

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 78

HA17-62

December 18, 2018

Summary: The complainant submitted an access request to the hospital for video records that would contain footage of an interaction he had with police outside the hospital's emergency department on a specific date. After receiving the hospital's response and video footage, the complainant challenged the reasonableness of the hospital's search for responsive records. During mediation, the hospital disclosed additional video records to the complainant. In this decision, the adjudicator finds that no review of the complaint is warranted in accordance with sections 57(3) and 57(4)(a) of the *Personal Health Information Protection Act, 2004* because there are no reasonable grounds for a review and the hospital has responded adequately to the complaint.

Statutes considered: *Personal Health Information Protection Act, 2004*, sections 53(2), 57(3) and 57(4)(a).

Decisions considered: PHIPA Decisions 18, 43 and 55.

BACKGROUND:

[1] This decision addresses a complaint filed under the *Personal Health Information Protection Act, 2004 (PHIPA)* by an individual regarding the access decision of a hospital in response to his request for specified security camera footage taken of him outside the hospital's emergency department. With his request, the individual provided details of the date and time of the footage sought, the kind of car he was driving upon arrival, his appearance, including clothing, and an interaction he had with police officers. The requester wanted all camera footage starting with the time of his arrival outside of the hospital's emergency department and ending with him entering the

emergency department, including video footage relating to the interaction he had with the police.

[2] The hospital issued a decision granting the requester access to “a video of a person matching the description you provided entering our emergency department at 5:07 AM...” However, the hospital stated that no video footage of the requester’s arrival at the hospital outside of the emergency department or his interaction with the police had been located. The hospital concluded by advising the requester that:

Accordingly, pursuant to section 54(1)(b) of the Personal Health Information Protection Act (PHIPA), we write to advise you that after a reasonable search we have concluded that records responsive to this portion of your request do not exist.

[3] Upon receipt of this decision, the individual (now the complainant) filed a complaint with this office, based on his belief that video footage capturing him driving up to the emergency entrance, exiting his car and interacting with police, including being made to kneel and being handcuffed by them, exists. In support of his assertion, the complainant claimed that he had observed several security cameras in the area of the emergency entrance, and that he had spoken with a security department employee who indicated that there were several videos capturing the information he sought. The complainant also expressed concern that the video disclosed to him had been edited prior to disclosure to remove scenes of him outside the emergency entrance being forced by police to kneel and being handcuffed by them.

[4] As part of the IPC’s efforts to mediate the complaint, the hospital was informed of the complainant’s concerns. In response, the hospital explained that other video footage existed, but that only one of the six videos it located in the searches conducted contained images of the complainant, and this video had been disclosed. The hospital maintained that none of the video footage showed the complainant outside the hospital’s emergency entrance. Specifically, the hospital claimed that although there were several video cameras pointing to various areas of the emergency entrance, they did not capture the entire area, only several spots in the area. Further, although the hospital had images of police officers, cars and other individuals involved with police, none of the cameras captured any images of the complainant outside the emergency entrance because his interactions with police were not in camera range.

[5] Regarding the complainant’s assertion that there were gaps in the video he received, the hospital indicated that neither its access office nor its security department had edited, severed or removed any images from the footage provided.

[6] Subsequently, the hospital issued a supplementary decision in which it confirmed that six responsive records (videos) had been located. The hospital granted partial access to the five remaining videos it had not yet disclosed, and disclosed another copy

of the video already sent to the complainant. The hospital also advised the complainant that it was withholding portions of the records because they constituted personal health information (of other individuals) or were exempt under the personal privacy exemption in section 21(1) of the *Freedom of Information and Protection of Privacy Act (FIPPA)*.¹

[7] After reviewing the supplementary decision, the complainant sought further information about the hospital's security cameras. He explained that the five partly disclosed videos do not include footage from a particular camera located in a spot he believes would have captured the police ordering him to step out of his vehicle and kneel down. The complainant also continued to assert that the videos had gaps and that he should be granted access to the footage he believed was missing.

[8] In response to these concerns, the hospital advised that the identified camera the complainant thought would have captured the additional video footage was installed after the date of the specified incident. The hospital provided this information to the complainant in a letter sent to him regarding his separate request for information about the location of security cameras in particular areas. The hospital also maintained that it did not sever the videos other than to remove the faces of other individuals. As the complainant does not seek access to the images of other individuals' faces, these severances were removed from the scope of the complaint.

[9] No further mediation of complaint HA17-62 was possible and the file proceeded to the adjudication stage of the IPC's process for *PHIPA* complaints.

[10] After reading the complaint file, I sent the complainant a letter advising him of my preliminary view that his complaint should not proceed to a review. My preliminary view was based on sections 57(3) and 57(4)(a) of *PHIPA*, specifically, my preliminary assessment that there are no reasonable grounds to review the subject matter of the complaint and the hospital has responded adequately to the complaint.

