

Information and Privacy Commissioner,  
Ontario, Canada



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

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## PHIPA DECISION 33

Complaint HA14-69

Mackenzie Health

October 13, 2016

**Summary:** The daughter of a former patient made a request to the hospital for access to records of correspondence relating to her deceased mother as well as to herself. The hospital denied access to a number of records, in whole or in part, on the basis of exemptions in the *Personal Health Information Protection Act, 2004 (PHIPA)* and the *Freedom of Information and Protection of Privacy Act (FIPPA)*.

The adjudicator finds that the daughter is entitled to request access to both her mother's personal health information and to her own personal information in the records under *PHIPA* and *FIPPA*, and considers the extent of the daughter's rights of access under both statutes. She concludes that the hospital properly withheld most of the information at issue in the records under *PHIPA* or *FIPPA*, or both. She orders the disclosure of two discrete severances in two records where she does not accept the hospital's exemption claims. In the result, the adjudicator largely upholds the hospital's access decision under both statutes.

**Statutes Considered:** *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sched A, as amended, ss. 2 (definitions), 3, 4, 5(1), 8(1), 8(4), 23(1)(4), 25, 52; *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, as amended, ss 2 (definitions), 13, 19, 21, 47(1), 49; *Quality of Care Information Protection Act, 2004*, SO 2004, c 3, Sched B, ss 1 (definitions), 1.1.

**Decisions Considered:** PHIPA Decision 17, PHIPA Decision 27, PHIPA Decision 30.

## **BACKGROUND:**

[1] The daughter of a former patient of Mackenzie Health (the hospital) made a request to the hospital for a number of records relating to her deceased mother's care. This complaint addresses the portion of the daughter's request seeking all correspondence relating to her mother, as well as to herself.<sup>1</sup>

[2] In response to this aspect of the request, the hospital issued a decision providing partial access to records located as a result of a keyword term search for various combinations of the mother's and daughter's first and last names. The hospital provided an index with its decision indicating that it denied access to some records, in whole or in part, on the basis of certain sections of the *Personal Health Information Protection Act, 2004 (PHIPA)* and the *Freedom of Information and Protection of Privacy Act (FIPPA)*. In particular, the hospital denied access to some records pursuant to sections 51(1)(a) (quality of care exclusion), 52(1)(a) (legal privilege) and 52(1)(c) (ongoing proceedings) of *PHIPA*. It also claimed, through the "flow-through" to certain sections of *FIPPA* at section 52(1)(f) of *PHIPA*, the application of certain exemptions available to it in *FIPPA*. For other records, the hospital denied access solely on the basis of exemptions in *FIPPA*.

[3] The daughter complained about the hospital's denial of access to this office, becoming the complainant in this matter.

[4] As the parties were unable to resolve the issues through mediation, the complaint 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 hospital and the complainant on the complainant's right of access to the records under *PHIPA* or *FIPPA*, or both.

[5] In seeking their representations on the issues, I directed the parties to consider PHIPA Decision 17, which was issued by this office after the close of the mediation stage of the present complaint. In PHIPA Decision 17, this office addressed, for the first time, a number of issues relating to the application of both *PHIPA* and *FIPPA* to an access request.

[6] After reviewing its position in light of the findings in PHIPA Decision 17, the hospital issued a revised decision granting additional access to a number of records or portions of records. The hospital also provided an updated index of records reflecting its revised decision, along with its representations in support of withholding the remaining records or parts of records under *PHIPA* or *FIPPA* or both.

[7] The complainant provided representations in response.

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<sup>1</sup> A separate complaint was opened to address the issues arising from another portion of the daughter's request. That complaint was disposed of in PHIPA Decision 30.

[8] In this decision, I find that some records contain only the personal health information of the complainant's mother, while other records contain only the personal information of the complainant. Still other records contain both the personal health information of the complainant's mother and the complainant's own personal information.

[9] I find that the complainant is entitled to request access to all these records under *PHIPA* and *FIPPA*. I conclude, however, that the hospital properly withheld most of the information remaining at issue in the records under *PHIPA* or *FIPPA*, or both.<sup>2</sup> I order the disclosure of two discrete severances in two records where I do not accept the hospital's exemption claims. In the result, I largely uphold the hospital's access decision under both statutes.

### **INFORMATION AT ISSUE:**

[10] At issue in this complaint are the withheld portions of records of correspondence relating to the complainant's mother and/or to the complainant, to which the hospital denied access in full or in part.

[11] The parties will receive an Appendix with this decision, setting out my decision on access to each record containing information at issue in this review.

### **ISSUES:**

- A. Does *PHIPA* or *FIPPA*, or both, apply in the circumstances of this complaint?
- B. What is the extent of the complainant's right of access to the records under the applicable statute(s)?

#### B1. Access under *PHIPA*

- i. Does section 51(1)(a) exclude any personal health information from the right of access in *PHIPA*?
- ii. For each record of personal health information to which the complainant exercises a right of access, is the record "dedicated primarily" to that personal health information within the meaning of section 52(3)?

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<sup>2</sup> For ease of reading, and consistent with the terminology used in *PHIPA* Decision 17, in this decision I will use the terms "refuse access to" and "withhold" interchangeably when referring to a denial of access in response to a request for one's own personal health information made under *PHIPA*, or for one's own personal information made under *FIPPA*.

For the same reason, I will use the terms "grant access to," "release" and "disclose" interchangeably when referring to a release of information to an individual in response to a request for access to one's own personal health information under *PHIPA* or to one's own personal information under *FIPPA*.

- iii. For each record of personal health information to which the complainant exercises a right of access, do any of the exemptions at section 52(1) of *PHIPA* apply?

#### B2. Access under *FIPPA*

- i. Does the discretionary exemption at section 19, in conjunction with section 49(a), apply to any of the information?
- ii. Does the discretionary exemption at section 13(1), in conjunction with section 49(a), apply to any of the information?
- iii. Does the discretionary exemption at section 49(b) apply to any of the information?
- iv. Did the hospital exercise its discretion under *PHIPA* and/or *FIPPA*?

