

CATEGORY:	Client Records, Information and Privacy
TITLE:	CR-11-51 Requesting Access to Records Policy
POLICY:	CR-11-51
ADOPTED:	June 2012 <i>Note: prior to November 2018, this policy formed part of the CR-11-50 Privacy and Information Practices Policy. However, in November 2018, this part of the policy was separated out and now is its own policy. In addition, revisions were made to this part of the policy at that time.</i>
APPROVED BY:	Executive Director
REVIEWED:	May 2004 (r) November 2018 (r) June 10 2020 (r)

Requesting Access to Records Policy

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Clients Requesting Access to their Records

The following is an excerpt from Contact Hamilton's Privacy and Information Practices Policy: "When requested, an individual will be informed of the existence, use, and disclosure of their personal information that is under Contact Hamilton's custody or control and has a right of access to that personal information as permitted by law."

Generally, every Contact Hamilton client who is 12 years of age or older has a right to access their own record of personal information.

A record is defined as a record of information, in any form or in any medium, whether in written, printed, photographic, or electronic form. The information in the record is recorded in connection with the provision of a service to the client or a member of the client's family and is under the custody or control of Contact Hamilton.

Part X: Personal Information of the Child, Youth and Family Services Act, 2017 sets out exceptions to an individual's right of access to their personal information. For example:

- The client record or the personal information in the client record is subject to a legal privilege that restricts its disclosure to the individual
- An Ontario Act, a federal Act, or a court order prohibits its disclosure to the individual
- The personal information in the client record was collected or created primarily in anticipation of or for use in a proceeding and the proceeding together with all appeals or processes resulting from it has not been concluded
- Granting access could reasonably be expected to result in a risk of serious harm to the individual or another individual
- There are reasonable grounds to believe that the request for access is frivolous or vexatious or is made in bad faith

A client may make a written request for access to Contact Hamilton's Privacy Officer to obtain access to their own record of personal information that is under Contact Hamilton's custody or control.

The decision to grant or deny access will be determined by the Contact Hamilton staff member. The Contact Hamilton staff member based on their judgement and knowledge of the client and in consultation with their Manager, will make this determination. If the Contact Hamilton staff member reasonably believes it is not in the client's best interests to have access to their client record, the Contact Hamilton staff member may consider it necessary to deny access. Denying access may be justified if

there is a real possibility for harm either to the client or to a third party. If access to the client record would cause harm to the client or to a third party, denying access is justified. In the ordinary case, the client record should be disclosed upon the request of the client unless there is a significant possibility of a substantial adverse effect on the physical, mental, or emotional health of the client or harm to a third party. Aside from this test which comes from the 1992 Supreme Court of Canada decision in *McInerney v. MacDonald*, Part X: Personal Information of the Child, Youth and Family Services Act, 2017 provides additional circumstances for denying access when a client, who is a child or youth younger than 18, makes an access request.

Where restrictions apply, the client has a right of access to that part of the record that can reasonably be severed from the restricted part of the record.

Before the client record is released to the client, the client must sign and date Contact Hamilton's Consent for Disclosure of Personal Information form authorizing Contact Hamilton to disclose the information and documents contained in the client record at Contact Hamilton to the client. At the discretion of Contact Hamilton, the Consent for Disclosure of Personal Information form will also indicate that the client agrees not to use or disclose the client record or any of the documents or the information in the client record, in any court or any other legal proceeding, other than a process at Contact Hamilton relating to any of the programs that are administered by Contact Hamilton. This is done to protect the privacy of the client and the confidentiality of their personal information.

PROCEDURE: CLIENTS REQUESTING ACCESS TO THEIR RECORDS

Written Request for Access

- 1 - Clients may request access to their records by making a written request for access to Contact Hamilton's Privacy Officer.
- 2 - All written requests for access to client records will be managed by the Manager in consultation with the involved Contact Hamilton staff member.
- 3 - The written request for access must contain sufficient detail to enable Contact Hamilton to identify and locate the client record with reasonable efforts. The request for access to a client's record will be documented in and included in the client record. Where access has been granted to a client's record, it will be documented as part of the client record.

