

Privacy of Health Information

Relevant Legislation

LOFT Community Services (LOFT) is a Health Information Custodian under the Personal Health Information Protection Act, 2004 (PHIPA). We are accountable and liable for compliance with PHIPA and the protection of LOFT clients' personal health information.

Intent

LOFT maintains a privacy program in compliance with the Personal Health Information Protection Act (PHIPA) 2004. PHIPA establishes rules for the collection, use and disclosure of personal health information about individuals, which protect the confidentiality of that information and the privacy of individuals with respect to that information, facilitating the effective provision of health care services. The policy hereto details the measures by which LOFT carefully manages client data and information, as well as our overarching commitment to procedural transparency.

We collect, use and share Personal Health Information only as permitted by law and permitted by PHIPA. LOFT understands that information about LOFT clients and their health is confidential. We are committed to protecting the privacy of this information.

To protect client privacy and ensure the proper use of personal health information, all LOFT staff, volunteers, and practicum students will adhere to privacy policies and standards as set out by law and this policy. As a Health Information Custodian, LOFT and its agents are responsible for ensuring that the personal health information of our clients is treated with respect and sensitivity.

LOFT is committed to safeguarding personal health information, and takes all possible measures to protect personal information from loss, misuse, unauthorized access, disclosure, alteration, or destruction.

To fulfill LOFT responsibility with respect to accountability and openness, LOFT clients have opportunity to access their Personal Health Information at any time and to correct it if it is inaccurate, and contact Privacy Officer with questions and comments.

This policy document underscores LOFT's pledge to be our very best in providing care that is clear, accessible and transparent. This policy will be made publicly available to clients, third-party partners and the broader community to facilitate effective informed consent and strong service partnerships.

Definitions

LOFT Client: means individuals who are currently receiving or received in the past health care services from LOFT.

LOFT Staff: means healthcare professionals employed by LOFT that act on behalf of LOFT in respect of collecting, using and disclosing personal health information that is in LOFT's custody.

PHIPA: means a provincial health privacy statute that establishes rules for the management of personal health information and protection of the confidentiality of that information, while facilitating effective delivery of health care services.

Consent: means individual's right to make their own decision on how their personal health information is collected, used and disclosed.

Collection of PHI: means gathering, acquiring, receiving or obtaining personal health information by any means from any source.

Use of PHI: means handling or dealing with personal health information for the purpose of provision of health care services.

Disclosure of PHI: means making personal health information available or to releasing it to another health information custodian or to another person.

Health Information Custodian: means listed persons or organizations under the PHIPA, who have custody or control of personal health information as a result of work they do. As a community mental health agency, LOFT is considered to be a health information custodian.

Substitute Decision Maker: means an individual designated to make personal care or financial decisions for another individual if they become unable to make those decisions themselves.

Personal Health Information: means any identifying information about an individual relating to the individual's health or to the provision of health care to the individual. For example, an individual's health card number and medical record would be considered personal health information.

Privacy: means an individual's right to control how their personal health information is collected, used and disclosed.

Privacy Breach: means the collection, use or disclosure of personal health information that is not in compliance with applicable privacy law, or circumstances where personal health information is stolen, lost or subject to unauthorized or

inappropriate collection, use or disclosure, copying, modification, retention or disposal.

Policy

This policy is organized around the *10 Fair Information Principles of the Canadian Standards Association's Model Code for the Protection of Personal Information* (CSA Model Code). The CSA Model Code is recognized as a national standard for privacy protection and it is used across Canada as the basis for health information privacy legislation, including PHIPA.

The Guiding Principles

The principles stated below, and the ensuring processes described in this document, are inter-related and will be interpreted within the context of the 10 CSA principles.

4.1 Principle 1 – Accountability for Personal Information

The principle of accountability means that LOFT is responsible for PHI under its control and has designated Privacy Officer who is accountable for LOFT compliance with privacy principles.

4.1.1. LOFT is responsible for the collection, use and disclosure of personal health information in its custody and must align those practices with privacy regulations set under by PHIPA. LOFT will appoint a Privacy Officer to ensure the safe, compliant, transparent and accountable collection of health information. The Privacy Officer is appointed by the CEO and performs the following duties:

- a. oversees LOFT's overarching compliance with agency privacy policy and PHIPA;
- b. works with a team to create policies and procedures that clearly mandate staff responsibilities for use of personal health information;
- c. ensures all LOFT staff are adequately informed of their duties under this policy and PHIPA overall;
- d. oversees regularly scheduled privacy audits and systems monitoring to verify policy compliance, as well as routine reviews of this policy to ensure its accuracy;
- e. ensures the development of transparent complaint procedures and responds to complaints from the public regarding alleged failure to uphold this policy or PHIPA regulations;
- f. verifies that all third-party contacts who administer PHI on LOFT's behalf maintain privacy in accordance with this policy and PHIPA;

- g. establishes and/or appoints a designate to facilitate staff training and orientation procedures related to this policy and privacy updates.

