

review owing to the Minister's failure to respond. A response was promised by June 22 and was forwarded to the petitioner. The Minister's response states in relevant part as follows:

Please be advised that all information in the possession of the Department of Health, relating to the death of your brother, ..., has been previously provided to you.

I have included a copy of the information previously sent.”

3. It is apparent from a review of the documents sent and from my *in camera* review of the documents in the Department's possession, on July 26, 2007, that all documents in their possession were received from the petitioner herself. I believe it is equally clear from my review of the file that it is to these same documents that Minister Green was referring in his letter of September 25th, 2006.
4. The regrettable fact is that the petitioner is seeking in vain for some further record within the Department that would shed some light on the circumstances of her brother's death and the Department itself has nothing further to offer, only condolences. This is, in large part, a sufficient answer to this request.
5. However, the record is also quite full of the petitioner's and her family's earnest and sustained efforts to obtain clarification from government of the level and quality of care her brother received over the years and in the later years of his life.
6. The responsive records identified and disclosed by the department demonstrate that as far back as February 1996, the petitioner, who lives in Ontario, took an active and responsible role in the provision of care for her brother. She was often consulted by the deceased's physicians with respect to changes in his program of care and she was diligent in alerting his caregivers to developments which she and her siblings had been able to monitor regarding her brother's health status.
7. In February 2005, 10 months prior to her brother's death, the petitioner had written to the clinical psychologist that had been recently following her brother's condition to raise concerns about his treatment plan. In particular she seeks access to a Long Term Care Assessment that was completed in 2004 confirming her brother's placement in the home where he died as the optimal placement for him.
8. She has been seeking access to the Assessment since before her brother's death. Initially, disclosure was refused to her on the basis of a lack of formal consent from her brother. The record is not clear whether that consent was

withheld by her brother or whether it was never sought or obtained in a timely fashion prior to his demise, although the petitioner had requested that the psychologist in question seek that consent.

9. In any event, since 2004 the petitioner has written to several Ministers and Premiers and has been referred more than once from one department to the next. Under the *Right to Information Act* the Minister was required in this case “to notify the applicant [that he did not have the information requested] and to advise the applicant of the department in which the information may be kept or filed.” That was not done in this case. At this stage however the Long Term Care Assessment should be available and, barring any applicable exemption that has not yet been raised, should be available to the petitioner so that she and the family can obtain closure with respect to her brother’s passing.
10. Our Act does not specify that a request for personal information may be brought on behalf of a deceased person by his or her personal representative, as for instance the Ontario statute does. Section 66 of the Ontario Act provides as follows:
 66. Any right or power conferred on an individual by this Act may be exercised,
 - (a) where the individual is deceased, by the individual’s personal representative if exercise of the right or power relates to the administration of the individual’s estate;
11. *Adams v. Ontario Information and Privacy Commissioner*, 136 D.L.R. (4th) 12, Ont. Div. Ct., is an interesting case discussing the Ontario precedent and confirming that on the basis of the statutory provisions there the IPC must clearly determine that the request for personal records of a deceased person comes from none other than the deceased’s personal representative as defined under applicable statutes dealing with the law of successions and estate administration.
12. The law here is not so stringent and should be applied purposively. I have copied this recommendation to the Minister of Family and Community Services, and I would urge the Minister of Health to give this matter diligent attention so that both the letter of the law and the spirit of the *Right to Information Act* be respected in this matter. Full disclosure and transparency in this case, where the relatives of the deceased person in question have raised concerns with respect to the quality of care he received from agents of the province, will only enure to the benefit of public administration and the confidence the public places in the provision of Long Term Care Services in this province.
13. **I recommend that the Minister of Health make a more diligent search of its records and consult with other departments concerned to locate the**

records requested by the petitioner and act diligently to help the petitioner bring closure to this matter.

Dated at Fredericton, this 14th day of September, 2007.

Bernard Richard, Ombudsman