

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 77

HA18-00151

Winston Park Family Physicians

December 7, 2018

**Summary:** The complainant sought access to the records of her late husband's personal health information from Winston Park Family Physicians. This order determines that Winston Park Family Physicians is deemed to have refused the complainant's request for access and is ordered to provide a response to the complainant regarding the complainant's request for access to records of personal health information in accordance with the *Personal Health Information Protection Act, 2004* and without recourse to a time extension.

**Statutes Considered:** *Personal Health Information Protection Act, 2004*, ss.2, 3, 4, 53 and 54

### BACKGROUND:

[1] This is a complaint under the Personal Health Information Protection Act, 2004 (the Act).

[2] On July 31, 2018 the complainant, on behalf of the estate of her late husband (the deceased), sent a written request via registered mail to Winston Park Family Physicians (the custodian) for access to the deceased's records of personal health information. The written request stated:

"I am requesting the medical records of my deceased husband, [named individual]."

[3] On September 20, 2018 the IPC received a deemed refusal complaint from the

complainant indicating it had been more than 30 days since she had submitted a request for access to medical records to the custodian and she had not received a response. As a result, this file was opened.

[4] On October 16, 2018, a Notice of Review was sent to the complainant and to the custodian. The Notice of Review stated that the complainant filed a complaint alleging that the custodian was deemed to have refused the complainant's request for access by not providing a response within the time period set out in section 54 of the *Act*. The Notice of Review indicated that the custodian would be asked to immediately respond to the complainant's request for access and to forward a copy to me, the analyst assigned to this complaint. The Notice of Review indicated that if the custodian failed to do so and settlement was not reached by October 26, 2018, an order requiring the custodian to provide a response to the complainant may be issued.

[5] I spoke with Mr. Jody Mangiardi, owner of Winston Park Family Physicians, on October 16, 2018 at which time he agreed to provide a response to the access request by October 26, 2018.

[6] I followed up with Mr. Mangiardi on November 5, 2018. Mr. Mangiardi responded on November 6, 2018 explaining that a personal matter had prevented him from completing the search for records and that he would need until the following week to provide a response. On November 8, 2018, I provided Mr. Mangiardi until November 14, 2018 to provide a response to the access request.

[7] I subsequently followed up with Mr. Mangiardi via email and telephone on November 16, 19, and 21, 2018 receiving no response. In an email communication on November 21, 2018, I informed Mr. Mangiardi that if he did not respond, I might issue an order requiring him to issue a response to the complainant. Mr. Mangiardi has not responded to the November 21, 2018 communication.

## **DISCUSSION:**

### **Issue A: Are the records at issue "records" of "personal health information" as defined in sections 2 and 4 of the *Act*?**

[8] Section 2 of the *Act* defines a "record" as:

...a record of information in any form or in any medium, whether in written, printed, photographic or electronic form or otherwise, but does not include a computer program or other mechanism that can produce a record.

[9] Section 4(1) of the *Act* states, in part:

In this *Act*,

“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,

(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 Act, 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

[10] “Identifying information” is defined in section 4(2) of the *Act* as information that identifies an individual or for which it is reasonable in the circumstances that it could be utilized, either alone or with other information, to identify an individual.

[11] I was advised by the complainant that the deceased had previously been treated by a physician who formerly worked for Winston Park Family Physicians and that the requested records relate to the provision of health care to the deceased. I am satisfied that the requested records contain identifying information that relates to the provision of health care to the deceased.

[12] As a result, I find that the records at issue are records of personal health information as defined in sections 2 and 4 of the *Act*.

**Issue B: Is Winston Park Family Physicians a “health information custodian” as defined in section 3(1) of the *Act*?**

[13] The *Act* provides an individual with the right of access to records of personal health information about the individual that are in the custody and under the control of

a "health information custodian". The term "health information custodian" is defined in section 3 of the *Act*, which reads, in part:

In this *Act*,

"health information custodian", subject to subsections (3) to (11), means a person or organization described in one of the following paragraphs who has custody or control of personal health information as a result of or in connection with performing the person's or organization's powers or duties or the work described in the paragraph, if any:

A health care practitioner or a person who operates a group practice of health care practitioners.

