



Report of Findings: 25/26-AP-090
June 24, 2026
Vitalité Health Network

Citation: Vitalité Health Network (Re), 2026 NBOMBUD 2

Summary: The Applicant made an access to information request to Vitalité Health Network for records about complaints and resulting internal investigations about psychiatric care or staff caring for psychiatric patients in its facilities over a six-year period. Vitalité refused access in full under subsection 21(1) and paragraphs 21(2)(a), (b), and (c) (unreasonable invasion of a third party's privacy) of the *Right to Information and Protection of Privacy Act*.

The Applicant challenged this decision, submitting that privacy could be protected with redactions to allow for some information about the nature of the complaints to be shared.

The Ombud found that Vitalité's decision to refuse access to the requested records under subsection 21(1) was proper because they contain highly sensitive personal information and personal health information of patients and other individuals. The Ombud also found that the records could not reasonably be severed in keeping with subsection 7(3) to provide access to other details that are not covered by the third party privacy exception.

Statutes Considered: [Right to Information and Protection of Privacy Act](#), SNB 2009, c. R-10.6, sections 7(3), 21(1), 21(2)(a).

Authorities Considered: N/A

Other Resources Cited: N/A

INTRODUCTION

[1] The Applicant made an access to information request under the *Right to Information and Protection of Privacy Act* (“the Act”) to Vitalité Health Network (“Vitalité”) for “[a]ll records of and correspondence related to complaints about psychiatric care or staff caring for patients receiving inpatient or involuntary psychiatric care in Vitalité Health Network facilities, and all records and correspondence relating to any resulting internal investigation” between January 1, 2018 and December 31, 2023.

[2] Vitalité responded by refusing access in full, relying on subsection 21(1) and paragraphs 21(2)(a), (b), and (c) (unreasonable invasion of a third party’s privacy) of the *Right to Information and Protection of Privacy Act* (“the Act”).

[3] The Applicant was not satisfied with Vitalité’s response and made a complaint to this office.

[4] Informal resolution was unsuccessful and I decided to conduct a formal investigation under subsection 68(3) of the Act.

APPLICANT’S REPRESENTATIONS

[5] In making this complaint, the Applicant submitted that redactions could be applied to the requested records to address Vitalité’s concerns related to third-party privacy. The Applicant also stated that Vitalité could provide information about the nature of the complaints from patients without disclosing identifying or personal health information.

VITALITÉ’S REPRESENTATIONS

[6] When this matter escalated to formal investigation, Vitalité maintained its position that the requested information needed to be protected in full for various reasons.

[7] Vitalité submitted the following:

- Psychiatric care is legislated under the *Mental Health Act* which has specific provisions on access and disclosure taking the risk of harm into consideration;
- Vitalité has a duty to protect its patients, specifically the most vulnerable, and has done its due diligence by closely examining the records subject of the access complaint in reference, to determine whether or not their disclosure could cause any potential harm to individuals;

- Records relating to complaints about psychiatric care are mainly comprised of sensitive personal health information protected under the *Personal Health Information Privacy and Access Act* and the *Mental Health Act*, disclosing them even partially redacted poses a significant risk to individuals who would re-identify themselves and re-live a trauma, which could have severe consequences;
- Vitalité has established a relationship of trust with its patients, who are informed about complaint processes and who share sensitive information in confidence about them during the complaint investigation, disclosing the records requested could also go against the patient's will and consent, which would not only damage the trust patients have in Vitalité, but could also reduce patients' complaints because they may fear sensitive information about them could be disclosed in the public sphere.

[8] Vitalité also mentioned a case in another Canadian province where a person took their life shortly after reading their own mental health records they received through an access to information request. Vitalité said that the access and privacy oversight body in that province said that the head of a health authority could block the release of documents deemed potentially harmful to a recipient and Vitalité wants to ensure it takes all precautionary measures to prevent the same type of events from happening and find the right balance between the right to access and the duty to protect.

PRELIMINARY MATTER: REVIEW OF RECORDS

[9] This office issued a notice of complaint to Vitalité on November 18, 2025, asking Vitalité to provide a copy of all records relevant to the request.

[10] Vitalité responded by email dated December 23, 2025 explaining its reasons for refusing to give the Applicant access to the requested information. Vitalité did not provide any records for this office's review at that time.

[11] During ensuing discussions, and recognizing that there was likely a significant volume of records involved, this office explored ways to meaningfully review the information at issue with Vitalité.

[12] On January 8, 2026, Vitalité provided some records for this office's review, along with a table with a summary of complaints received directly by Vitalité. The table provided the number of complaints Vitalité received in each year specified in the request (2018-2023) by health zone and complaint type.

[13] Vitalité shared the table with the Applicant as a proposed resolution of this complaint. The Applicant said they were not interested in receiving quantitative complaint information and did not believe the table was a full answer to the request.

[14] When the matter escalated for investigation, recognizing that there was a significant number of records implicated in this matter, I asked Vitalité to produce a sample of records for review. Specifically, I asked for a representative sample consisting of one complaint for each type listed in the summary chart Vitalité shared during the informal resolution stage. I requested a sample instead of the entirety of the records at issue to get a better understanding of the nature of the information and to assess any privacy considerations that may be involved, reserving the right to require full production if needed as the investigation process unfolded.