### **DISCUSSION:**

#### **A. Does *PHIPA* or *FIPPA*, or both, apply in the circumstances of this complaint?**

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

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

[14] As the hospital is subject to both *PHIPA* and *FIPPA*,<sup>3</sup> a preliminary question for the hospital, on receiving a request for access to information, is whether *PHIPA* or *FIPPA*, or both, applies.

[15] The request giving rise to this complaint is a request for records of correspondence relating to the complainant's mother (who was a patient of the hospital), as well as for records of correspondence relating the complainant. The information at issue is contained in records located by the hospital through its search for records of correspondence containing various combinations of the mother's and daughter's first and last names.

[16] Based on the wording on the request and the content of the responsive records, I find (and the parties do not dispute) that both *PHIPA* and *FIPPA* apply in this

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<sup>3</sup> Specifically, the hospital is operated by a person who is a health information custodian within the meaning of paragraph 4.i of section 3(1) of *PHIPA*, and it is an institution within the meaning of paragraph a.2 of section 2(1) of *FIPPA*.

complaint.

[17] Some of the records contain identifying information about the complainant's mother relating to her physical or mental health, or to the providing of health care to her. This information constitutes the complainant's mother's "personal health information" within the meaning of paragraphs (a) and (b) of the definition at section 4(1) of *PHIPA*. Her personal health information in the records also includes other identifying information about her that is not personal health information described in section 4(1), but that nonetheless qualifies as her personal health information under section 4(3).

[18] The right of access to these records of personal health information of the complainant's mother is governed by *PHIPA*. The right of access in *PHIPA* can only be exercised by the individual to whom the information relates (*PHIPA*, section 52), or to 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.

[19] In this case, there is no dispute that the complainant acts as the substitute decision-maker for her deceased mother within the meaning of *PHIPA*. The complainant provided a copy of the will of her deceased mother, naming the complainant as a trustee of her mother's estate.<sup>4</sup> I therefore find that the complainant is entitled to exercise, on her mother's behalf, her mother's right of access under *PHIPA* to records of the mother's personal health information.

[20] In addition, some of the records contain information about the complainant. This includes information about the complainant's family status, her address, her personal opinions or views and correspondence sent by her to the hospital in confidence. All this information constitutes the complainant's "personal information" within the meaning of paragraphs (a), (d), (e), and (f) of the definition at section 2(1) of *FIPPA*. The complainant's personal information also includes her name where its disclosure would reveal other personal information about her (paragraph (h)).

[21] The complainant has a right of access under *FIPPA* to her own personal information in records that do not contain her mother's personal health information. Her right of access under *FIPPA* also extends to those records of her mother's personal health information that also contain the complainant's personal information, where the

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<sup>4</sup> Section 23(1)4 of *PHIPA* 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).

The complainant provided a copy of the will of her deceased mother, naming the complainant and her sister as executors of the will and estate trustees. The complainant also provided the consent of her sister (the joint executor and estate trustee) to the complainant's making a request for access to the personal health information of their deceased mother.

complainant does not otherwise have access through her mother's *PHIPA* request.<sup>5</sup>

[22] Having found that the complainant may exercise a right of access to the records under *PHIPA* (on behalf of her deceased mother) and under *FIPPA* (on her own behalf), I will next determine the extent of her rights of access to the records under both statutes.

**B. What is the extent of the complainant's right of access to the records under the applicable statute(s)?**

[23] The complainant's right of access, on behalf of her mother, to her mother's personal health information is governed by section 52 of *PHIPA*. This section reads, in part:

(1) Subject to this Part, an individual has a right of access to a record of personal health information about the individual that is in the custody or under the control of a health information custodian unless [...]

(2) Despite subsection (1), an individual has a right of access to that part of a record of personal health information about the individual that can reasonably be severed from the part of the record to which the individual does not have a right of access as a result of clauses (1) (a) to (f).

(3) Despite subsection (1), if a record is not a record dedicated primarily to personal health information about the individual requesting access, the individual has a right of access only to the portion of personal health information about the individual in the record that can reasonably be severed from the record for the purpose of providing access.

[24] In addition, for any of her own personal information in the records to which the complainant does not otherwise have access through her mother's *PHIPA* request, the complainant's right of access is under *FIPPA*. Section 47(1) of *FIPPA* gives an individual a right of access to her own personal information held by an institution. In records of her mother's personal health information, the complainant's right of access under *FIPPA* to her own personal information is preserved by sections 8(1) and 8(4) of *PHIPA*.<sup>6</sup> In these records, it is necessary to first determine the extent of any right of access under *PHIPA*, and then consider the extent of any right of access under *FIPPA* to any remaining portions of the records to which the complainant does not otherwise have access under *PHIPA*.<sup>7</sup>

[25] In light of the above, I will next consider the complainant's right of access, on behalf of her mother, to records of her mother's personal health information under

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<sup>5</sup> *PHIPA*, sections 8(1) and 8(4). See also discussion at paragraphs 73-75, below.

<sup>6</sup> See paragraphs 73-75, below.

<sup>7</sup> *PHIPA* Decision 30.

*PHIPA*. I will then consider the extent of the complainant's right of access, under *FIPPA*, to any remaining portions of records of personal health information that also contain the complainant's personal information, as well as the complainant's right of access under *FIPPA* to records containing only her personal information.

### **B1. Access under *PHIPA***

[26] The hospital has withheld personal health information in the records on the basis of sections 51(1)(a) (quality of care exclusion), 52(1)(a) (legal privilege) and 52(1)(c) (ongoing proceedings) of *PHIPA*, and, through the "flow-through" to certain sections of *FIPPA* at section 52(1)(f) of *PHIPA*, sections 13 (advice or recommendations) and 19 (solicitor-client privilege), in conjunction with section 49(a) (denial of access to own information), of *FIPPA*.

[27] I will begin by addressing the hospital's section 51(1)(a) claim, as the application of this exclusion would remove any qualifying personal health information from the right of access in *PHIPA*.

[28] Then, for the remaining personal health information that is not excluded from the right of access in *PHIPA*, I will consider each of the hospital's exemption claims in turn.

#### ***i. Does section 51(1)(a) exclude any personal health information from the right of access in PHIPA?***

[29] Section 51(1)(a) of *PHIPA* states:

This Part [Part V of *PHIPA*, setting out a right of access to records of one's own personal health information] does not apply to a record that contains [...] quality of care information[.]

