

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-4091

Appeal PA18-146

Ministry of the Solicitor General

November 26, 2020

Summary: The appellant submitted a request under section 47(2) of the *Freedom of Information and Protection of Privacy Act* to the Ministry of the Solicitor General to correct information about her mother in a Coroner's Investigation Statement. The ministry refused to make the requested correction and the appellant filed an appeal with this office. In this order, the adjudicator finds that the appellant has not established the requirements for correction to her mother's personal information and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 47(2) and 66(a); *Personal Health Information Protection Act, 2004*, SO 2004, c 3, sections 3(1), 5(1) and 23(1)(4); *Regulated Health Professions Act, 1991*, SO 1991, c 18, section 36(3).

OVERVIEW:

[1] This appeal addresses a correction request submitted under section 47(2) of the *Freedom of Information and Protection of Privacy Act (FIPPA)* to the Office of the Chief Coroner by an individual seeking to have her mother's cause of death on a Coroner's Investigation Statement changed from "natural" to "lupus". The appellant's mother had passed away in a hospital in 2006 and a coroner's investigation was conducted.

[2] The Ministry of the Solicitor General¹ (the ministry) issued a decision denying the appellant's correction request. The ministry co-ordinates *FIPPA* responses for several institutions under its umbrella, including the Office of the Chief Coroner (OCC).

[3] The appellant appealed the ministry's decision to this office and a mediator was assigned to explore settlement with the parties. However, settlement was not possible.

[4] The file then moved to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. I sought and received representations from the ministry initially by sending it a Notice of Inquiry setting out the facts and issues in the appeal. The ministry's representations raised a question as to whether the appellant was entitled to act as her mother's personal representative under section 66(a) of *FIPPA*. I subsequently sent a Notice of Inquiry to the appellant inviting her representations on the issue of whether she was entitled to act as her mother's personal representative under section 66(a) of *FIPPA*. I also sought the appellant's representations on whether the ministry's correction decision should be upheld.

[5] Most of the appellant's representations do not specifically address the issues set out in the Notice of Inquiry. Instead, the appellant made voluminous submissions² providing background information in support of her position that her mother's medical condition was misdiagnosed at the time of her death.

[6] The appellant provided a CD containing her mother's medical records, which she had obtained by submitting a request to a health information custodian³ under the *Personal Health Information and Protection Act (PHIPA)*.

[7] The appellant's representations also include multiple copies of the Coroner's Investigation Statement that she seeks to have corrected. Based on my review of the file materials, there is no evidence that the ministry provided the appellant with a copy of the Coroner's Investigation Statement in response to a freedom of information access request from the appellant. Instead, it appears that the appellant obtained a copy of the record directly from the coroner at the conclusion of its investigation. This raises a question as to whether the ministry was obligated to respond to the appellant's request to correct the record, as previous decisions from this office have found that the right to seek a correction follows the right to obtain a copy of the record under the *Act*.⁴

¹ At the time of the request, the ministry was named the Ministry of Community Safety and Correctional Services.

² In addition, the appellant sent dozens of emails in support of her correction request during the inquiry process.

³ The term "health information custodian" is defined in section 3(1) of the *Personal Health Information and Protection Act*.

⁴ See Order PO-4040, which found that the rights to request and correct personal information under sections 47(1) and (2) are connected, and relate, to each other.

However, given that the ministry already responded to the appellant's correction request, and in light of my conclusions below, I will not address this issue in this order.

[8] In this order, I uphold the ministry's refusal to make the requested corrections and dismiss the appeal.

SUMMARY OF CORRECTION REQUEST:

[9] The information the appellant seeks to correct is contained in a 2-page Coroner's Investigation Statement (the record), which states that the cause of the appellant's mother's death was "natural". The appellant seeks to have the term "natural" corrected to "lupus".

DISCUSSION:

Is the appellant entitled to act as her mother's personal representative under section 66(a) of the *Act*?