LOFT strives to uphold the principles of openness in the performance of this privacy mandate, and thus will ensure the name and contact information of Privacy Officer is accessible to all staff and clients for inquiries, comments and complaints. This information will be shared when requested and provided in all educational materials, pamphlets and posters.

Privacy Officer
LOFT Community Services
15 Toronto Street
Toronto, ON M5C 2E3
416-979-1994
privacy@LOFTcs.org

4.2 Principle 2 – Identifying Purposes for Collecting Personal Health Information

The principle of identifying purposes means that the use and rationale for which PHI is collected is identified by LOFT at or before the time the information is collected.

4.2.1 LOFT in practice and through the provisions of this policy will clearly define the purposes of collecting and using client PHI. Information collected will only be used for purposes communicated to the client prior to or at the time of collection. Information will not be used for any other stated purpose unless permitted by law and any new use of information will be conducted with the explicit permission of the client.

4.2.2 LOFT will limit the use of client PHI to what's necessary and legitimate for the provision of client care within our programs and use aggregate data instead of PHI wherever possible. Information will be collected to ensure LOFT can deliver the best care to client in a transparent and reliable manner. LOFT will collect, store and use client information for the purposes of:

- a. providing community support care or assisting in the provision of health care to clients;
- b. considering tenancy, providing housing support and personal care in housing;
- c. planning or delivering programs or services within LOFT Community Services;
- d. evaluating, monitoring and allocating resources to these programs and services;
- e. quality care improvement or quality management of any related program or service;
- f. anonymous data collection/analysis for funding reports and agency progress summaries;

- g. fundraising and development campaigns/materials, but only with express consent;
- h. as otherwise consented to by the individual; and
- i. as otherwise permitted, authorized or required by law

The above stated purposes will be reviewed annually or as the nature and scope of LOFT programming changes. Clients will be duly notified of these changes and information will be made publicly available.

4.2.3 The aforementioned purposes will be made publicly available, as well as upon client request. The Privacy Policy will be available on LOFT website and/or via hardcopy on all LOFT sites. LOFT clients will also be provided educational materials, including brochures and posters that inform them of use, collection and disclosure purposes.

4.2.4 LOFT staff will be trained to effectively explain and clarify purposes of collection to clients and/or third party interests. All information obtained in the service of these purposes will be consented to prior to or at the time of being obtained from the client. LOFT staff will be expected to be able to provide rationale for data collection and answer any questions clients may have in relation to this policy.

4.2.4 Any changes in the purposes of use of information must receive the explicit consent of client prior to that use or collection. Clients will be notified of the change and provide written consent. This consent process will fall in accordance with the following principle on consent to collection, use and disclosure of health information.

4.3 Principle 3 – Consent for the Collection, Use and Disclosure of Personal Health Information

The principle of consent means that the knowledge and consent of LOFT clients are required for the collection, use or disclosure of PHI, except where exempted by law.

4.3.1 Express consent will be required for the collection of personal health information and the subsequent use or disclosure of that information. Where possible and practicable, LOFT will seek express consent for the use and disclosure of personal health information at the time of collection and before PHI is disclosed within and outside of the agency.

4.3.2 LOFT will make a reasonable effort to ensure that LOFT clients are informed of the purposes for which the information will be collected, used and disclosed through the use of brochures and having information accessible on LOFT website and through other means directly at LOFT program locations. To make LOFT clients consent knowledgeable and meaningful, the purposes will be explained in such a way that the individual can reasonably understand how the information will be used or disclosed.

LOFT will not deceive or mislead LOFT clients to obtain their consent and will not seek consent for any secondary purposes.

4.3.3 LOFT clients will be informed that consent may be withdrawn at any time, subject to legal restrictions, and LOFT staff will inform the individual of the implications of withdrawal of consent.

4.3.4 In certain circumstances personal health information can be collected, used, or disclosed without the consent of the individual: when it is not reasonably possible to obtain the individual's consent in a timely manner, for the Ministry of Health and Long Term Care to provide payment for services and when contacting a relative or SDM if the individual incapacitated or ill. In these cases LOFT will rely on clients' implied consent.