...

[14] A "health care practitioner" is a term defined in section 2 of the *Act*, which reads in part as follows:

"health care practitioner" means,

(a) A person who is a member within the meaning of the *Regulated Health Professions Act, 1991* and who provides health care,

...

[15] "Health care" is also defined in section 2 of the *Act*, in part, to mean:

Any observation, examination, assessment, care, service or procedure that is done for a health-related purpose and that,

(a) is carried out or provided to diagnose, treat or maintain an individual's physical or mental condition

(b) is carried out or provided to prevent disease or injury or to promote health, or

...

[16] Section 1(1) of the *Regulated Health Professions Act, 1991* includes the following definitions of "member" and "college":

In this *Act*,

"College" means the College of a health profession or group

of health professions established or continued under a health profession *Act*;

...

“member” means a member of a College:

[17] Applying the definitions, I find that Winston Park Family Physicians is a “person who operates a group practice of health care practitioners” within the meaning of the *Act* and therefore a health information custodian. Winston Park Family Physicians is a group practice consisting of members of the College of Physicians and Surgeons of Ontario who provide health care to patients. The deceased was a patient at Winston Park Family Physicians. The complainant therefore reasonably suspects that Winston Park Family Physicians has custody or control of the deceased’s records of personal health information as a result of or in connection with the provision of health care to him.

**Issue C: Did the custodian respond to the request for access in accordance with section 54 of the *Act*? Is the custodian in a deemed refusal situation pursuant to section 54(7) of the *Act*?**

[18] Section 53(1) of the *Act* states that an individual may exercise a right of access to a record of personal health information by making a written request for access to the health information custodian that has the custody or control of the personal health information.

[19] Section 54 of the *Act* requires a health information custodian that receives a request from an individual (including from an individual’s substitute decision-maker pursuant to sections 23(1) and 25 of the *Act*) for access to a record of personal health information about that individual to provide a response as soon as possible in the circumstances, but no later than 30 days after receiving the request. In certain circumstances, within 30 days after receiving the request for access, a health information custodian may give the individual written notice extending the time for a response for a further period of time not to exceed 30 days.

[20] If a response or notice of extension is not given within 30 days after receiving a request for access, the health information custodian is deemed to have refused the individual’s request for access pursuant to section 54(7) of the *Act*, which states:

If the health information custodian does not respond to the request within the time limit or before the extension, if any, expires, the custodian shall be deemed to have refused the individual’s request for access.

[21] On July 31, 2018, the complainant submitted a written request for access to the custodian via registered mail. The complainant indicated, and I have concluded, that the custodian has not responded to the complainant’s request for access in compliance

with section 54 of the *Act*.

[22] There is no evidence to suggest that, within the 30 days of receiving the request for access, the custodian provided the complainant with written notice extending the time for a response for a further period of time not exceeding 30 days. In any event, this additional 30-day period would have expired long ago.

[23] In light of the custodian's continued failure to respond to the complainant's request for access in compliance with the *Act* and to adequately respond to the attempts made by this office to resolve this matter without recourse to a formal order, I find that the custodian is deemed to have refused the complainant's request for access pursuant to section 54(7) of the *Act*. Accordingly, I will order Winston Park Family Physicians to issue a response to the complainant within ten days of this decision, and to provide a copy to my attention to verify compliance.

### **ORDER:**

1. Winston Park Family Physicians shall provide a written response to the complainant regarding her request for access to the records of her deceased husband's personal health information in accordance with the *Act* and without recourse to a time extension no later than **December 17, 2018**.
2. In order to verify compliance of Provision 1 of this Order, Winston Park Family Physicians shall provide me with a copy of the response referred to in Provision 1 by **December 17, 2018**. This should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8.

Original Signed by: \_\_\_\_\_  
Emilie Garant  
Analyst

December 7, 2018  
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