[10] The right of correction applies only to personal information of the appellant or an individual regarding whom the appellant has the right to act as their personal representative. In this case, the ministry questions whether the appellant is entitled to act as her mother's personal representative under section 66(a) of the *Act* for the purpose of seeking correction of the record. Section 66(a) states:

Any right or power conferred on an individual by this Act may be exercised, 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] As noted above, the appellant submitted her correction request to the ministry approximately twelve years after her mother's death. As also noted above, the representations filed by the appellant are voluminous and did not specifically address section 66(a) of the *Act*. However, the appellant included a copy of her mother's Last Will and Testament on the CD that contained copies of her mother's medical records. The Last Will and Testament is dated in 2006 and says that the appellant is to act as her mother's Executor and Trustee under certain conditions.

[12] Based on the contents of the CD, it would appear that the appellant was granted access to her mother's medical records, which suggests that the health information custodian concluded that she is entitled to act as a substitute decision-maker for her

mother under *PHIPA*.⁵ *PHIPA* does not require the substitute decision-maker of a deceased individual to demonstrate that they are exercising their right to act as a substitute decision-maker for the administration of the deceased individual's estate. However, under *FIPPA*, the applicable statute in this matter, section 66(a) provides that any right or power conferred on an individual, such as a right to request correction on behalf of another individual, may be exercised *if the exercise of the right or power relates to the administration of the individual's estate*.

[13] Although the appellant appears to have had the right to act for her mother's estate in various circumstances, I am not satisfied that any exercise of that right here would be related to the administration of her mother's estate, given that the appellant's mother passed away 12 years before the correction request was made. Accordingly, I find that the appellant is not entitled to exercise a right of correction under *FIPPA* to make a request to correct her mother's personal information in the record.

[14] However, for the sake of completeness, I will go on to consider the appellant's representations in support of her correction request.

Are the requirements of section 47(2) for granting a correction request met?

[15] Section 47(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 47(2)(a)⁶ gives the individual a right to ask the institution to correct the personal information.

[16] This office has previously established that in order for an institution to grant a request for correction, the following three requirements must be met:

1. the information at issue must be personal and private information; and
2. the information must be inexact, incomplete or ambiguous; and
3. the correction cannot be a substitution of opinion.⁷

[17] In each case, the appropriate method for correcting personal information should be determined by taking into account the nature of the record, the method indicated by

⁵ Section 23(1)(4) of *PHIPA* sets out the authority of a deceased person's estate trustee (or the person who assumed responsibility for the administration of the estate, if there is no estate trustee) to exercise powers with respect to a deceased person's personal health information. These powers include the authority to make a request for access to the personal health information of the deceased person. Such an authorized person is described as a "substitute decision-maker" in section 5(1) of *PHIPA*.

⁶ Section 47(2)(a) states: Every individual who is given access under subsection (1) to personal information is entitled to request correction of the personal information where the individual believes there is an error or omission therein.

⁷ Orders 186 and P-382.

the requester, if any, and the most practical and reasonable method in the circumstances.⁸

Requirement 1: the information at issue must be personal and private information

[18] There is no dispute that the record contains the appellant's mother's personal information under the definition of that term in section 2(1) of the *Act*. In its representations, the ministry concedes that information describing the "manner of death" constitutes the "personal and private information" of the appellant's mother. I have reviewed the record and find that the record contains the "personal information" of the appellant's mother as defined in paragraphs (a), (b), and (h) of the definition of that term.⁹ Accordingly, I find that the first requirement has been met.

Requirement 2: the information must be inexact, incomplete or ambiguous

[19] To meet the second requirement of section 47(2)(a), the information must be "inexact, incomplete or ambiguous". This section will not apply if the information consists of an opinion.¹⁰

[20] The ministry states:

The Coroner's finding that the appellant's mother's manner of death was natural causes is neither inexact, incomplete nor ambiguous. Indeed, it reflects the reasoned opinion of a Coroner, who is required to be a medical practitioner, and who investigated the manner of death, which was subsequently confirmed by the Regional Supervising Coroner.