4.3.5 The LOFT client consent policy will be reviewed and updated as required annually along with the review of consent processes and staff actions involved in obtaining client consent.

4.3.6 In situations where LOFT client is not capable of making decisions with respect to PHI, LOFT will turn to a Substitute Decision Maker for consent to collection, use and disclosure of PHI on behalf of the LOFT client. This list, in order of priority, is the following:

- a. the guardian of the person or the guardian of property
- b. the attorney for personal care or the attorney for property
- c. the representative appointed by the Consent and Capacity Board
- d. the spouse or partner
- e. a child or parent, which includes a Children's Aid Society
- f. a parent with only a right of access
- g. a brother or sister
- h. any other relative
- i. the Public Guardian and Trustee

4.4 Principle 4 – Limiting Collection of Personal Health Information

The principle of limiting collection means that the collection of PHI is limited to that which is necessary for the purposes identified by LOFT. LOFT will collect PHI by fair and lawful means.

4.4.1 The amount and type of information collected will be limited to that which is reasonably necessary to fulfill the purposes for the collection. LOFT will not collect PHI if other information will serve the purpose.

4.4.2 LOFT will not collect information by misleading or deceiving clients about the purposes for which the information is being collected. LOFT will provide as much detail as is reasonably necessary regarding the purpose for collecting PHI in order for clients to provide knowledgeable consent. LOFT clients will be informed that they can restrict the collection of PHI. LOFT clients' feedback on clear communication of PHI collection practice will be included in annual review of information collection and handling practices.

4.4.3 Please refer to Principle 2 for description of purposes for collection PHI by LOFT.

4.5 Principle 5 – Limiting Use, Disclosure and Retention of Personal Health Information

The principle of limiting use, disclosure and retention means that PHI will not be used or disclosed by LOFT for purposes other than those for which it was collected, except with the consent of the individual or as required by law. PHI will be retained by LOFT only as long as necessary for the fulfillment of those purposes.

4.5.1 LOFT will use and disclose PHI only for purposes it was collected, except with the consent of the client or as permitted or required by law. If a new purpose is identified, LOFT will seek the clients' express consent to use and disclose PHI. LOFT staff will update clients' PHI as needed and deemed appropriate.

4.5.2 LOFT will monitor procedures, legal contracts, policies, and technical controls to ensure appropriate restrictions on the use and disclosure of PHI and make necessary changes and adjustments when needed.

4.5.3 LOFT may generally disclose PHI to:

- a. a health care provider for the provision of LOFT client care, where it is not reasonably possible to obtain the individuals' consent in a timely manner, except where the individual expressly instructed LOFT not to make the disclosure
- b. the Ministry of Health and Long Term Care or other Health Information Custodian to secure or provide funding for services
- c. a person for the purpose of contacting a relative or friend of LOFT client if the individual is injured, incapacitated or ill and unable to give consent personally

- d. any person to confirm that the individual is a client of LOFT, provided that the individual has been given an opportunity to object and has done so
- e. a person for the purpose of identifying a deceased LOFT client or to inform a person of the fact that LOFT client is deceased, and of circumstances of their death when appropriate
- f. a spouse, partner, sibling or child of a deceased LOFT client if the recipients of the information require that information to make decisions about their own health care or their children
- g. a person for the purpose of determining or verifying eligibility of LOFT client to receive health care or other services or benefits where there are funded by the Government of Ontario or Canada or by a municipality
- h. a person conducting an audit or reviewing an application for accreditation
- i. a person designated to compile and maintain a registry of PHI for the purposes of facilitating or improving the provision of health care
- j. the Chief Medical Officer of Health or medical officer of health
- k. a public health authority established under the laws of Canada, a province or other jurisdiction under the Health Protection and Promotion Act
- l. a person where there are reasonable grounds to believe that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to an individual or a group of individuals
- m. the head of a penal or other custodial institution in which the individual is being lawfully detained or to officer in charge of a psychiatric facility, to assist in making a decision concerning provision of health care to the individual or the placement of the individual into custody, detention, release, discharge or conditional discharge
- n. subject to any applicable regulation, as required for the purposes of a legal proceeding, contemplated legal proceeding, to comply with the Court Order, summons or warrants issued by a court or tribunal, or to comply with a procedural rule
- o. a professional college, Public Guardian and Trustee, a Children's Aid Society
- p. a researcher, provided that specific requirements and conditions are met
- q. a person or entity for the purposes of planning or managing the health care system, or to health data institute as permitted by law

- r. a person carrying out an inspection, investigation or similar procedure authorized by a warrant, a court order or otherwise authorized by law
- s. a successor, archive, the Minister of Health and Long Term Care
- t. as otherwise permitted, authorized or permitted by law

4.5.4 Retention of PHI LOFT will ensure that appropriate PHI retention schedules are in place. The retention period will be long enough to fulfill identified purposes for which it was collected and for LOFT clients to access and/or challenge accuracy of PHI. LOFT clients will be notified about LOFT retention period policy and PHI disposal procedures.

