter experts were contacted in relation to the request and were asked to provide information. These individuals included the Regional Director for Community Support, the Regional Director for Long Term Care, a Residential Care Manager and a Site Administrator. NLHS also made some of these individuals available to this Office to provide a clearer understanding of the province's personal care system.

[10] There was no issue retrieving the information for the privately-run personal care facility. The Compliance Reports in questions were provided to the Complainant. When the Complainant addressed the information that was not provided, there was a substantial back-and-forth with NLHS, which tried to explain its position. NLHS did provide the Complainant with links to websites about quality information for government-run personal care homes that is publicly available.

[11] All parties in this matter admit that the personal care system in this province is complex. Personal care homes in the province operate on two parallel tracks – a private and a public system. In the private system, care homes are operated by private companies that are licensed to provide such care by a regional health authority. The private company must adhere to the rules and regulations set out in the *Health and Community Services Act* and in the *Personal Care Home Regulations*. If a company cannot meet the standards set out in the legislation and regulation, then a license will not be issued. Once a private personal care home is licensed, the operators of that home need to show on an ongoing basis that it remains in compliance with the legislation and regulations. To do so, they comply with the rules set forth in the “Provincial Personal Care Home Program Operation Standards” manual created by the Department of Health and Community Services.

- [12] The Operational Standards manual sets out a broad list of performance measures that a private personal care home must meet. One of the first standards set out in this manual is that the regional health authority, which assesses whether the home is meeting all performance standards, must carry out an annual review of how a private personal care home is operating. This report is the Operational Standards Compliance Report, copies of which have been provided to the Complainant for the requested private personal care home.
- [13] There is also the public personal care system, within which Pleasant View Towers operates. Pleasant View Towers does not need a license to operate, it functions directly within the NLHS system. Therefore, it does not need to show compliance with operational standards to an outside agency like a private personal care home.
- [14] NLHS monitors the quality of care in a public personal care facility through the collection of information directly from public personal care homes. In the *Patient Safety Act*, this information is known as “quality assurance information” and it is provided to a “quality assurance activity committee” or for the purpose of carrying out a “quality assurance activity”. Both the activity and committee are defined in the Act.
- [15] Quality assurance information is sensitive and can involve employee self-reporting or reporting on activity conducted by others. As such, section 11 of the *Patient Care Act* explicitly forbids anyone who reports a quality information committee or a health care provider from facing any retaliation in the workplace.
- [16] Given the sensitive nature of quality information, the legislature decided that, pursuant to section 10 of the *Patient Safety Act*, the use, disclosure, release, storage, or disposition of quality assurance information is not subject to *ATIPPA, 2015*. Once assessed as quality assurance information, section 15 of the *Patient Safety Act* requires that such information remain classified as quality assurance information in perpetuity and therefore the restrictions on providing this information will always permanently prevail over disclosure requirements in *ATIPPA, 2015*.
- [17] Operational Compliance Standards Reports do not exist for public personal care homes, and therefore do not exist for Pleasant View Towers, as NLHS has stated. There is also nothing

akin to an Operational Compliance Standards Report for public personal care homes. Information is provided to a Quality Assurance Committee in a myriad of ways and is addressed by the Committee through different means. Sometimes matters are addressed by a report, sometimes they are not. A Quality Assurance Committee addresses issues as they arise; the Committee is not tasked with conducting an annual overview of a particular location.

[18] With that said, not all aspects of quality assurance are exempt from *ATIPPA, 2015*. The Complainant can request information on who is a member of a Quality Assurance Committee and when these committees meet. A request for such information may provide the Complainant with some of the information sought. However, the matters discussed at these meetings cannot be disclosed.

[19] The Complainant asserts that section 9 of the *Patient Safety Act* overrides the section 10(1) exclusion from *ATIPPA, 2015*. While section 9 does allow the Minister or the Provincial Health Authority (PHA) to release quality assurance information that is not patient-specific, in our view the release of such information is discretionary and cannot be compelled. In this case, there was no decision to release the information.

## RECOMMENDATIONS

[20] Under the authority of section 47 of *ATIPPA, 2015* I find that Newfoundland and Labrador Health Services met its duty to assist pursuant to section 13(1) of *ATIPPA, 2015*.

[21] As set out in section 49(1)(b) of *ATIPPA, 2015*, the head of Newfoundland and Labrador Health Services must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report w

[22] Dated at St. John's, in the Province of Newfoundland and Labrador, this 10<sup>th</sup> day of October 2023.



Michael Harvey  
Information and Privacy Commissioner  
Newfoundland and Labrador