

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 27

Complaint HA15-34

City of Toronto

April 22, 2016

Summary: The complainant asked the city for a copy of an audio recording that captures the complainant's call to a 911 dispatcher seeking medical assistance for her uncle. After her uncle's death, the complainant asked the city for a copy of the 911 call tape. The city denied her request, in full, based on the complainant's failure to establish her authority to make a request for the record under the *Personal Health Information Protection Act (PHIPA)*.

In this decision, the adjudicator finds that the requested record is a record of personal health information of the complainant's deceased uncle, to which the complainant does not have a right of access under *PHIPA*. The record is also a record of personal information of the complainant. The adjudicator finds, however, that the record is not reasonably severable under *PHIPA*, and, as a result, the complainant has no right of access to it under the *Municipal Freedom of Information and Protection of Privacy Act*. In the result, she upholds the city's denial of access to the record.

Statutes Considered: *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A, ss. 2 (definitions), 3, 4, 5(1), 8(1), 8(4), 23(1), 24, 25, 52, 53; O. Reg. 329/04, s. 3(6); *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, ss. 2 (definitions), 36(1).

Cases Considered: PHIPA Decision 17.

BACKGROUND:

[1] The complainant made a 911 call for medical assistance for her uncle, who has since died. Shortly afterward, the complainant asked Toronto Police Services for a copy of the 911 call tape and records related to the call.

[2] Toronto Police Services advised the complainant that the call had been transferred to Toronto Paramedic Services for the City of Toronto (the city). Through her lawyer, the complainant made a request to the city for a copy of the 911 recording.

[3] Upon receipt of the request, Toronto Paramedic Services advised that in order to receive a copy of the audio tape, the complainant must provide a will or an affidavit in which the complainant is named the next of kin for her deceased uncle.

[4] The complainant filed an appeal of the city's decision to this office under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*, based on her view that she should not be required to provide the requested documentation to support her access request.

[5] The city subsequently wrote to the complainant advising that the audio recording contains personal health information that does not pertain to the complainant. The city advised that it is unable to release the recording to the complainant as she is not the legal representative of the deceased's estate and does not have the authorization of the legal representative of the estate.

[6] The city followed up with a decision under the *Personal Health Information Protection Act (PHIPA)*, denying the complainant's request for access to the 911 call, in full, on the above basis. In its decision letter, the city cited section 23(1)4 of *PHIPA*, which provides that in the case of a deceased individual, the estate trustee (or, where there is no estate trustee, the person who has assumed responsibility for the administration of the deceased's estate) may give consent in respect of the personal health information of the individual for the purposes of *PHIPA*.

[7] The present complaint file under *PHIPA* was opened.

[8] The complainant objects to the city's denial of access under *PHIPA* based on her view that the audio recording she seeks is not a record of personal health information of her deceased uncle, but rather a record of her own information. In her view, she is entitled to a complete copy of the record as she is the person who made the call captured in the record.

[9] The city takes the position that the recording is a record of personal health information of her deceased uncle, to which the complainant has no right of access under *PHIPA*.

[10] As the parties were unable to resolve the issues through mediation, this file was transferred to the review stage of the complaint process under section 57(3) of *PHIPA*. During the course of my review, I sought and received representations from the complainant and the city on the complainant's rights of access under *PHIPA* or *MFIPPA*, or both.

[11] In this decision, I find that the record is a record of personal health information of the complainant's deceased uncle, to which the complainant does not have a right of access under *PHIPA*. I also find that the record contains the complainant's own personal information, which may give rise to a right of access under *MFIPPA*, if the information of her uncle is reasonably severable from her information. I conclude, however, that severance of her uncle's information would leave only a meaningless snippet, and is therefore not reasonable. In the result, I uphold the city's decision to deny access to the record, in full.

RECORD:

[12] The record is an audio recording of a 911 call made by the complainant, contained on a CD.