LOFT will generally retain client health record containing PHI for a minimum of 10 years after discharge from LOFT services, unless in some cases, it is necessary to retain the health record for a period of time that is longer than 10 years.

The following LOFT client records will be retained by LOFT for a minimum of 10 years:

- a. Electronic client health records that contain: demographic information, diagnosis and medication, incident reports, employment and income information, hospitalization records, clinical assessments and case notes and client's contact information.
- b. Client clinical care agreements that contain: consent forms, service agreements, service plans, complaint forms and release of PHI requests.
- c. Client residential agreements that contain: residence lease agreement, arrears information and payment agreement, eviction notice and outcome.

4.5.5 LOFT will proceed to securely dispose of PHI after the maximum period of retention ends after 10 years. No records will be disposed of before the maximum retention period has been met. Records will be disposed of in a secure manner such that the reconstruction of the record is reasonably foreseeable in the circumstances. LOFT will hire confidential shredding services for disposal of large quantities of health records containing PHI. LOFT staff will fine/cross shred paper copies of small quantities of health records. Electronic health records will be archived by LOFT staff.

Disposal of health records containing PHI will be documented by LOFT staff and maintained permanently. The PHI disposal document will contain the following information and will be sent to the Privacy Officer with the following meta-data:

- a. Date of disposal
- b. Method of disposal
- c. Description of disposed documents
- d. Inclusive dates covered
- e. Statement that the records were disposed in the normal course of business
- f. Signatures of the individuals supervising and witnessing the disposal

4.6 Principle 6: Accuracy of Personal Health Information

The principle of accuracy means that PHI collected by LOFT will be as accurate, complete and up to date as is necessary for the purposes for which it is to be used.

4.6.1 LOFT will ensure that client PHI is current, accurate and relevant to the client's care. PHI is extremely useful for making decisions related to support and thus can impede effective care if information is out of date or inaccurate. Some examples of information that is important for accuracy and appropriate for updates are:

- medication
- physical and mental health diagnosis
- physicians/care providers name & contact
- emergency contacts
- third-party consent

4.6.2 LOFT staff and management will conduct regular file audits to verify PHI is accurate and accords with the standards in this policy. Information will be reviewed annually. While LOFT endeavors to ensure all PHI is up to date, accuracy of information is limited by the frequency and scheduling of assessment as well as the disclosure of the client.

4.6.3 LOFT clients will have the opportunity to review and correct any fact based PHI related to the information examples provided above (as opposed to staff assessments, consult reports etc.). The process whereby clients can review their information is documented in the proceeding section 4.9 related to *Individual Access to Personal Health Information*.

4.7 Principle 7: Safeguards for Personal Health Information

The principle of safeguards means that PHI will be protected by LOFT by employing security safeguards appropriate to the sensitivity of the information.

4.7.1 LOFT will implement security safeguards to protect PHI against loss or theft, unauthorized access, disclosure, copying, use or modification. LOFT will protect PHI regardless of the format in which it is held and the level of security safeguards will be appropriate and proportional to the level of sensitivity of PHI. The methods of PHI protection will include the following measures:

- a. Physical (e.g. locked filing cabinet, restricted office access)
- b. Organizational (mandatory annual staff training, confidentiality and user agreements, role-based access to PHI, regular audits of staff practices, 'Clean Desk' policy)

- c. Technological (e.g. passwords and user ID's, encryption of devices, firewalls and virus scanners, automatic backup for file recovery)

4.7.2 LOFT will have a Privacy Breach Protocol in place so that there is a process to follow in the event where PHI is lost, stolen or accessed by someone without authorization to do so. Privacy Officer will conduct an internal investigation into the privacy breach and take appropriate remedial action. LOFT will also report confirmed privacy breaches to the Information and Privacy Commissioner.

4.8 Principle 8: Openness about Privacy Policies and Practices

The principle of openness means that LOFT will make readily available to clients specific information about its policies and practices related to the management of PHI.

4.8.1 LOFT is committed to openness and transparency regarding its information and privacy measures. A clear and transparent policy ensures that clients can obtain the information they need to make informed decisions about accessing services. LOFT will take reasonable measures to ensure that staff and clients are appropriately informed of all laws, policies and practices that apply to PHI.