[15] Vitalité provided the requested representative sample of the relevant records on April 20, 2026.

[16] Given that the question of the Applicant's access rights are straightforward in this case, had the records, or in the alternative a representative sample, been provided for this office's review at the outset of our complaint review, it is possible that this complaint could have been addressed relatively quickly, and possibly without the need for a formal investigation.

[17] In future complaints, I encourage Vitalité to be more forthcoming in providing the relevant records for our review in a timely manner.

[18] I will now address the question of the Applicant's access rights to the requested information.

ISSUES

[19] The issue before me is whether the Applicant has a right of access to any of the requested information, specifically:

- a) Does subsection 21(1), paragraph 21(2)(a), paragraph 21(2)(b), and/or paragraph 21(2)(c) of the *Act* apply to bar access to the requested information, in whole or in part?
- b) If so, can the records in question be reasonably severed to allow the Applicant a right of access to some information, while protecting sensitive personal information and/or personal health information from disclosure, in keeping with subsection 7(3) of the *Act*?

[20] The public body has the burden of proving that the applicant has no right of access to the record or part of the record under subsection 84(1) of the *Act*.

[21] Where the public body establishes that the information at issue is personal information (including personal health information), subsection 84(2) shifts the burden to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's privacy.

ANALYSIS AND FINDINGS

A. Did Vitalité properly refuse access under s. 21(1) (unreasonable invasion of a third party's privacy)?

[22] Section 21 requires public bodies to refuse access if the information requested is personal information that would unreasonably invade another person's privacy.

[23] Section 21 is a mandatory exception to disclosure, which means that public bodies are prohibited from disclosing information where doing so would unreasonably invade a third party's privacy. Subsection 21(2) of the *Act* sets out certain situations where disclosure is deemed to be an unreasonable invasion of privacy. Subsection 21(3) must also be considered, as it deems the disclosure of certain kinds of personal information not to be an unreasonable invasion of privacy, in which case the personal information in question cannot be protected on this ground.

[24] To rely on this exception, a public body must show that:

- the information in question is personal information about a third party, and
- that disclosure would be an unreasonable invasion of their privacy.

Step one: Does the information at issue consist of personal information about a third party?

[25] Personal information is defined in section 1 as "recorded information about an identifiable individual". The definition includes the individual's name and personal health information about the individual.

[26] Having reviewed Vitalité's submissions and explanations, the sample of complaints provided by Vitalité during the formal investigation, as well as the Applicant's argument that Vitalité should be able to provide some details without compromising individual privacy, I am satisfied that Vitalité can lawfully protect much of the information in question out of concern for patient privacy.

[27] The sample of complaints that Vitalité provided for this office's review shows that the complaints made by or on behalf of in-patient or involuntary psychiatric patients are highly descriptive of patients' individual situations and details of the care they received, as are the responses that Vitalité issued to report back on the steps taken to address these concerns.

[28] I find that the information at issue contains, in large part, identifying information about patients, and in some cases their family members and/or support persons, including sensitive personal health information.

[29] The records also include other details, including the names of Vitalité staff members involved with patient care as well as those tasked with receiving and addressing these kinds of complaints.

Step two: Would disclosure be an unreasonable invasion of privacy?

[30] Subsection 21(2) of the *Act* sets out situations where personal information is deemed to be an unreasonable invasion of privacy if it were to be disclosed. This includes personal health information about another person (paragraph 21(2)(a)).

[31] The records in question largely consist of the personal health information of patients, and for this reason, I find that Vitalité is legally bound to refuse access to the portions of the records that contain this kind of information.

[32] I also find that none of the circumstances under subsection 21(3) apply to otherwise allow for the disclosure of this information.

[33] In light of this finding, the sole remaining question is whether the relevant records could reasonably be severed to allow some access to the remaining details.

B. Can the records at issue be reasonably severed?

[34] Section 7(3) of the *Act* states:

7(3) The right to request and receive information under subsection (1) does not extend to information that is excepted from disclosure under Division B or C of this Part, but if that information can reasonably be severed from the record, an applicant has a right to request and receive information from the remainder of the record.

[35] This provision places an obligation on public bodies to take steps to ensure that only information that is lawfully protected from disclosure is withheld from

applicants. Where only part of the information in a record merits protection from disclosure, a public body should take steps to redact or sever the information at issue and provide the remainder of the record to the applicant wherever it is reasonable to do so.

[36] In assessing this complaint, I considered whether some of the information in the records at issue, such as the names of Vitalité employees, could be disclosed to allow the Applicant a right of access to at least some of the requested information.

[37] Given the highly sensitive nature of the details contained in the sample of records Vitalité provided for my review, I find that there is no reasonable or meaningful way to separate or sever sensitive personal information, including personal health information, and other potentially identifying details.

RECOMMENDATION

[38] Based on the above findings, under clause 73(1)(a)(ii)(A) of the *Act*, I confirm Vitalité's decision to refuse access to the requested in full.

This Report is issued in Fredericton, New Brunswick this 24th day of June, 2026.

Marie-France Pelletier
Ombud for New Brunswick