[30] "Quality of care information" is defined at section 2 of *PHIPA* as having the same meaning as in the *Quality of Care Information Protection Act, 2004 (QCIPA)*.<sup>8</sup> The definition of "quality of care information" in *QCIPA* includes information that is collected by or prepared for a quality of care committee for the sole or primary purpose of assisting the committee in carrying out its functions. "Quality of care committee" is also defined in *QCIPA*.

[31] The hospital identified several records as containing quality of care information relating to reviews conducted by or for the committee designated by the hospital's Board of Directors as a quality of care committee for the purposes of *QCIPA*. The

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<sup>8</sup> SO 2004, c 3, Sched B. *QCIPA* is to be repealed and replaced by the *Quality of Care Information Protection Act, 2016* on a day to be named by proclamation of the Lieutenant Governor. The *Quality of Care Information Protection Act, 2016*, not yet in force, contains definitions of "quality of care information" and "quality of care committee" that are largely identical to those contained in *QCIPA*.

hospital explains that the withheld information is about a *QCIPA* review undertaken in relation to the medical quality of care provided to the complainant's mother. One record also contains information about a *QCIPA* review conducted in relation to another patient in an unrelated case.

[32] I have reviewed the records and the hospital's representations, and I am satisfied that the following records contain quality of care information within the meaning of *PHIPA*: Records 46, 47, 49, 160, 161, 162, 178, 224 and 227. The information sought to be excluded in these records relates to quality of care reviews conducted by the hospital, and includes the basis for the reviews as well as specific findings. I also agree with the hospital that Record 227 additionally contains quality of care information relating to another patient, which would not be subject to the complainant's mother's right of access under *PHIPA* in any event.

[33] Even where a record contains information excluded under section 51(1), section 51(2) may apply to give the individual a right of access to part of the record. This section states:

Despite subsection (1), this Part [Part V of *PHIPA*] applies to that part of a record of personal health information that can reasonably be severed from the part of the record that contains the information described in clauses (1) (a) to (d).

[34] All the personal health information in Records 178, 224 and 227 is excluded personal health information (and, in the case of Record 227, includes other personal health information to which the complainant does not exercise a right of access on behalf of her mother), with no possibility of severance. The complainant therefore has no right of access (on behalf of her mother) to other parts of these records under *PHIPA*.<sup>9</sup>

[35] By contrast, Records 46, 47, 49, 160, 161 and 162 contain, in addition to excluded personal health information, other personal health information that can reasonably be severed from the excluded information. The complainant therefore exercises a right of access, on behalf of her mother, to the reasonably severable personal health information in these records. I will consider the extent of her right of access to the remaining personal health information under the next headings.

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<sup>9</sup> In addition, these records do not contain any personal information of the complainant. The complainant therefore has no right of access to the information withheld in these records under either *PHIPA* or *FIPPA*.



**ii. For each record of personal health information to which the complainant exercises a right of access, is the record "dedicated primarily" to that personal health information within the meaning of section 52(3)?**

[36] For each record of personal health information of the complainant's mother that is not wholly excluded from the right of access by virtue of section 51, the complainant exercises a right of access, on behalf of her mother, under section 52 of *PHIPA*.

[37] In order to determine the extent of the right of access to the records under *PHIPA*, it is first necessary to determine, for each record, whether it is "dedicated primarily" to the personal health information of the complainant's mother. This is because, subject to any applicable exemptions, the right of access in *PHIPA* applies either to a whole record (under section 52(1)), or only to certain portions of a record of personal health information (under section 52(3)). If a record is dedicated primarily to the personal health information of the individual, the individual (or, in this case, her substitute decision-maker) has a right of access to the entire record, even if it incidentally contains information about other matters or other parties. If, on the other hand, a record is not dedicated primarily to the personal health information of the individual, the right of access only applies to the information about the individual that can reasonably be severed from the record.

[38] *PHIPA* Decision 17 set out this office's approach to the interpretation of section 52(3). In order to determine whether a record is "dedicated primarily" to the personal health information of an individual within the meaning of section 52(3), this office takes into consideration various factors, including:

- the quantity of personal health information of the requester in the record;
- whether there is personal health information of individuals other than the requester in the record;
- the purpose of the personal health information in the record;
- the reason for creation of the record;
- whether the personal health information of the requester is central to the purpose for which the record exists; and
- whether the record would exist "but for" the personal health information of the requester in it.<sup>10</sup>

[39] This list is not exhaustive.

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<sup>10</sup> *PHIPA* Decision 17, para 95.

[40] The hospital applied this purposive approach to the interpretation of section 52(3) described in PHIPA Decision 17, and concluded that the majority of the records are not dedicated primarily to the personal health information of the complainant's mother. The hospital identifies these records as having been created for legal, risk management, communications and other purposes. The hospital notes that in many of these records, the quantity of the mother's personal health is minimal, or arises solely from the inclusion of the complainant's own emails as part of a forwarded email chain; some records also contain personal health information of patients other than the complainant's mother. The records include those relating to the complainant's lawsuit against the hospital, draft correspondence, internal communications about process issues and meeting arrangements, and other matters not directly related and several steps removed from the care experience of the complainant's mother.

[41] The complainant questions the hospital's ability to accurately determine whether records of her mother's personal health information are or are not "dedicated primarily" to the personal health information in them. In her view, any records containing her mother's information, even indirectly, are a reflection on the level of care provided to her, and should be released to the complainant.

[42] I have reviewed the records and conclude that most of them are not dedicated primarily to the personal health information of the complainant's mother within the meaning of section 52(3).

[43] Some of the records contain only snippets of the mother's personal health information that are included in the records for context, in order to identify the matter to which the records relate. Other records contain large amounts of the mother's personal health information, typically in the form of the complainant's own emails (and those portions of the records appear to have been released to her). In still other records, the personal health information of the complainant's mother originates from hospital staff.