4.8.2 LOFT will make information regarding its privacy policies as well as measures to reach out for concerns or complaints publicly available in a number of ways, including:

- a. LOFT policy and procedure manual, including privacy policies, will be available in hardcopy at all program sites and electronically accessible online via agency website
- b. Clients on occasion and upon request will be provided pamphlets and brochures detailing LOFT privacy policies and practices
- c. The contact information – the email and phone number – for LOFT Privacy Officer will be distributed to clients and publicly posted on LOFT website
- d. All staff will be thoroughly trained and educated on LOFT privacy policies in order answer any questions regarding this policy and/or how to access its contents

4.8.3 LOFT staff will be expected to read and understand the contents of this policy. All staff must sign and acknowledge they have read the privacy policy. LOFT staff will also sign a confidentiality statement upon hire and agree to abide to the terms laid out in that statement.

4.8.4. LOFT will openly communicate and disseminate information regarding its privacy policies and practices to third-party partners in which the agency conducts service partnerships, agreements and collaborations.

4.8.5 Where applicable and appropriate, all staff belonging to a professional college (e.g. the College of Social Workers, College of Nurses etc.) will communicate their compliance to these practices and policies as part of their professional membership.

4.9 Principle 9: Individual Access to Personal Health Information

The principle of individual access means that upon request, client will be informed by LOFT about the existence, use and disclosure of their PHI and will be given access to that information. Clients will be able to challenge the accuracy and completeness of the information and have it amend it as appropriate.

4.9.1 Upon request, LOFT will inform clients of the existence, use and disclosure of their PHI and they will be provided access to that information. Exceptions to the right of access requirement will be in accordance with the law. Examples may include information that could reasonably be expected to result in a risk of serious harm or information that is subject to legal privilege. The reasons for denying or restricting access will be provided by LOFT to the individual requesting access to PHI. LOFT will ask the client to confirm their identity and fill out appropriate form with the request to access PHI. LOFT will respond to access requests within 30 days from date the request has been received and at no cost to the client requesting PHI. The requested information will be made available by LOFT in a form that is generally understandable.

Access to PHI does not apply to all records containing the following types of information:

- a. the record contains quality of care information
- b. the record contains information collected/created to comply with the requirements of a quality assurance program
- c. the record contains raw data from standardized psychological tests or assessments
- d. the record is subject to a legal privilege that restricts disclosure to the requestor
- e. other legislation or court order prohibits disclosure to the requestor
- f. the information in the record was collected/created in anticipation of or use in a proceeding that has not concluded
- g. the information in the record was collected/created for an inspection/ investigation/ similar procedure authorized by law that has not concluded

- h. granting access could reasonably be expected to result in a risk of serious harm to the client or to others
- i. granting access could lead to the identification of a person who was required by law to provide the information in the record
- j. granting access could lead to the identification of a person who provided the information in the record in confidence (either explicitly or implicitly) and it is considered appropriate to keep the name of this person confidential
- k. the request for access is frivolous, vexatious or made in bad faith
- l. the identity or authority of the requestor cannot be proven by the requestor

4.9.2 LOFT client will be able to challenge the accuracy and completeness of factual information in their record and have an opportunity to amend it as appropriate. When a LOFT client successfully demonstrates the inaccuracy or incompleteness of their record, LOFT will correct all factual information as required. Otherwise, LOFT client may require that a statement of disagreement be attached to the record. Upon request of LOFT client, the corrected factual information or statement will be communicated to third parties to whom the information in question has recently been disclosed.

4.10 Principle 10: Challenging Compliance with the Privacy Policies and Practices

The principle of challenging compliance means that LOFT client will be able to address a challenge concerning compliance with the privacy principles to the designated individual accountable for LOFT's compliance.

4.10.1 LOFT's Privacy Officer will be responsible for the agency's compliance with privacy principles. LOFT will put procedures in place to receive and respond to complaints or inquiries about policies and practices relating to the handling of PHI. Inquiry and complaint procedures will be explained to LOFT clients.

4.10.2 LOFT is committed to investigate all complaints, and if justified, take appropriate action including, where necessary, amending current policies and practices.

4.10.3 LOFT will ensure that challenging compliance process is easily accessible and simple to use and LOFT staff responds to client inquires in a fair, accurate and timely manner. LOFT will regularly review complaint and dispute resolution processes for its effectiveness, fairness, impartiality, confidentiality, ease of use and timeliness.