Contact Hamilton Response to Access Request

4 - Contact Hamilton will respond in writing to the written request for access within 30 days after receiving the request. At that time, the client will be informed in writing whether or not access will be provided to their client record.

5 - In certain situations, such as when it is not reasonably practical to provide a response within 30 days or providing a response within 30 days would unreasonably interfere with the operations of Contact Hamilton, Contact Hamilton may extend the deadline for responding by not more than 90 days. If Contact Hamilton extends the deadline, it will give the client written notice of the extension setting out the length of the extension and the reason for it.

Contact Hamilton Process for Addressing Access Request

6 - After receiving the written request for access, the Contact Hamilton staff member will review and follow Contact Hamilton's Privacy and Information Practices Policy, including Principle 9: INDIVIDUAL'S ACCESS.

7 - The Contact Hamilton staff member will review and follow the following policy: Clients Requesting Access to their Records. In particular, the decision to grant or deny access will be determined by the Contact Hamilton staff member. The Contact Hamilton staff member based on their judgement and knowledge of the client and in consultation with their Manager, will make this determination. This will involve a review of each document in the client record.

8 - Since the Executive Director is accountable for Contact Hamilton's information practices and is the Privacy Officer for access or correction requests, the decision by the Contact Hamilton staff member to grant or deny access for each document in the client record, will be reviewed with Contact Hamilton's Executive Director (Privacy Officer).

The Need for Written Consent to Authorize Disclosure

9 - If the decision is to grant access to all documents in the client record, then a copy of the complete client record will be prepared. A cover letter, indicating that a decision has been made to grant the client access to all documents in the client record **and** listing all the documents in the client record, will be prepared. A Consent for Disclosure of Personal Information form will also be prepared.

10 - The cover letter and a copy of the complete client record are provided, once the client signs and dates the Consent for Disclosure of Personal Information form. This means that the client must sign and date the Consent for Disclosure of Personal Information form, before the cover letter and the complete client record are released.

Examining the Client Record at Contact Hamilton Offices

11 - If the client chooses to examine the client record instead of obtaining a copy of the client record, the client will be allowed to access the client record at a mutually agreed upon time at the Contact Hamilton offices. A Contact Hamilton staff member will assist the client by explaining terms, abbreviations, and codes used in the client record. Contact Hamilton may redirect the client to the appropriate practitioner (e.g. physician, social worker) for any sensitive medical or other information that is made available to the client.

12 - Due to the importance of ensuring the integrity of Contact Hamilton's records, a Contact Hamilton staff member will be present at all times while the client is examining their client record. Contact Hamilton will provide a print out of relevant screens of the client's electronic record.

Obtaining a Copy of the Client Record

13 - Additional time may be required to prepare the necessary support documentation, for a request for copies of part of the client record or the complete client record, such as an explanation of terms, abbreviations, and codes used in the client record.

14 - Wherever possible, prior to releasing a copy of the client record, a Contact Hamilton staff member will meet with the requestor to review the information contained within the client record.

PROCEDURE: DENYING CLIENTS ACCESS TO THEIR RECORDS

1 - If a Contact Hamilton staff member determines that the client should not have access to part or all of their client record, they must discuss this decision with the Manager and the Executive Director (Privacy Officer) prior to action being taken.

2 - If Contact Hamilton denies a client's request for access to their client record, in whole or in part, Contact Hamilton will provide written notice to the client indicating that Contact Hamilton is refusing the request, providing a reason(s) for the refusal, and, in relation to the Children's Services program, letting the client know that the client is entitled to make a complaint about the refusal to the Information and Privacy Commissioner. There may be certain situations where a reason for the refusal is not provided, as permitted by Part X: Personal Information of the Child, Youth and Family Services Act, 2017.

3 - The decision and reason(s) for denying a client access will be documented in the client's record.

Parents, Legal Guardians Requesting Access

The custodial or access parent(s) of a client younger than 18 have a right of access to the client's record.