[44] I find that in many of these records, the mother's personal health information is included for purposes only incidentally related and several steps removed from her clinical experience. Consistent with the approach taken in PHIPA Decision 17 and PHIPA Decision 30, I conclude that these records are not dedicated primarily to the mother's personal health information. Although it can be said that these records would not exist "but for" that clinical interaction, the records are not directly about the personal health information contained in the records, and are instead qualitatively about other matters. Examples of the latter type of records include communications about the various legal proceedings commenced by the complainant,<sup>11</sup> draft correspondence to the complainant and outside regulatory bodies circulated for review and comment,<sup>12</sup> and internal updates about administrative matters that may include information about patients other

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<sup>11</sup> Records 105, 196 and others.

<sup>12</sup> Records 69, 116 and others.

than the complainant's mother.<sup>13</sup>

[45] For these records, the complainant exercises a right of access, on her mother's behalf, under section 52(3) only to any personal health information about her mother in the records that can reasonably be severed for the purpose of providing access. The right of access under section 52(3) does not extend to other information in the records that is not qualitatively about her mother. In making this finding, I reject the complainant's implicit claim that the latter type of information is intended to be directly accessible to requesters through *PHIPA*. As described in PHIPA Decision 17, the purposive interpretation of section 52(3) applied by this office is in keeping with *PHIPA*'s purpose to grant a right of access to one's own personal health information, but not to unrelated information directly through *PHIPA*.<sup>14</sup>

[46] In records that are not dedicated primarily to the mother's personal health information, undisclosed personal health information that would, if released, comprise only disconnected or meaningless snippets are not "reasonably severable" within the meaning of section 52(3), and are not required to be released.<sup>15</sup> In some of these records, all the reasonably severable personal health information of the complainant's mother has already been released to the complainant, on her mother's behalf; the remaining information at issue is not her mother's personal health information, and is thus not subject to the complainant's right of access, on behalf of her mother, under section 52(3) of *PHIPA*.<sup>16</sup>

[47] I find that other records are dedicated primarily to the complainant's mother's personal health information within the meaning of section 52(3). These records typically contain a large quantity of personal health information about the complainant's mother (and no personal health information about any other individuals). More importantly, whatever the quantity of the mother's personal health information in the records, it is clear from the records' contents that the personal health information in them is central to the purpose of these records. Although some of these records may not be contained in the mother's patient file, they are qualitatively about the clinical experience of the complainant's mother in the hospital, and are not primarily about other matters. These records contain communications between hospital staff about the reviews conducted in respect of the care provided to the complainant's mother during her time in the

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<sup>13</sup> Records 12, 13 and others.

<sup>14</sup> PHIPA Decision 17, paragraphs 91-97, 112-114.

<sup>15</sup> 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, PHIPA Decision 27). See PHIPA Decision 17, footnote 74 for more details.

<sup>16</sup> Records 11, 12, 13 and others. In Record 12, for example, the withheld information consists of the personal health information of individuals other than the complainant's mother, and the personal email address of a hospital staff member. Neither type of information is subject to the right of access under section 52(3).

hospital, including information about the basis for conducting the reviews and review findings.<sup>17</sup>

[48] For these records, the complainant exercises a right of access, on her mother's behalf, to the records in their entirety under section 52(1), subject to any applicable exemptions. As acknowledged in PHIPA Decision 17, these records may include information about matters unrelated to the complainant's mother, which may incidentally be accessible to the complainant under section 52(1). As any such unrelated information is contained in records that are primarily about the complainant's mother, this result is compatible with a purposive interpretation of the access regime in *PHIPA*.<sup>18</sup>

[49] Having determined that the complainant exercises a right of access to some records in their entirety under section 52(1), and only to the reasonably severable personal health information in other records under section 52(3), the next question is whether any of the exemptions on which the hospital relies to deny access to the records, or parts of records, applies.

***iii. For each record of personal health information to which the complainant exercises a right of access, do any of the exemptions at section 52(1) of PHIPA apply?***

[50] The hospital denies access to records of personal health information that are dedicated primarily to the mother's personal health information (to which the complainant exercises a right of access under section 52(1)), or to the reasonably severable personal health information in records that are not dedicated primarily to the mother's personal health information (to which the complainant exercises a right of access under section 52(3)) on the basis of exemptions at sections 52(1)(a), (c) and (f)(ii)(A) of *PHIPA*. These sections state:

52. (1) Subject to [Part V of PHIPA, governing the right of access], an individual has a right of access to a record of personal health information about the individual that is in the custody or under the control of a health information custodian unless,

(a) the record or the information in the record is subject to a legal privilege that restricts disclosure of the record or the information, as the case may be, to the individual;

(c) the information in the record was collected or created primarily in anticipation of or for use in a proceeding, and the proceeding, together with all appeals or processes resulting from it, have not been concluded;

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<sup>17</sup> Records 40, 46, 47, 160, 161, 162.

<sup>18</sup> PHIPA Decision 17, paragraphs 113-114.

(f) the following conditions are met:

(i) the custodian is an institution within the meaning of the Freedom of Information and Protection of Privacy Act or the Municipal Freedom of Information and Protection of Privacy Act or is acting as part of such an institution, and

(ii) the custodian would refuse to grant access to the part of the record,

(A) under clause 49 (a), (c) or (e) of the Freedom of Information and Protection of Privacy Act, if the request were made under that Act and that Act applied to the record[.]

[51] Section 52(1)(f)(ii)(A) of *PHIPA* permits the hospital, as a body subject to both *PHIPA* and *FIPPA*, to claim the application of certain *FIPPA* exemptions (as "flow-through" *FIPPA* claims) to deny access to personal health information in the records. In this case, the hospital claims the exemptions at sections 13(1) (advice or recommendations), 18(1)(j) (quality of health care information) and 19(a) and (c) (solicitor-client privilege) of *FIPPA*, in conjunction with section 49(a), to deny access to personal health information in the records.

[52] The relevant sections of *FIPPA* state:

49. A head may refuse to disclose to the individual to whom the information relates personal information,

(a) where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information[.]

13. (1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

18. (1) A head may refuse to disclose a record that contains,

(j) information provided in confidence to, or records prepared with the expectation of confidentiality by, a hospital committee to assess or evaluate the quality of health care and directly related programs and services provided by a hospital, if the assessment or evaluation is for the purpose of improving that care and the programs and services.

