

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 72

Complaint HA17-48-2

April 24, 2018

Summary: The complainant submitted a correction request to a medical clinic requesting that a specific reference contained in a note prepared by a physician be removed from the record. The custodian denied the correction request citing sections 55(8) and 55(9) of the *Personal Health Information Protection Act*. The adjudicator finds that no review is warranted in accordance with sections 57(3) and 57(4)(a).

Statutes Considered: *Personal Health Information Protection Act, 2004*, sections 3(1), 4(1), 55(8), 57(3) and 57(4)(a).

BACKGROUND:

[1] The complainant submitted a correction request under the *Personal Health Information Protection Act* [PHIPA] to a named physician at a medical clinic requesting that certain information be removed from the physician's note in her file. Initially, the medical clinic (the custodian) responded to the request by sending the complainant a letter advising that her correction request was denied on the basis that the physician was deceased. The custodian advised the complainant that it would attach a Statement of Disagreement upon her request.

[2] The complainant filed a complaint with this office and a mediator was assigned. During mediation, the custodian issued a revised decision letter citing sections 55(8) and (9) and the complainant clarified that she wanted a specific reference contained in

the physician's notes removed.¹

[3] The parties were not able to reach a settlement but the custodian confirmed that access restrictions were placed on the complainant's file. As a result, information contained in the complainant's file, including the physician's note, will not be released to third parties without the complainant's prior written consent.

[4] The file was transferred to adjudication. After reviewing the complaint file, I sent a letter to the complainant advising her that my preliminary view was that her complaint did not warrant a review under sections 57(3) and (4) and she was given an opportunity to provide written representations in response.

[5] Though the complainant did not provide written representations, her letter of complaint, dated May 28, 2017 and letter to the mediator, dated August 3, 2017 provide an explanation as to why she takes the position that the custodian should correct the record. The information the complainant seeks to have removed from the record refers to a hospital stay which occurred before her visit to the custodian's clinic. The complainant takes the position that the inclusion of this information negatively affected a now resolved legal claim. She also argues that the information at issue, if not removed, will hamper any future legal claims. The appellant also argues that disclosure of the information at issue to third parties could also adversely affect the quality of medical care she may receive in the future.

[6] In this decision, I find that there are no reasonable grounds for a review under sections 57(3) and (4)(a) on the basis that the requirements of section 55(8) have not been met.

DISCUSSION:

[7] There is no dispute that the information the complainant seeks to correct constitutes her personal health information (PHI). PHI is defined in section 4(1) of *PHIPA*, in part as follows:

"personal health information", subject to subsections (3) and (4), means 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,

¹ The physician's handwritten one-page note relates to the complainant's December 2014 visit to the clinic.

(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,

[8] There also does not appear to be a dispute that the custodian is a "health information custodian" as defined in section 3(1) of *PHIPA*, and that the complainant was given access to her health records before making her correction request.

[9] The sole issue in this complaint is whether the custodian has a duty to correct the complainant's PHI contained in the records. Section 55(8) of *PHIPA* provides for a right of correction to records of PHI in some circumstances. It states:

The health information custodian shall grant a request for a correction under subsection (1) if the individual demonstrates, to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information and gives the custodian the information necessary to enable the custodian to correct the record.

[10] Section 55(9) of *PHIPA* sets out exceptions to the obligation to correct records, as follows:

Despite subsection (8), a health information custodian is not required to correct a record of personal health information if,

(a) it consists of a record that was not originally created by the custodian and the custodian does not have sufficient knowledge, expertise and authority to correct the record; or

(b) it consists of a professional opinion or observation that a custodian has made in good faith about the individual.

[11] Read together, these provisions set out the criteria pursuant to which an individual is entitled to a correction of his or her records of PHI. The purpose of section 55 of the *PHIPA* is to impose a duty on health information custodians to correct records of PHI that are inaccurate or incomplete for the purposes for which they use the information, subject to the exceptions set out in section 55(9) of the *PHIPA*.

[12] In all cases where a complaint regarding a custodian's refusal to correct records of PHI is filed with this office, the individual seeking the correction has the onus of establishing whether or not the "record is incomplete or inaccurate for the purposes for which the custodian uses the information" pursuant to section 55(8). Section 55(8) requires the individual asking for correction to:

a) demonstrate to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information, and

b) give the custodian the information necessary to enable the custodian to correct the record.

[13] If the above is established, the question becomes whether or not any of the exceptions that are set out in section 55(9) apply.

[14] Previous decisions from this office have found that not all PHI contained in records held by health information custodians need to be accurate in every respect. If a request is made to correct inconsequential bits of information that have no impact on the purposes for which the custodian uses the information, and the custodian is not relying on the information for a purpose relevant to the accuracy of the information, the custodian is not required to correct the information.²

[15] In addition, this office has found that the custodian is not required to grant the correction request if the individual seeking the correction does not provide the custodian with the information necessary to enable it to correct the record.³

Analysis and Decision

[16] Applying the principles above to the circumstances of this complaint, I find that the complainant has not provided the custodian the information necessary to enable it to correct the record under section 55(8).

[17] The information the complainant seeks to have removed from the record is a notation which indicates that she had been a patient at a named hospital. Although the materials the complainant filed with this office identified her reasons for requesting the correction (that the information negatively affected a legal claim involving her, and may affect future legal claims or medical care), they do not provide the custodian the information necessary to enable it to correct the record. For example, there is no evidence that the custodian was provided with information that would establish that an error was made when the writer of the record made a notation that the complainant had been a past patient at the named hospital. In addition, the complainant did not provide this office with substantiating documentation that would support a position, that an error had been made.

[18] Accordingly, I find that the custodian is not obliged to grant the correction request on the basis that the complainant has failed to provide the custodian with the information necessary to enable the correction as required under section 55(8). Given my finding, it is not necessary that I also determine whether the complainant has established that the information at issue is incomplete or inaccurate for the purposes for which the custodian uses the information.

² PHIPA Decisions 36, 39 and 40.

³ PHIPA Decisions 36 and 39.

Decision

[19] Sections 57(3) and (4)(a) set out my authority to decline to review a complaint as follows:

57(3) If the Commissioner does not take an action described in clause 1(b) or (c) or if the Commissioner takes an action described in one of those clauses but no settlement is effected within the time period specified, the Commissioner may review the subject-matter of a complaint made under this Act if satisfied that there are reasonable grounds to do so.

57(4) The Commissioner may decide not to review the subject-matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that,

(a) the person about which the complaint is made has responded adequately to the complaint;

[20] For the reasons stated above, I have decided not to review this complaint on the basis that there are no reasonable grounds to do so as the complainant has not met the initial onus under section 55(8). I issue this decision in satisfaction of the notice requirement in section 57(5).

NO REVIEW:

1. For the foregoing reasons, no review of this matter will be conducted under PART VI of the *Act*.

Original signed by
Jennifer James
Adjudicator

April 24, 2018