Part X: Personal Information of the Child, Youth and Family Services Act, 2017 sets out exceptions to an individual's right of access to their personal information.

These exceptions apply equally to a custodial or access parent(s) right of access to the client record of a client younger than 18.

The custodial parent's consent is not required for release of the client's record to the access parent.

An access parent's right of access to the client's record may be modified by separation agreement or court order. A separation agreement or a court order is a legal binding document which must be followed. When a separation agreement or a court order is in place, Contact Hamilton staff must request a copy and review it before proceeding with an access request.

Parent(s) of a client with no right of access are not entitled to have access to the client's record.

If the client is younger than 16 and they have the capacity to make a decision about the collection, use, and disclosure of their personal information, the client's decision to withhold consent to the disclosure of their client record to their parent prevails. In this situation, the client's record would not be disclosed to the parent. This exception for a capable

client younger than 16 is set out in Part X: Personal Information of the Child, Youth and Family Services Act, 2017.

For example, under this exception, a custodial parent requests access to their 14 year old youth's client record, but the youth indicates that they do not want their parent to have access to their client record. Provided the 14 year old youth is capable, their decision prevails, and the parent's access request must be refused.

Once the client turns 18 years old and they have the capacity to make a decision about the collection, use, and disclosure of their personal information, the client will decide whether or not to consent to the disclosure of their client record to their parent. In this situation, the client's record should not be disclosed to the parent without the client's consent.

If the client is 18 years of age but does not have the capacity to make a decision about the collection, use, and disclosure of their personal information (i.e., the client has a severe to profound developmental disability), the client's substitute decision-maker will make a decision on behalf of the client about whether or not to consent to the disclosure of the client's record to the client's parent. Generally, only clients with a mild to moderate developmental disability will be capable of consenting, whereas clients with a severe to profound developmental disability will not be capable of consenting.

A custodial or access parent may make a written request for access to Contact Hamilton's Privacy Officer to obtain access to the client record of a client younger than 18 that is under Contact Hamilton's custody or control.

The decision to grant or deny access will be determined by the Contact Hamilton staff member. The Contact Hamilton staff member based on their judgement and knowledge of the client and in consultation with their Manager, will make this determination. Denying access may be justified if there is a real possibility for harm either to the client or to a third party. If access to the client record would cause harm to the client or to a third party, denying access is justified. In the ordinary case, the client record should be disclosed upon the request of the custodial or access parent unless there is a significant possibility of a substantial adverse effect on the physical, mental, or emotional health of the client or harm to a third party. Aside from this test which comes from the 1992 Supreme Court of Canada decision in *McInerney v. MacDonald*, Part X: Personal Information of the Child, Youth and Family Services Act, 2017 provides additional circumstances for denying access when a client, who is a child or youth younger than 18, makes an access request. These additional circumstances for denying access apply equally

when a custodial or access parent makes an access request to the client record of a client younger than 18.

For example, the Contact Hamilton staff member may withhold all or parts of the client record from the custodial or access parent or provide a summary on the basis of the staff member's judgement that there is a significant possibility of a substantial adverse effect on the client's physical, mental, or emotional health or harm to a third party if full or partial access is provided.

Where restrictions apply, the custodial or access parent has a right of access to that part of the client record that can reasonably be severed from the restricted part of the client record.

Before the client record is released to the custodial or access parent, the custodial or access parent must sign and date Contact Hamilton's Consent for Disclosure of Personal Information form authorizing Contact Hamilton to disclose the information and documents contained in the client record at Contact Hamilton to the custodial or access parent. At the discretion of Contact Hamilton, the Consent for Disclosure of Personal Information form will also indicate that the custodial or access parent agrees not to use or disclose the client record or any of the documents or the information in the client record, in any court or any other legal proceeding, other than a process at Contact Hamilton relating to any of the programs that are administered by Contact Hamilton.

The Procedure, set out above, relating to Clients Requesting Access to their Records, including Denying Clients Access to their Records, will be followed with appropriate modifications as are necessary.