[21] I have reviewed the appellant's submissions¹¹ and find that she seeks to correct

⁸ Orders P-448, MO-2250, and PO-2549.

⁹ "Personal information" means recorded information about an identifiable individual, including:

- information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual (paragraph (a));
- information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved (paragraph (b)); and
- the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual (paragraph (h)).

¹⁰ Orders P-186, PO-2079 and PO-2549.

¹¹ As noted above, the appellant's representations were voluminous and included a CD containing over 300 pages of her mother's medical records. The appellant also submitted another bundle of documents bearing the markings "HPARB" on the bottom left hand corner. I find that the documents marked "HPARB" are inadmissible in this appeal and I have not considered them in reaching my decision. These documents were clearly filed during a Health Professions Appeal and Review Board (HPARB) proceeding

the views or observations of the individuals who completed the Coroner Investigation Statement. The Coroner Investigation Statement (the record) is a standard form completed by the coroner assigned to conduct a death investigation to determine the cause of sudden death. In this case, it appears that the appellant requested that the coroner conduct an investigation into her mother's death.

[22] The appellant takes the position that the writers' views or observations contained in the record are inconsistent with other medical reports or findings. However, past orders of this office have found that the issue is not whether the statements at issue are consistent with other information, but whether they reflect the views or observations of the author at the time they were made.¹² If they do, they cannot be categorized as "inexact," "incomplete" or "ambiguous."

[23] I find that the appellant's request to have her mother's cause of death changed from "natural" to "lupus" in the record constitutes a request to change the views or observations of the writers at the time they were made. Accordingly, the information the appellant seeks to have corrected cannot be categorized as "inexact", "incomplete" or "ambiguous," and thus the second part of the test has not been met.

Requirement 3: the correction cannot be a substitution of opinion

[24] Records of an investigatory nature cannot be said to be "incorrect" or "in error" or "incomplete" if they simply reflect the views of the individuals whose impressions are being set out. In other words, it is not the truth of the recorded information that is determinative of whether a correction request should be granted, but rather whether or not what is recorded accurately reflects the author's observations and impressions at the time the record was created.¹³

[25] The ministry states:

The appellant has plainly failed to meet this part of the test. The appellant is seeking to substitute the finding of a Coroner and a Regional Supervising Coroner for the appellant's own opinion. The possibility that this could occur is unreasonable, as it would defeat the mandate of the

relating to a complaint the appellant filed against a nurse who provided care to her late mother. Section 36(3) of the *Regulated Health Professions Act (RHPA)* provides that documents filed in such proceedings are not admissible in any other civil proceeding. See PHIPA Decisions 80 and 100 for a discussion that proceedings before this office amount to "civil proceedings" for the purpose of section 36(3) of the *RHPA*. I agree with and adopt the reasoning in PHIPA Decisions 80 and 100 and am satisfied that proceedings before this office under *FIPPA* are also "civil proceedings" for the purpose of section 36(3) of the *RHPA*.

¹² Orders P-186, PO-2079 and PO-2549.

¹³ Orders M-777, MO-1438 and PO-2549.

[Office of the Chief Coroner], which is to determine the manner of death based on the results of an investigation.

[26] For similar reasons stated above, I find that the appellant's request to the ministry for it to change the cause of her mother's death on the Coroner Investigation Statement to lupus constitutes an attempt to substitute her own opinion in place of the writers' observations or opinions. Accordingly, I find that the third part of the test has also not been met.

Summary

[27] Only the first of the three requirements for correction under section 47(2) has been met. As all three parts of the three-part test must be met, I find that no right of correction is established in the circumstances of this appeal, even if the appellant had been able to establish that she has a right to act as her mother's personal representative.

[28] Accordingly, I uphold the ministry's decision to deny the appellant's correction request.

ORDER:

The ministry's decision is upheld and I dismiss the appeal.

Original Signed by: _____

Jennifer James
Adjudicator

November 26, 2020