ISSUE:

- A. Does *PHIPA* or *MFIPPA*, or both, govern in these circumstances?
- B. If *PHIPA* applies, does the complainant have a right of access to the record under *PHIPA*?
- C. If *MFIPPA* applies, does the complainant have a right of access to the record under *MFIPPA*?
- D. Is there any other basis for ordering release of the record to the complainant?

DISCUSSION:

A. Does *PHIPA* or *MFIPPA*, or both, govern in these circumstances?

The city is subject to PHIPA and MFIPPA

The right of access to the requested record is governed by PHIPA and MFIPPA

[13] In this complaint, the parties disagree about whether any right of access to the record is governed by *PHIPA* or *MFIPPA*, and whether the complainant has a right of access to the record under the applicable statute or statutes. To begin, I must determine whether the city is subject to *PHIPA* or *MFIPPA*, or both, and whether the right of access to the record requested by the complainant is governed by a statute to which the city is subject.

[14] *PHIPA* grants an individual a right of access to records of his or her own personal health information that are in the custody or under the control of a health information custodian, subject to limited exceptions (*PHIPA*, Part V).

[15] *MFIPPA* grants an individual a right of access to records of general information (*MFIPPA*, Part I) and to an individual's own personal information (*MFIPPA*, Part II) in the custody or under the control of an institution, subject to certain exceptions.

[16] In this complaint, there is no dispute that the information being sought is contained in a "record" within the meaning of *PHIPA* (section 2) and *MFIPPA* (section 2(1)). There is also no dispute that the record is in the custody or under the control of the city.

[17] The parties agree that the city is an institution within the meaning of *MFIPPA* (*MFIPPA*, section 2(1)), and is therefore a body that is subject to *MFIPPA*.

[18] The complainant disputes that the city is a health information custodian within the meaning of *PHIPA*. In particular, the complainant takes the position that the 911 dispatcher to whom she made the call is not a health information custodian, because the dispatcher performs a different service than a health professional like a paramedic. She submits that the record of the 911 call (the record at issue in this complaint) is a "record of investigation," and not a record of health care.

[19] By contrast, the city submits, and I agree, that the city, as the operator of Toronto Paramedic Services and the communications service for the dispatch of ambulance services in the city, is a health information custodian under *PHIPA*.¹ The city is therefore a body that is subject to *PHIPA*.

[20] I also find that the complainant's request is a request for access to the entire record, which contains both the complainant's own information (as she is the caller captured in the record), as well as the information about her uncle that she provided to the 911 dispatcher during the call.² As will be seen below, these kinds of information constitute the "personal information" of the complainant within the meaning of *MFIPPA*, and the "personal health information" of the complainant's uncle within the meaning of *PHIPA*.

[21] Having found that the city is subject to both *PHIPA* and *MFIPPA*, and that the complainant's request is properly understood as a request for access to a record subject to both statutes, I will next consider whether the right of access in *PHIPA*, or *MFIPPA*, or both, applies in these circumstances.

B. If *PHIPA* applies, does the complainant have a right of access to the record under *PHIPA*?

- i. Does the record contain "personal health information" within the meaning of *PHIPA*? If so, to whom does it belong?**
- ii. If the record is a record of personal health information of an individual other than the complainant, is the complainant entitled to make a request for access to the record under *PHIPA*?**

[22] *PHIPA* sets out rules governing access to records of personal health information, and the entitlement of a person to make a request for access to such records. Under *PHIPA*, the right of access to personal health information belongs to the individual to whom the information relates (*PHIPA*, section 52), or to his or her "substitute decision-maker"—a person authorized to make a request for access on the individual's behalf (*PHIPA*, sections 5(1), 23, 25). *PHIPA* does not otherwise provide any right of access to records of personal health information.

¹ Section 3(1)4.v of *PHIPA* includes in the definition of health information custodian a person who operates an ambulance service within the meaning of the *Ambulance Act*. Section 3(6) of Regulation 329/04 under *PHIPA* prescribes as a health information custodian a municipality that operates a communications service within the meaning of the *Ambulance Act*.

I accept that the city is a health information custodian within the meaning of *PHIPA*, and that the 911 dispatcher is an agent of the city in its role as a health information custodian.

