

April 10, 2019



Re: Your request for access to information under Part II of the *Access to Information and Protection of Privacy Act, 2015* [Our File #: PRE/21/2019]

On March 13, 2019 the Premier's Office received your request for access to the following records/information:

"January 17, 2019 Information Note: HCS - Decision of the Transitioning of Hospital-Based Services Committee on a Proposed Private Cataract Surgery Facility."

I am pleased to inform you that a decision has been made by the Chief of Staff of the Premier's Office to provide access to some of the information requested. Access to portions of information within the record has been refused in accordance with the following exceptions to disclosure, as specified in the *Access to Information and Protection of Privacy Act* (the *Act*):

29. (1) The head of a public body may refuse to disclose to an applicant information that would reveal

(a) advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister.

30. (1) The head of a public body may refuse to disclose to an applicant information

(b) that would disclose legal opinions provided to a public body by a law officer of the Crown.

35. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose

(d) information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party.

39. (1) The head of a public body shall refuse to disclose to an applicant information

(a) that would reveal

(ii) commercial, financial, labour relations, scientific or technical information of a third party;

(b) that is supplied, implicitly or explicitly, in confidence; and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party.

Please note, page 5 of the records has been removed in its entirety in accordance with sections 35(1)(d), 39(1)(a)(ii), 39(1)(b), 39(1)(c)(i).

You may ask the Information and Privacy Commissioner to review this response, as set out in section 42 of the *Act* (a copy of this section of the *Act* has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the response and why you are submitting the appeal. The appeal may be addressed to the Information and Privacy Commissioner as follows:

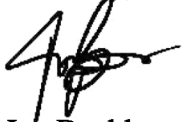
Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL. A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the *Act*.

This response will be published as outlined on the Completed Access to Information Requests website (<http://atipp-search.gov.nl.ca/>). If you have any further questions, please feel free to contact me by telephone at (709)729-3570 or by e-mail at joybuckle@gov.nl.ca.

Sincerely,



Joy Buckle
ATIPP Coordinator
Enclosure

Access or correction complaint

42.(1) A person who makes a request under this *Act* for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, Act or failure to Act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the Act or failure to Act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.

Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, Act or failure to Act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the Act or failure to Act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, Act or failure to Act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner's refusal under subsection 45(2).

Information Note
Department of Health and Community Services

Title: Decision of the Transitioning of Hospital-Based Services Committee on a Proposed Private Cataract Surgery Facility

Issue: The Transitioning of Hospital-Based Services Committee has not recommended approval of the proposal by Dr. Justin French to transition the provision of cataract surgeries from the Western Regional Health Authority to his private facility. The Minister intends to accept the recommendation but will be allowing all ophthalmologists to perform cataract surgery, as an insured service, in designated non-hospital facilities.

Background and Current Status:

- Cataract surgeries in Newfoundland and Labrador have been limited to the hospital setting where ophthalmologists are provided Operating Room (OR) time and bill the Medical Care Program (MCP) per case. The restriction of cataract surgeries to the hospital setting had been based on an interpretation of the *Medical Care and Hospital Insurance Act* and regulations made thereunder. In June 2018, government amended the regulations to state explicitly that “the medically necessary removal and replacement of a cataractous lens is an insured service covered by MCP and the surgery must be performed in a hospital or a facility designated by the Lieutenant-Governor in Council.”
- The Transitioning of Hospital-Based Services Committee (the Committee) was created in the 2014-2017 MOA between government and the NLMA to consider the potential to have fee-for-service (FFS) physicians provide services currently only provided in hospitals in their clinics. The Committee's sole responsibility is to make recommendations to the Minister of HCS.
- Dr. Justin French, a Corner Brook ophthalmologist, has been advocating for permission to perform cataract surgeries in his private clinic. In the media, he has claimed that he can perform these surgeries more efficiently in a private setting than in Western Health facilities. He operates in both Western Regional Memorial Hospital in Corner Brook (WRMH) and Sir Thomas Roddick Hospital in Stephenville (STRH).
- In early 2018, HCS reviewed and rejected an initial proposal from Dr. French because it would not provide cost savings. It was agreed, following consultation with the NLMA, that Dr. French would be invited to submit a comprehensive proposal to the Committee which could contract an independent consultant to assess Dr. French’s proposal against data collected from Western Health to determine the financial viability of the proposal.
- Grant Thornton (GT) was engaged by Western Health to conduct the independent review. Dr. French submitted an Expression of Interest to GT to establish the “Humber Valley Surgical Centre” (HVSC) on May 12, 2018. This proposal expanded substantially from the concept originally discussed with government officials in February 2018. GT subsequently collected data from Western Health, and met with Dr. French and Western Health on numerous occasions. It submitted its first report on July 3, 2018 and, based on further direction from the Committee, submitted supplementary analysis on October 30.