19. A head may refuse to disclose a record,

(a) that is subject to solicitor-client privilege;

(c) that was prepared by or for counsel employed or retained by an educational institution or a hospital for use in giving legal advice or in contemplation of or for use in litigation.

[53] Section 52(2) of *PHIPA* provides that despite the application of any exemptions in section 52(1), the individual has a right of access to that part of a record of personal health information that can reasonably be severed from the part containing the exempt information. In my review I asked the hospital to consider whether any part of an exempt record could be severed under section 52(2), which the hospital did.

[54] I will begin by considering the hospital's legal privilege exemption claims, which it has applied to most of the personal health information of the complainant's mother and to the personal information of the complainant that it seeks to withhold in the records.

***Do any of the legal privilege exemptions apply to the records?***

[55] For most of the personal health information of the complainant's mother at issue in the records, the hospital claims the legal privilege exemptions at sections 52(1)(a) or (c) of *PHIPA*, or, through section 52(1)(f) of *PHIPA*, sections 19(a) and/or (c) of *FIPPA*, in conjunction with section 49(a). The hospital also denies access to some of the complainant's own personal information in the records (some of which contain the mother's personal health information, while others do not) on the basis of section 49(a) of *FIPPA* in conjunction with section 19(a) and/or (c).

[56] I have reviewed the records and the hospital's representations, and I am satisfied that most of the information was properly withheld from the complainant on the basis of legal privilege.

[57] The common law privilege at section 19(a) encompasses two types of privilege: solicitor-client communication privilege and litigation privilege. Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.<sup>19</sup> Litigation privilege protects records, including a lawyer's work product and material going beyond solicitor-client communications,<sup>20</sup> created for the dominant purpose of litigation and within a "zone of privacy" intended to be protected by the litigation privilege. The litigation must be

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<sup>19</sup> *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

<sup>20</sup> *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)* (2002), 62 O.R. (3d) 167 (C.A.).

ongoing or reasonably contemplated.<sup>21</sup>

[58] Section 19(c) of *FIPPA* is a statutory privilege that applies where the records were prepared by or for counsel employed or retained by the hospital for use in giving legal advice or in contemplation of or for use in litigation. The statutory privilege encompasses a statutory solicitor-client communication privilege and a statutory litigation privilege. The statutory and common law privileges, though not necessarily identical, exist for similar reasons. Unlike the common law litigation privilege, which generally comes to an end with the termination of litigation,<sup>22</sup> termination of litigation does not end the statutory litigation privilege in section 19.<sup>23</sup>

[59] The hospital states that it reasonably contemplated that litigation could arise in this matter in late November 2012, shortly after the complainant's mother's transfer to the hospital, and before the mother's death the following month. By the end of November 2012, the complainant had made a number of complaints to the hospital about her mother's care, and had advised that she would be lodging formal complaints against physicians and nurses with the relevant regulatory bodies. She had also advised that she was considering her legal options. Based on this, the hospital states, it identified the case as a potential legal matter before the complainant's mother's death, and it took steps to investigate the complainant's concerns in anticipation of litigation.

[60] The hospital reports that after the mother's death, it received copies of complaints filed by the complainant to the regulatory colleges for physicians and nurses in Ontario. It was made aware of complaints filed to several other offices, including the Ministry of Health and Long-Term Care, Accreditation Canada and the Ontario Ombudsman's office. The hospital also received a statement of claim naming the hospital and certain hospital staff and physicians as defendants. While each of these proceedings is separate, the hospital states that they involve the same parties and arise from the same allegations. It reports that various legal proceedings, including the lawsuit and a number of appeals of decisions of the health regulatory colleges, are ongoing.

[61] The complainant takes issue with the hospital's account of events, and particularly with certain dates cited by the hospital in its representations filed in a related complaint involving the same parties and arising from the same facts. I addressed the discrepancies identified by the complainant in PHIPA Decision 30, which disposed of the matters in that related complaint. In that decision, I accepted the hospital's claim that it reasonably contemplated litigation in this matter as early as November 20, 2012. The complainant has not provided any basis for making a different

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<sup>21</sup> Order MO-1337-I and *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); see also *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39).

<sup>22</sup> *Blank v Canada (Minister of Justice)*, cited above.

<sup>23</sup> *Ontario (Attorney General) v Ontario (Information and Privacy Commission, Inquiry Officer)*, cited above.

finding in the present complaint. Although the complainant disagrees that the hospital could reasonably have contemplated litigation from this date based on her statements of dissatisfaction with her mother's care, I am satisfied, based on the evidence before me, that the hospital reasonably perceived the complainant's words and actions in November 2012 as an indication that she might pursue litigation against the hospital (which, in fact, she did). For the complainant's benefit, I confirm that "litigation" encompasses court proceedings as well as proceedings before administrative tribunals,<sup>24</sup> and that the fact the complainant had not actually retained legal counsel by a particular date does not undermine the reasonableness of the hospital's belief at that time that litigation might arise.

[62] I conclude that most of the withheld personal health information and personal information in the records is exempt by reason of legal privilege. The exempt information includes communications between hospital staff and legal counsel for the purpose of obtaining legal advice and reporting potential litigation matters, which is subject to solicitor-client communication and litigation privileges.<sup>25</sup> These privileges also apply to communications between hospital staff that contain a summary of legal advice or that would otherwise reveal legal advice, or that were created to update staff and external parties on the various litigation matters commenced by the complainant.<sup>26</sup> Also exempt are documents created by the hospital's patient relations department that set out a chronology of events and a compilation of concerns raised by the complainant, which the hospital submits, and I accept, were created for hospital legal counsel for the dominant purpose of litigation.<sup>27</sup> Other internal communications between hospital staff setting out the hospital's concerns, approaches and strategies with respect to existing and potential litigation matters involving the complainant are also subject to litigation privilege.<sup>28</sup>

[63] In all these records, I am satisfied that the withheld information reveals advice sought or received from legal counsel, or is contained in records created for use in actual or reasonably contemplated litigation. I also accept that the hospital has not waived privilege in any of this information.

[64] However, I do not accept the hospital's legal privilege claims for the information withheld in Records 48 and 217.<sup>29</sup> The hospital describes both records as containing communications relating to the complainant's complaints and legal proceedings (both in

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<sup>24</sup> Order M-162.