² Later in this decision, I also find that the request is not a request for disclosure of the record under *PHIPA*. See my discussion at paragraphs 82-83, below.

[23] To determine whether the right of access in *PHIPA* applies in the circumstances of this complaint, I must determine whether the record contains "personal health information," and, if so, whether the complainant is entitled to make a request for access to the record of personal health information under *PHIPA*.

The record is a record of personal health information of the complainant's uncle

[24] The complainant takes the view that the record is not a record of personal health information of her uncle, but rather a record of her own information. She notes that the record is an audio recording of a conversation between her and the 911 dispatcher, in which she provided information within her knowledge. She states that she had the consent of her uncle to share any information that is about him. On this basis, the complainant maintains that the record belongs only to her.

[25] In the alternative, she proposes that the record is a record about accountability in a death investigation, and not a record of any particular individual's information.

[26] "Personal health information" is defined in section 4(1) of *PHIPA* as follows:

identifying information about an individual in oral or recorded form, if the information,

- (a) relates to the physical or mental health of the individual, including information that consists of the health history of the individual's family,
- (b) relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual,
- (c) is a plan of service within the meaning of the *Home Care and Community Services PHIPA, 1994* for the individual,
- (d) relates to payments or eligibility for health care, or eligibility for coverage for health care, in respect of the individual,
- (e) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance,
- (f) is the individual's health number, or
- (g) identifies an individual's substitute decision-maker.

[27] In addition, sections 4(2) and 4(3) state:

(2) "identifying information" means information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual.

(3) Personal health information includes identifying information that is not personal health information described in subsection (1) but that is contained in a record that contains personal health information described in that subsection.

[28] I find that the record contains the personal health information of the complainant's uncle within the meaning of sections 4(1)(a) and (b) and section 4(3) of *PHIPA*. As the complainant recognizes, the record contains information about the physical health of her uncle and the providing of health care to him. It also contains other identifying information about her uncle, such as his address and telephone number, that qualifies as his personal health information by virtue of section 4(3). The fact that this information was communicated by the complainant to the 911 dispatcher, and that it is therefore within the complainant's own knowledge, has no bearing on this determination. The definition of personal health information at section 4 does not require that the information originate from any particular source.

[29] I also find the record does not contain the personal health information of any other person, including the complainant. The record does not contain any information about the complainant falling within section 4 of *PHIPA*. I also find no basis in *PHIPA* for the proposition that an individual's personal health information can become the personal information of another person with that individual's consent.

[30] I find, therefore, that the record contains only the personal health information of the complainant's uncle.

The complainant is not entitled to make a request for access to the record under PHIPA

[31] Having found that the record is a record of personal health information of the complainant's uncle, the next question is whether the complainant is entitled to request access to the record, on behalf of her uncle (now deceased), under *PHIPA*.

[32] Section 23(1)4 sets out the authority of a deceased person's estate trustee (or the person who has 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 (*PHIPA*, sections 25, 52, 53).

[33] The city asked the complainant to provide it with evidence that she is the estate trustee or the administrator of the estate of her deceased uncle, or that she has the consent of the estate to make an access request under *PHIPA* for her uncle's personal health information. As the complainant failed to do so, the city denied access on the basis of her lack of authority to make an access request under *PHIPA*.

[34] The complainant has not provided any evidence of her authority to act on behalf of her deceased uncle under *PHIPA*. This is in spite of the city's asking her for such evidence after receiving her request, and my invitation for representations on this issue during my review into this complaint. I also note that the complainant originally appealed the city's decision to this office on the ground she should not be required to provide evidence of her authority to act for her deceased uncle under *PHIPA*.

[35] The complainant suggests that if access to the record is governed by *PHIPA*, she is entitled to seek access on the basis of the deemed or implied consent of her uncle. In support of her claim, she notes that she made the 911 call captured in the record, that she was present during all the events captured in the record, and that the record contains only information that is within her knowledge and that, in fact, was supplied by her. She notes that by obtaining access to the record, she would not be receiving any information that she does not already know.