- For the sake of comparison, GT attempted to determine the cost of a cataract surgery at WRMH and compare it to the HVSC proposal. In July, GT reported that, based on the data available, the HVSC proposal compared favourably to WRMH on a direct cost analysis [REDACTED]. However, overhead and wastage data is not available from WRMH and, therefore, the Committee requested additional analysis using a proxy measure of overhead derived from data available from relatively comparable hospitals in other jurisdictions. [REDACTED]
- Grant Thornton did not consider the impact on STRH. [REDACTED] Cataract surgeries represent the majority of all surgeries performed at STRH. In 2016-17, of 1193 surgeries performed at STRH, 840 (70.4%) were cataract surgeries; in 2017-18, of 962 surgeries, 572 (59.5%) were cataract surgeries.
- Considering the wait time to have the procedure after having seen the ophthalmologist (not the wait for the initial visit) WH's cataract benchmark performance has been one of the best in the province, consistently performing more than 90 per cent of first eye cataract cases within the 112 day benchmark (see Annex C). Some Committee members expressed doubt regarding the wait time measurement methodology and results, however; these figures follow national CIHI guidelines and are regularly published by HCS.

Analysis:

- The Committee met on November 29, 2018 and came to a consensus. It decided not to recommend approval of Dr. French's proposal to the Minister. The Minister received the Committee's report late on January 15, 2019. The NLMA has advised that the report will be sent to Dr. French on January 16, 2019.
- The primary concern of the Committee was that, while GT's analysis suggests that the HVSC proposal compares favourably with an estimate of the costs faced by WRMH, the ability to transition cataract surgeries out of the hospital and capture savings is limited. Of the elements of the costs faced by WRMH, the Committee agreed that only the cost of consumables could actually reduce WH's expenses. Some costs could potentially be reduced via the reduced demand on human resources, but as the non-physician staff that support cataract surgeries (nursing, administration, housekeeping, etc.) support other WRMH operations, any savings that could be captured would be delayed and partial, given that WRMH will continue to offer some cataract surgeries. Overhead costs would be impossible to capture.
- The Committee agreed that the proposed HVSC fee would not provide any opportunity for cost savings but instead would increase overall net costs to the system. As illustrated in Annex A, the net increased cost per case to WHRA of the HVSC proposal would be in the order of [REDACTED] 35(1)(d), 39(1)(a)(ii), 39(1)(b), 39(1)(c)(i) [REDACTED] 35(1)(d), 39(1)(a)(ii), 39(1)(b), 39(1)(c)(i)
- [REDACTED] In the five year period from 2013/14 to 2017/18, the volume of cataract surgeries in Western region has only exceeded 2,000 once, in 2016/17. The volume in 2017/18 was 1,324. Moreover, it was also observed that, over the five year period, the incidence of cataract surgeries in every age cohort was significantly higher in Western Health than in any other region - almost double the rate of Eastern Health (see Annex B). Dr. French projects that the demand for cataracts will continue to grow over the next 20 years as the population ages, and projections done by NLCHI support his projections; however, the Committee was not convinced that there was evidence that Western Health could not respond to this increased demand within their hospitals sufficient to justify supporting the HVSC proposal. 35(1)(d), 39(1)(a)(ii), 39(1)(b), 39(1)(c)(i)
- [REDACTED] 39(1)(a)(ii), 39(1)(b), 39(1)(c)(i), 35(1)(d)
- [REDACTED] The Committee noted that if the decision was made to transition cataract surgeries to private settings, the transition would have to be done so that all ophthalmologists would be permitted to perform cataract surgeries in their clinics, subject to criteria (patient safety, accreditation etc.). 29(1)(a), 30(1)(b)
- The Committee is also in receipt of a proposal by Dr. Jackman. Dr. Jackman's proposal is much less detailed than Dr. French's and proposes a fee that is broadly comparable. The