<sup>25</sup> Records 216, 233 and others.

<sup>26</sup> Records 49, 105, 223 and others.

<sup>27</sup> Records 59 and 63.

<sup>28</sup> Records 69, 116 and others.

<sup>29</sup> In both cases, the complainant's right of access to the withheld portions is under section 47(1) of *FIPPA*, and the hospital denies access on the basis of section 49(a) of *FIPPA* in conjunction with section 19. (The withheld portions of these records are not accessible to the complainant under *PHIPA*. Record 48 is a record of the mother's personal health information but it is not dedicated primarily to that personal health information, and the withheld portion in that record is not personal health information. Record 217 does not contain any personal health information of the complainant's mother.)



progress and anticipated), and the hospital's investigation, review and response to the complainant.

[65] It is not clear to me from the hospital's representations or from my review of the records how the information withheld in these records qualifies for legal privilege. Both records contain internal communications between hospital staff members on preparing responses to the complainant; in each case, the entire record with the exception of one severance has been disclosed to the complainant. While the hospital claims the information withheld in Record 217 is exempt by reason of litigation privilege, the severance in it appears to address a routine administrative matter in the preparation of the response to the complainant. The hospital does not explain the basis for its section 19 claim for the withheld portion of Record 48. On my review of both records, I am not satisfied that either was created for a litigation purpose, or that disclosure of the withheld portions in them would reveal legal advice or other privileged information, or are otherwise exempt by reason of legal privilege.

[66] As the hospital has not made any other claim for the information withheld in Record 217, I will order that it be disclosed to the complainant. I will consider under the appropriate heading, below, the hospital's alternate exemption claim for the information withheld in Record 48.

[67] In summary, I uphold the hospital's denial of access to most of the information withheld in the records on the basis of legal privilege. I specifically find that section 49(a), in conjunction with sections 19(a) and (c) of *FIPPA*, through section 52(1)(f) of *PHIPA*, applies to all the remaining personal health information of the complainant's mother at issue in the records.<sup>30</sup> Section 49(a), in conjunction with sections 19(a) and (c) of *FIPPA*, applies to most of the withheld personal information of the complainant in the records.

[68] As the section 52(1)(f) exemption in *PHIPA*<sup>31</sup> and the section 49(a) exemption in *FIPPA* confer a discretion on the hospital to deny access to the records on the basis of section 19 of *FIPPA*, this finding is subject to my review of the hospital's exercise of discretion under *PHIPA* and *FIPPA*. I will consider the hospital's exercise of discretion under both statutes at Issue C, below.

***Do any other exemptions at section 52(1) apply?***

[69] Above I upheld the hospital's legal privilege exemption claims for all the remaining personal health information withheld in the records. Given this, it is unnecessary to consider the hospital's alternative claim that section 13 of *FIPPA* (in conjunction with section 49(a)), through section 52(1)(f) of *PHIPA*, applies to some of the same information.

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<sup>30</sup> There is therefore no possibility of access under section 52(2) to non-exempt personal health information in the records.

<sup>31</sup> *PHIPA* Decision 17, *PHIPA* Decision 30. See also discussion in *PHIPA* Decision 17, footnote 88.

[70] The only other *PHIPA* claim made by the hospital is that sections 49(a) and 18(1)(j) of *FIPPA*, through section 52(1)(f) of *PHIPA*, applies to various severances to Record 11. Above, I found that the information withheld in Record 11 is not personal health information of the complainant's mother. As such, this information is not subject to the complainant's right of access (on her mother's behalf) under *PHIPA*.<sup>32</sup>

[71] Having now addressed all the withheld personal health information of the complainant's mother in the records, I will next consider the complainant's right of access to the remaining information under *FIPPA*.

## **B2. Access under *FIPPA***

[72] As noted, the complainant's request to the hospital includes a request for access to her own personal information. The complainant's right of access to her own information under section 47(1) of *FIPPA* applies both to records that do not contain her mother's personal health information, and to records of her mother's personal health information that also contain the complainant's personal information and to which the complainant does not otherwise have access through her mother's *PHIPA* request.

[73] *PHIPA* Decision 30 elaborated on the interaction between *PHIPA* and *FIPPA* where records are subject to the rights of access in both statutes. Sections 8(1) and 8(4) of *PHIPA* provide guidance in this task. These sections state:

(1) Subject to subsection (2) [containing certain exceptions that are not relevant in this complaint], the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act do not apply to personal health information in the custody or under the control of a health information custodian unless this Act specifies otherwise.

(4) This Act does not limit a person's right of access under section 10 of the Freedom of Information and Protection of Privacy Act or section 4 of the Municipal Freedom of Information and Protection of Privacy Act to a record of personal health information if all the types of information referred to in subsection 4 (1) are reasonably severed from the record.

[74] Read together, sections 8(1) and 8(4) of *PHIPA* preserve an individual's right of access, under *FIPPA* (and its municipal counterpart), to certain information in records of personal health information, the right of access to which is otherwise governed by

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<sup>32</sup> As I found Record 11 is not dedicated primarily to the personal health information of the complainant's mother, any right of access under *PHIPA* is only to the reasonably severable personal health information of her mother under section 52(3). See discussion at Issue B1.ii, above.

*PHIPA*.<sup>33</sup>

[75] In records of the complainant's mother's personal health information that also contain the complainant's own personal information, the hospital considered the extent of the complainant's right of access (on behalf of her mother) under section 52 of *PHIPA* to her mother's personal health information in the records, and then, applying section 8(4) of *PHIPA*, it considered the extent of her right of access under section 47(1) of *FIPPA* to the remainder of records to which she does not otherwise have access under *PHIPA*. The hospital also considered the extent of the complainant's right of access, on her own behalf, to records containing only her personal information.

[76] For any personal information of the complainant withheld in the records, the hospital claims the exemptions at section 49(a) (discretion to refuse requester's own information) in conjunction with sections 19 (solicitor-client privilege) and 13 (advice or recommendations), and section 49(b) (personal privacy) of *FIPPA*.<sup>34</sup> I will consider each of these claims in turn.