[36] In making this argument, I understand the complainant to be suggesting that, before his death, her uncle either implicitly consented to the disclosure of his personal health information to her, or that he implicitly consented to the complainant's making an access request under *PHIPA* on his behalf. The complainant proposes that she is entitled to the record on the basis of this implied consent.

[37] I find no basis in *PHIPA* for her conclusion. While *PHIPA* permits a health information custodian to rely on the implied consent of an individual to collect, use or disclose his personal health information in some circumstances (section 18(2)), consent after an individual's death can only be given by the deceased individual's estate trustee or the administrator of the deceased's estate (section 23(1)4). As noted above, the complainant has not provided any evidence that she acts for the estate or has the consent of the estate trustee or the person with responsibility for the administration of the deceased's estate in relation to her uncle's personal health information.

[38] It also cannot be the case that the fact of calling 911 on another individual's behalf qualifies as a valid consent of that individual under *PHIPA*. The elements of consent under *PHIPA* are set out at section 18, and, on the facts before me, I find no evidence that the complainant's uncle provided a valid consent in relation to his personal health information under *PHIPA*.

[39] The complainant's argument under this heading also relates to her claim that denying her access to the record would yield an absurd result. I will address this argument later in this decision, at Issue D.

[40] In summary, I find that *PHIPA* applies to the record, which is a record of personal health information of the complainant's deceased uncle, and that the complainant has no right of access to the record under *PHIPA*.

[41] In spite of this, the complainant may still be entitled to access information in the record under *MFIPPA*. I will address this issue next.

C. If *MFIPPA* applies, does the complainant have a right of access to the record under *MFIPPA*?

[42] Section 36(1) of *MFIPPA* grants an individual a right of access to personal information about herself held by an institution such as the city.

[43] The right of access in *MFIPPA* does not apply to any personal health information in a record (*PHIPA*, section 8(1)). However, an individual may still exercise a right of access, under *MFIPPA*, to a record of personal health information if all the personal health information is reasonably severed from the record (*PHIPA*, section 8(4)).

[44] As a result, by the operation of section 8(4) of *PHIPA* and section 36(1) of *MFIPPA*, the complainant has a right of access to her own information contained in the record of personal health information of her deceased uncle, if her uncle's personal health information can reasonably be severed from the record.³

[45] Before I address the issue of reasonable severability, I will first address the parties' arguments about whether the record contains "personal information" of the complainant within the meaning of *MFIPPA*.

The record contains the personal information of the complainant

[46] The complainant submits that the entire record is a record of her personal information, as all the information in the record was supplied by the complainant and is within her knowledge.

[47] The city recognizes that the record contains the complainant's first name, which it concedes may be the personal information of the complainant. (In the alternative, the city argues that the complainant's first name, without more, is not identifiable information about the complainant.) It denies, however, that the record contains any other personal information of the complainant. In the city's view, besides (possibly) the complainant's first name, the entirety of the record comprises the personal health information of the complainant's uncle, and not the personal information of the complainant.

³ This interpretation of section 8(4) of the *PHIPA* was applied in PHIPA Decision 17.

[48] Section 2(1) of *MFIPPA* sets out a definition of “personal information” that reads, in part, as follows:

“personal information” means recorded information about an identifiable individual, including,

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name if 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[.]

[49] Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections are not applicable in these circumstances.

[50] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall within the definition of the term at section 2(1) may still qualify as personal information.⁴

[51] I find that the record contains the personal information of the complainant within the meaning of section 2(1)(h) of *MFIPPA*. I do not accept the city’s argument that the complainant’s first name in the record is not her personal information. Information qualifies as personal information where it is reasonable to expect that an individual may be identified if the information were disclosed.⁵ In making this determination, this office takes into account the context in which the information appears.⁶ I find that the complainant’s first name, in the context of this record—which is an audio recording of a 911 call that she made—is identifying information about the complainant.

⁴ Order 11.

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁶ Orders P-872, P-1180, MO-1358 and many others.