Committee has not assessed this proposal or communicated further with Dr. Jackman about it. A decision on the court application brought by Dr. Jackman against HCS is still pending.

- The minister has decided to allow all ophthalmologists to perform cataract surgeries in their private clinics, so long as they meet criteria which will be developed to address patient safety and appropriateness of care concerns. The regulatory changes made in July 2018 are compatible with this approach, though further regulatory changes regarding approval of such clinics will likely be necessary.
- Prior to setting the fee for the provision of cataract surgeries outside a hospital, consultation with the NLMA will be required. Considerations will include: the costs incurred by the ophthalmologist to perform the service in their clinic; anticipated uptake; potential effect on recruitment; the net fiscal impact for government; and patient access, assessed as projected demand held against existing capacity.

Action to be Taken:

- The Minister will contact Dr. French immediately before Dr. French receives the Committee's report from the NLMA and discuss with him the recommendation and government's response. He will suggest that Dr. French meet with him and/or senior officials as soon as possible to discuss next steps.

Prepared by/Approved by: M. Harvey/K. Stone
Reviewed by: G. Murphy/K. Quinlan
Ministerial Approval: Received from Hon. John Haggie, MD

January 16, 2019

Annex B**Incidence Rate of Cataract Surgery by Age Cohort by RHA 2016.**

Age Cohort	Cataract Surgeries per 100 Population in 2016				
	Eastern Health	Central Health	Western Health	Lab-Gren. Health	Province
0-64	0.3	0.5	0.6	0.2	0.3
65-69	3.0	4.1	5.3	2.8	3.6
70-74	4.9	7.2	9.9	4.6	6.3
75-79	6.6	10.4	13.7	7.4	8.7
80-84	6.7	11.3	13.6	7.1	9.0
85-89	5.2	7.8	9.5	1.8	6.4
90+	2.6	3.8	6.6	1.6	3.5

Source: Newfoundland and Labrador Centre for Health Information.

Annex C

Cataract Surgery (First Eye) Benchmark Wait Time Data Western Health 2013- 2018

Wait Time Information	2013/14		2014/15		2015/16		2016/17		2017/18			
	Q1	Q2	Q1	Q2	Q1	Q2	Q1	Q2	Q1	Q2	Q3	Q4
Number of first-eye cataract procedures completed	149	183	219	220	279	244	322	299	193	175	135	178
5 out of 10 patients had surgery within this number of days (50 th Percentile)	16d	30d	20d	14d	13d	20d	48d	33d	28d	22d	37d	56d
9 out of 10 patients had surgery within this number of days (90 th Percentile)	55d	70d	85d	66d	44d	70d	113d	87d	75d	108d	104d	103d
Percentage of patients who had surgery within 112 days (% at benchmark)	100%	100%	99%	100%	99%	99%	89%	96%	97%	94%	91%	96%

Source: Western Regional Health Authority, Newfoundland and Labrador

Notes:

1. In Q1 2018/19, WH reports 65 First Eye (FE) cataract procedures were performed in Q1 2018/19, which represents a 66% decrease compared to Q1 2017/18.
2. At the Western Memorial Regional Hospital (WMRH) 94 cataract procedures (42 FE) were performed during fourteen days with the majority (n89/94) performed by one Ophthalmologist.
3. At the Sir Thomas Roddick Hospital (STRH) 43 cataract procedures (23 FE) were performed during three days by one Ophthalmologist.