***i. Does the discretionary exemption at section 19, in conjunction with section 49(a), apply to any of the information?***

[77] I addressed at Issue B1.iii the hospital's legal privilege claims for both the personal health information of the complainant's mother and the personal information of the complainant withheld in the records. Under that heading I accepted the hospital's claim that section 49(a), in conjunction with sections 19(a) and (c) of *FIPPA*, applies to most of the personal information of the complainant withheld on the basis of legal privilege.

***ii. Does the discretionary exemption at section 13(1), in conjunction with section 49(a), apply to any of the information?***

[78] At Issue B1.iii I rejected the hospital's legal privilege claim for the information withheld in Record 48. The hospital claims in the alternative that this information is exempt under section 13(1) of *FIPPA*.

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<sup>33</sup> Section 8(4) of *PHIPA* is read to include the right of access to one's own personal information at section 47(1) of *FIPPA* (and the equivalent section 36(1) in its municipal counterpart, the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*), in addition to the right of access to general information at section 10 of *FIPPA* (and section 4 of *MFIPPA*): *PHIPA* Decision 17, *PHIPA* Decision 27, *PHIPA* Decision 30. See particularly *PHIPA* Decision 30, paragraph 21 and footnote 6.

<sup>34</sup> The hospital indicated in its index of records that certain information has been withheld on the basis that it is not responsive to the complainant's request. The complainant did not challenge this claim during the earlier stages of the complaint process. For the sake of completeness, I have reviewed the portions of the records withheld on the basis of non-responsiveness (in Records 115, 189 and others), and confirm that these severances are unrelated to either the complainant or to her mother.

The hospital also cited section 1.1 of *QCIPA* as a ground for denying access in its *FIPPA* decision. This section of *QCIPA* provides that *FIPPA* does not apply to quality of care information. I addressed the complainant's right of access, on behalf of her mother, to personal health information that the hospital claims is excluded quality of care information at Issue B1.i, above.

[79] The purpose of section 13 is to preserve an effective and neutral public service by ensuring that people employed or retained by institutions are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making.<sup>35</sup>

[80] "Advice" and "recommendations" have distinct meanings. "Recommendations" refers to material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised, and can be express or inferred. "Advice" has a broader meaning, and includes the views or opinions of a public servant as to the range of policy options to be considered by the decision maker even if they do not include a specific recommendation on which option to take. "Advice" involves an evaluative analysis of information.

[81] The hospital describes Record 48 as containing advice from its director of enterprise risk, quality and privacy to the chief of staff in relation to a proposed course of action to be taken in response to a communication from the complainant. I have reviewed the information withheld in this record, and I do not accept that it qualifies as either "advice" or "recommendations" within the meaning of section 13(1). The withheld information is a comment by the hospital director that appears to be directed at the assistant to the chief of staff rather than to the chief of staff. Although this comment is made in reference to the hospital's (and the director's) past dealings with the complainant, it does not contain any discernible advice or recommendations, and the hospital has not identified the specific advice or recommendations or how disclosure of this severance would reveal any.

[82] As I have rejected both the hospital's section 19 and 13(1) claims for this severance, and no other exemption claim has been made, I will order the hospital to disclose it to the complainant.

***iii. Does the discretionary exemption at section 49(b) apply to any of the information?***

[83] The hospital withholds other portions of records containing the complainant's own personal information on the basis of section 49(b). This exemption permits the hospital to deny access to information where its disclosure would constitute an unjustified invasion of another individual's personal privacy.

[84] The information withheld by the hospital under section 49(b) includes personal email addresses of hospital staff<sup>36</sup> and information about certain hospital staff members' education or employment history.<sup>37</sup> (The hospital also withheld under section 49(b) other information that I found, above, is exempt by reason of legal privilege. It is therefore unnecessary to consider the hospital's alternate claim that section 49(b)

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<sup>35</sup> *John Doe v. Ontario (Finance)*, 2014 SCC 36, at para. 43.

<sup>36</sup> In Records 11, 52 and others.

<sup>37</sup> In Records 204 and 205.

applies to this same information.<sup>38</sup>)

[85] The complainant has confirmed that she is not interested in obtaining personal information such as the personal email addresses or personal phone numbers of hospital staff members. The withheld email addresses are thus not at issue in this complaint. As the complainant has not specified otherwise, I will assume that she continues to seek access to the remaining information withheld under section 49(b), which consists of the educational and employment histories of staff members withheld in two of the records. This information qualifies as the hospital staff members' personal information within the meaning of paragraph (b) of the definition at section 2(1).

[86] Sections 21(2) and (3) of *FIPPA* set out factors and presumptions for consideration in determining whether disclosure of the personal information in the records would be an unjustified invasion of personal privacy.<sup>39</sup> Section 21(4) sets out exceptions from the application of the exemption in section 49(b), none of which applies in these circumstances.

[87] The presumption against disclosure at section 21(3)(d) applies to the employment or educational history of certain staff members withheld in Records 204 and 205. I have also considered whether any of the factors in section 21(2), or any other unlisted factor, applies, and conclude that none does. Although the complainant states that any information relating to her should be released, I find this falls short of establishing a basis for overcoming the applicable presumption against disclosure. The complainant observes that some information about the professional history of nurses and doctors is available publicly on the websites of the health regulatory colleges; she submits that any withheld information of this nature should be disclosed. I confirm that the information withheld under section 49(b) is not publicly available information of this nature. I uphold the hospital's denial of access to this information on the basis of section 49(b).

[88] I have now addressed the complainant's right of access under *FIPPA* to any withheld personal information in the records where the right of access has not already been determined through her mother's *PHIPA* request. The remaining records either do not contain any personal information of the complainant,<sup>40</sup> or are records in which any releasable personal information has already been disclosed.<sup>41</sup>

[89] In summary, I uphold the hospital's denial of access to all the personal health

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<sup>38</sup> In Records 159, 191 and others.

<sup>39</sup> This office's "record-by-record" approach to requests for access to one's own personal information made under section 47(1) of *FIPPA* means that requesters have a right of access under Part III of *FIPPA* to entire records (or the withheld portions of records) that contain their own personal information, subject to any applicable exceptions. See also discussion at *PHIPA* Decision 17, paragraphs 61-62 and footnotes 7 and 110.

<sup>40</sup> Records 12, 105 and others.