[52] The parties agree that the address and telephone number given by the complainant and captured in the record belong to the complainant's uncle. In addition, the views and opinions expressed by the complainant in the record relate to her uncle, and therefore also qualify as the personal information of her uncle (*MFIPPA*, section 2(1)(g)).⁷

[53] I find that all this information in the record also comprises the personal information of the complainant within the meaning of section 2(1)(h) of *MFIPPA*. The entirety of the record, which consists of the complainant's 911 call, reveals other personal information about the complainant, including the fact that she made a call to 911. I conclude, therefore, that the entire record comprises the mixed personal information of the complainant and of her uncle.

[54] My finding that the record contains the personal information of the complainant means that she may have a right of access to the record under section 36(1) of *MFIPPA*.

[55] As noted, however, the right of access in *MFIPPA* applies to the record only if the personal health information of her deceased uncle can reasonably be severed. I therefore turn to consider the issue of reasonable severability.

The record is not reasonably severable within the meaning of section 8(4) of PHIPA

[56] The city describes the context in which the complainant's name appears in the record: several minutes into the 911 call, the 911 dispatcher asks for her name, and the complainant provides her first name. The city submits that this snippet is the only personal information of the complainant in the record, and that it is not reasonably severable from the personal health information of her uncle.

[57] The city also notes that it has a long-standing practice of treating records of 911 medical calls as records of personal health information of the patient, regardless of who makes the call. For the city, the complainant's identity as caller and as a relative of the patient is irrelevant to the issue of her right of access to the record.

[58] The complainant asserts that she is entitled to the record, in full, under section 36(1) of *MFIPPA*. She relies in particular on the undisputed fact that she is the caller and knows the full contents of the record. She believes that denying her access to a record of her own conversation is absurd.

⁷ All this personal information of the complainant's uncle is therefore his personal health information under section 4(3) of *PHIPA*. See my discussion at Issue A.i, above.

[59] I conclude that the complainant has no right of access to the record under *MFIPPA*. This is because I find the record is not reasonably severable within the meaning of section 8(4) of *PHIPA*.

[60] Although I found above that the record is a record of mixed personal information of the complainant and of the complainant's uncle (and, therefore, a record of her uncle's personal health information),⁸ the complainant's right of access under *MFIPPA* is limited to that portion of the record that can reasonably be severed from the personal health information in it. The only portion of the record that is not her uncle's personal health information—in other words, the only portion of the record that is only about the complainant and not about her uncle—is her first name. I find that disclosure of this item would be of no value to the complainant, whose interest is clearly in obtaining access to the entire record. Severing the personal health information in the record to leave only this snippet would not amount to a reasonable severance of the record.⁹ As the record is not reasonably severable within the meaning of section 8(4) of *PHIPA*, the complainant has no right of access to it under *MFIPPA*.

[61] This finding is sufficient to dispose of the issues in this complaint. Nonetheless, I wish to address the additional arguments made by the complainant in support of her request for access to the entire record. I conclude that none of these is a basis for ordering release of the record.

D. Is there any other basis for ordering release of the record to the complainant?

[62] The complainant makes four additional submissions in support of her view that she is entitled to the record in full.

[63] First, she proposes that the record ought to be disclosed to her pursuant to the absurd result principle.

[64] Second, she submits that there is a public interest in disclosure of the record, based on the interest in ensuring the accountability of 911 services and 911 response times. She provides copies of coroner's investigation records in support of her assertion that detailed health information about her uncle's death has already been provided to her in recognition of a public interest in disclosing such information.

⁸ *PHIPA*, section 4(3).

⁹ The concept of the reasonable severability of records has been judicially considered and applied by this office to find that information that would, if released, comprise only disconnected or meaningless snippets is not reasonably severable, and is not required to be released. The IPC has applied this approach in interpreting severance provisions in *FIPPA* and *MFIPPA* (see Orders PO-1735, PO-1663 and many others), and in *PHIPA* (*PHIPA* Decision 17). See *PHIPA* Decision 17, footnote 74 for more details.

[65] The complainant also suggests that disclosure of the record is desirable for compassionate reasons.

[66] Finally, the complainant states that the city's decision to deny access to the record contradicts its own directive on disclosure of 911 call recordings. She provides a copy of the city's routine disclosure plan for emergency medical services records that indicates that the city's policy is to disclose audio recordings of incoming 911 calls to the callers (and to other specified recipients) who request access.

[67] The city provided representations in reply to the complainant's submissions. I will refer to these where relevant.

The absurd result principle does not apply in these circumstances

[68] This office has recognized that, in some circumstances, denying access to information may yield manifestly absurd or unjust results. In those circumstances, this office has applied the "absurd result" principle to find that claimed exemptions from the right of access did not apply. The absurd result principle has been applied where, for example, a requester originally supplied the information or is otherwise aware of the information.¹⁰

[69] In these cases, this office has taken into consideration all the circumstances surrounding the request for access, as well as the fundamental purposes of the statute under which the request was made. The fundamental purposes of the statutes administered by this office, including *PHIPA* and *MFIPPA*, include providing a right of access to one's own information, and protecting individuals' personal privacy.

[70] This office has recognized that, in some cases, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's own knowledge, because disclosure would be inconsistent with the purpose of the exemption claimed to deny access.¹¹ The absurd result principle was found not to apply, for example, where protecting other individuals' personal privacy outweighed the potential absurdity of withholding from a requester a record that had been in the requester's possession.¹² In each case, the determination of whether the absurd result principle applies is dependent on the facts and circumstances present.

¹⁰ Orders M-444, P-1414, PO-1679 and others.

¹¹ Order MO-1323 and others.

¹² Orders M-757, MO-1323, MO-1378 and others.

[71] In this case, I acknowledge that the complainant, as the caller whose conversation is captured in the record, was privy, either as provider or recipient, to all the information contained in the record. I find, however, that the absurd result principle cannot apply to confer a right of access where there otherwise is none.¹³

[72] I found above that the record is a record of personal health information of an individual other than the complainant, to which the complainant has no right of access under *PHIPA*. Applying the absurd result principle to enable the release of an individual's personal health information to a person with no entitlement to this information under *PHIPA* would be inconsistent with the purposes of that act.

[73] I also found that the complainant has no right of access to the record under *MFIPPA*, as it is not reasonably severable within the meaning of section 8(4) of *PHIPA*. *PHIPA* precludes access under *MFIPPA* to records of other individuals' personal health information unless those records can reasonably be severed. I find no absurd result in denying access, under *MFIPPA*, to a record of another individual's personal health information in accordance with the limitation on that access set out in *PHIPA*.

[74] The absurd result principle has no application to these facts.

The public interest override does not apply in these circumstances

[75] The complainant asserts that there is a public interest in the release of the record to her.

[76] The public interest override at section 16 of *MFIPPA* provides that certain exemptions from the right of access in *MFIPPA* will not apply if there is a compelling public interest in disclosure that clearly outweighs the purpose of the applicable exemption. I need only consider the application of section 16 if I find the complainant has a right of access under *MFIPPA*, and the denial of access is based on one of the exemptions enumerated at section 16.

[77] In this case, I found that the complainant has no right of access to the record under *MFIPPA*. Given this, section 16 has no application.

[78] I also observe that public interest considerations are not relevant to the question of reasonable severability under section 8(4) of *PHIPA*.

[79] In addition, there is no equivalent public interest override provision in *PHIPA*, and I find no basis for reading in a public interest override that would confer a right of access under *PHIPA* where there otherwise is none. I find irrelevant to this issue the

¹³ I note that the question of whether the absurd result principle could apply where an individual has a right of access under *PHIPA* is not before me in this complaint.

complainant's evidence that she has obtained information about her uncle's death through other means.

The complainant has not shown that there are compassionate grounds for disclosure of the record

[80] The complainant proposes that there are compassionate reasons for providing her with access to the record. She cites an order of this office, decided under the provincial equivalent to section 14(4)(c) of *MFIPPA*, where the disclosure of personal information of a deceased individual was found to be desirable for compassionate reasons.¹⁴ In referring to that order, I understand the complainant to be suggesting that *PHIPA* should be interpreted to include compassionate grounds for access.