<sup>41</sup> Records 115 and 125.

information of the complainant's mother and most of the complainant's own personal information that has been withheld in the records. I order the hospital to disclose two discrete severances in Records 48 and 217, as I do not accept the hospital's *FIPPA* exemption claims for the withheld information.

[90] My findings upholding the hospital's denial of access to information is subject to my review of the hospital's exercise of discretion under *PHIPA* and *FIPPA*. I will consider this issue next.

**C. Did the hospital exercise its discretion under *PHIPA* and/or *FIPPA*?**

[91] As noted above, the exemptions at section 52(1)(f) of *PHIPA*<sup>42</sup> and sections 49(a) and 49(b) of *FIPPA* are discretionary. The section 19 exemptions in *FIPPA*, claimed to withhold personal information of the complainant and, through section 52(1)(f) of *PHIPA*, to withhold personal health information of the complainant's mother, are also discretionary.

[92] Where exemptions are discretionary, the hospital has the discretion to grant access to information despite the fact it could withhold it. The hospital must exercise its discretion. As part of my review, I must determine whether the hospital exercised its discretion under *PHIPA* and *FIPPA*.

[93] In *PHIPA* Decisions 17 and 30, this office found that considerations which may be relevant to an institution's exercise of discretion under *FIPPA* and its municipal equivalent may also be applicable to an exercise of discretion under *PHIPA*.

[94] Through orders issued under *FIPPA* and its municipal equivalent, this office has developed a list of such considerations. These include:

- the purposes of the legislation, including the principles that:
  - information should be available to the public
  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific
  - the privacy of individuals should be protected;
- the wording of the exemption and the interests it seeks to protect;
- whether the requester is seeking his or her own personal information;
- whether the requester has a sympathetic or compelling need to receive the information;

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<sup>42</sup> *PHIPA* Decision 17, paragraph 153 and footnote 88.

- whether the requester is an individual or an organization;
- the relationship between the requester and any affected persons;
- whether disclosure will increase public confidence in the operation of the institution;
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person;
- the age of the information; and
- the historic practice of the institution with respect to similar information.

[95] Not all these considerations will necessarily be relevant, and additional unlisted considerations may be relevant.<sup>43</sup>

[96] If I were to determine that the hospital failed to exercise its discretion, or that it erred in exercising its discretion (for example, by doing so in bad faith or for an improper purpose, by taking into account irrelevant considerations, or by failing to take into account relevant considerations), I may send the matter back to the hospital for a re-exercise of discretion. I may not, however, substitute my own discretion for that of the hospital.<sup>44</sup>

[97] The hospital states that it took into consideration the underlying principle of the public's right of access, as well as the specific rights of access of the complainant's mother and the complainant to their own information, in deciding whether to withhold the information at issue in the records. It submits that it has disclosed as much information as possible, in keeping with the purposes of *FIPPA* and *PHIPA*, while withholding a limited amount of information that is subject to legal privilege or that would, if disclosed, constitute an unjustified invasion of personal privacy of hospital staff members.

[98] The hospital also cites a number of other factors that it considered in exercising its discretion under these sections. Among others are the nature of the information and its sensitivity to the hospital, the importance of maintaining its legal privileges in the context of ongoing litigation between the hospital and the complainant, the complainant's sympathetic and compelling need for information relating to herself and to her mother, and whether disclosure of the information would increase public confidence in the hospital. In relation to this last factor, the hospital submits that existing regulatory processes to ensure hospital accountability and transparency,

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<sup>43</sup> Orders P-344 and MO-1573.

<sup>44</sup> Orders P-344 and MO-1573, in relation to this office's review of an institution's exercise of discretion under *FIPPA* and *MFIPPA*. This office also confirmed its ability to review a health information custodian's exercise of discretion under *PHIPA* in PHIPA Decision 17, PHIPA Decision 19 (upheld on reconsideration in PHIPA Decision 25) and PHIPA Decision 27.

including statutory disclosure and reporting obligations<sup>45</sup> and those available through the health regulatory colleges, are sufficient to satisfy any public interest in these matters.

[99] The complainant provided detailed representations setting out her concerns about the care given to her mother in the hospital, and about the hospital's responses to these concerns. These representations reveal a strong and genuine interest in obtaining information relating to her mother and to herself, in order to better understand the events following her mother's admission to the hospital and to hold the hospital to account for any role that inadequate care may have played in her mother's death. The complainant particularly objects to the hospital's reliance on legal privilege claims to deny access to information, which she views as a barrier to obtaining the truth.

[100] While I am sympathetic to the complainant's compassionate need for information about herself and her mother, I am satisfied that the hospital took this factor into account in exercising its discretion under *PHIPA* and *FIPPA*. I also accept that the hospital took into account other relevant factors, including the sensitive nature of the withheld information and the importance of transparency and accountability, and that it did not take into account irrelevant factors in its exercise of discretion. There is no evidence the hospital acted in bad faith, or made an error in its exercise of discretion. I am also mindful of the significant amount of information the hospital has already disclosed to the complainant as a result of this access request (including through its revised decision issued at the review stage of the complaint), and the number of other legal processes underway to address some of the accountability and transparency issues raised by the complainant.

[101] For these reasons, I accept that the hospital properly exercised its discretion in withholding the limited amount of information it did on the basis of legal privilege and personal privacy exemptions in *PHIPA* and *FIPPA*. I uphold its exercise of discretion.

## **DISPOSITION:**

I uphold the hospital's denial of access under *PHIPA* and *FIPPA* to most of the information withheld in the records. In particular,

1. I uphold the hospital's denial of access under *PHIPA* to personal health information in the records. No order is issued under *PHIPA*.
2. I do not uphold the hospital's denial of access under *FIPPA* to the personal information withheld in Records 48 and 217.

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<sup>45</sup> Under the *Public Hospitals Act* and the *Excellent Care for All Act*.



I order the hospital to disclose this information to the complainant by **November 18, 2016** but not before **November 14, 2016**.

To assist the parties, I provide with this decision an Appendix setting out my findings on access for each of the records at issue.

Original Signed By: \_\_\_\_\_  
Jenny Ryu  
Adjudicator

October 13, 2016 \_\_\_\_\_