[81] As the city acknowledges, *PHIPA* permits the disclosure of personal health information without an individual's consent in certain circumstances (*PHIPA*, sections 38-48, 50). Compassionate reasons for disclosure may be a relevant consideration in some of these circumstances—for example, this office has recognized that a health information custodian may take into account a compassionate need for information when deciding whether to disclose personal health information about the fact of and the circumstances of an individual's death.¹⁵ It is important to note that any disclosures under these sections of *PHIPA* are discretionary, although discretion must be exercised in a proper manner, failing which a complaint may be made to this office.¹⁶

[82] Having reviewed the complainant's original request to the city, the city's decision letters to the complainant in response to her request, and the parties' submissions to this office throughout this complaint process, I see no reason for the city to have interpreted the complainant's request as a request for disclosure without consent on compassionate grounds under *PHIPA*.

[83] It is evident from her submissions to the city and to this office, including in her representations made during this review, that the complainant seeks access to the record based on her belief that she is entitled to it under *MFIPPA* or *PHIPA* or both. In response to her request, the city denied access under *MFIPPA*, with reference to the complainant's lack of authority to make a request for access under *PHIPA*. I find no support in *PHIPA* for the proposition that an individual's right of access in *PHIPA* to his own personal health information may be conferred onto another person based on compassionate grounds.

¹⁴ Order PO-3212, addressing section 21(4) of the *Freedom of Information and Protection of Privacy Act*. Section 21(4) is an exception to the mandatory exemption prohibiting the disclosure of personal information to any person other than the individual to whom the information relates. The exception at section 21(4) enables the disclosure of another individual's personal information on compassionate grounds.

¹⁵ *PHIPA* Decision 21, paragraphs 32-33, considering *PHIPA* section 38(4)(b).

¹⁶ *PHIPA* Decision 19, upheld on reconsideration in *PHIPA* Decision 25.

[84] I also observe that disclosure on compassionate grounds is not a relevant consideration in the question of reasonable severability under section 8(4) of *PHIPA*.

[85] I dismiss this aspect of the complainant's submission.

The city has corrected the error in its routine disclosure plan for the release of 911 call recordings

[86] Lastly, the complainant refers to a city policy on the release of emergency medical services records, including 911 call recordings, that supports her claim of a right of access to the record. Specifically, the city's routine disclosure plan dated January 2014 provides that an audio recording of an incoming 911 call is disclosed (with some severances) upon request to the caller.

[87] In reply, the city reports that the January 2014 version of its routine disclosure plan for Toronto Paramedic Services records contained an error and does not reflect the city's practice. This error has been corrected in an updated version of the city's routine disclosure plan. I confirm that the plan currently posted on the city's website states that audio recordings of incoming calls to Toronto Paramedic Services are to be disclosed upon request only to the patient and to those with the patient's consent.¹⁷ This policy accords with the city's decision to deny the complainant access to the record based on the lack of consent of the estate trustee or other person authorized under *PHIPA* to consent on behalf of her deceased uncle, the patient whose personal health information is contained in the record.

[88] I am satisfied that the city's refusal of access is in accordance with *PHIPA*. In any event, I do not find that this ground of complaint would confer onto the complainant a right of access under *PHIPA*, or *MFIPPA*, where she does not otherwise have one.

Conclusion

[89] Based on all the above, I uphold the city's decision to deny the complainant access to the record in full. I specifically find that the complainant has no right of access to the record under either *PHIPA* or *MFIPPA*.

[90] I dismiss this complaint.

¹⁷ City of Toronto, "Routine Disclosure Plan – Division: Toronto Paramedic Services" (January 2016). Available online at www.toronto.ca.

DISPOSITION:

1. No order is issued under *PHIPA*.
2. I uphold the city's decision under *MFIPPA*.

Original Signed By: _____

Jenny Ryu
Adjudicator

April 22, 2016