[11] In my letter, I invited the complainant to provide submissions to explain why his complaint should proceed to a review under *PHIPA*, if he disagreed with my preliminary view. I advised the complainant that I would consider any submissions provided in response to the letter before I made a final decision. The complainant did not respond to the letter or provide any written submissions within the time period that I gave him

¹ Specifically, the hospital's supplementary access decision stated: "... Six records were identified as responsive to the request. One record was previously been released [sic] to you pursuant to your request made under the [PHIPA]. Our decision is to provide partial access to remaining five records. We have determined that portions of these records are not accessible under FIPPA as constituting personal health information or are subject to the exemption in section 21 of FIPPA relating to another individual's personal privacy." Notably, the complainant had addressed his request to "Freedom of Information Privacy @ [named] Hospital" and did not identify whether he sought access under *PHIPA* or *FIPPA*. However, as stated, the hospital issued its initial access decision under *PHIPA*, which resulted in the opening of this complaint under *PHIPA*.

to do so. In this context, therefore, I did not seek submissions from the hospital before making this final decision.

DISCUSSION

Should the complainant's reasonable search complaint proceed to a review under *PHIPA*?

[12] I have the authority under sections 57(3) and (4) of *PHIPA* to decide whether this office should conduct a review of a complaint. These provisions state, in part:

(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.

(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;

[13] In a *PHIPA* complaint, where a requester claims that additional records exist beyond those identified by a health information custodian, such as the hospital, the issue to be decided is whether the custodian has conducted a reasonable search for records as required by sections 53 and 54 of *PHIPA*. The IPC has extensively canvassed the issue of reasonable search in orders issued under *FIPPA* and its municipal counterpart, the *Municipal Freedom of Information and Protection of Privacy Act*. The IPC has also addressed the issue of reasonable search under *PHIPA* in numerous decisions.² I outline those principles below, and I adopt them in this decision.

[14] To begin, *PHIPA* does not require the hospital to prove with absolute certainty that further records do not exist. However, it is required to provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.³ To be responsive, a record must be "reasonably related" to the request.⁴

[15] A reasonable search is one in which an experienced employee knowledgeable in

² *PHIPA* Decisions 18, 43, 57, 61 and others.

³ *PHIPA* Decision 18; Orders P-624 and PO-2559.

⁴ Order PO-2554.

the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.⁵

[16] I may order a further search if the hospital does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁶

[17] Although a requester will rarely be in a position to indicate precisely which records the hospital has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁷

Analysis and findings

[18] The circumstances of this complaint and the response by the hospital make it unnecessary for me to conduct a review of the reasonableness of the hospital's search for responsive records. In particular, the evidence provided by the parties before this complaint reached the adjudication stage of the *PHIPA* complaints process leads me to conclude that there is no reasonable basis for believing that additional responsive video footage exists.

[19] I have considered that the complainant's request for the security camera video footage, supplemented by his subsequent communications with this office, was sufficiently detailed to enable the hospital to identify and locate the records sought, expending reasonable efforts as section 53(2) of *PHIPA* requires. I also note the hospital's evidence that its staff carried out at least three reviews of all of its security camera video footage from the time period specified in the complaint.

[20] The hospital corresponded with both this office and the complainant just before the mediation stage ended. The letter to this office contained detailed information about the efforts of its FIPPA and Information Access office staff and a security supervisor to locate the records sought by the complainant. It also provided relevant information about a specific, existing, camera located on the most eastern wall of the Emergency Department from the ambulance entrance bay. This was the camera identified by the complainant, which he thought might contain the additional responsive video footage he was seeking. Along with the letter sent to this office, the hospital provided a copy of the correspondence it sent to the complainant, which provided him with further details about the specific camera in the Emergency Department ambulance entrance bay.

[21] Regarding the searches conducted, the hospital's letter to this office explained

⁵ PHIPA Decisions 18 and 57; Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.

⁷ PHIPA Decision 18; Order MO-2246.

that the security supervisor who conducted the searches is one of six individuals who has responsibility for storage of the video footage from the hospital's security cameras. This individual has been employed by the hospital for 16 years, and I accept that he would be knowledgeable about the storage of relevant security video footage. The hospital identified the video server that was searched, which is where all downloaded video is stored and, specifically, the "Security Videos and Snapshots" folder where "all video recorded prior to [the year in question] is stored." The supervisor located and reviewed the contents of a subfolder; this folder has a title that I accept to be related to the date and incident identified by the complainant. This subfolder included six files of security camera footage, and these were the six videos disclosed to the complainant. The hospital's evidence is that this supervisor also reviewed other videos from the same time range, but they did not correspond with the identified incident or they related to different incidents altogether. The hospital advised that the security supervisor was asked to confirm, and did confirm, that the six videos identified from that date were the only ones available that fit the description the complainant provided about the relevant incident.

[22] Additionally, the hospital provided details about the procurement and installation of new security cameras in the year identified by the complainant in the request, including the camera the complainant had apparently observed at a later date located at the most eastern wall Emergency Department from the ambulance entrance bay. I accept that this particular camera was installed more than two months after the incident identified by the complainant is said to have occurred and, therefore, could not have captured the video footage he seeks.

[23] In sum, based on the information available to me, I accept as reasonable the hospital's explanation as to why the complainant's arrival outside the emergency entrance and his interactions with police at the time and date specified by him were not captured within the range of the security cameras then in use at the hospital.

[24] Under the authority granted to me by sections 57(3) and 57(4)(a) of *PHIPA*, I am exercising my discretion not to conduct a review of this complaint. For the reasons set out above, I decline to review this complaint on the basis that there are no reasonable grounds to commence a review of the subject matter of the complaint and because the hospital has responded adequately to the complaint.

[25] I issue this decision in satisfaction of the notice requirement in section 57(5) of *PHIPA*.

NO REVIEW:

For the foregoing reasons, no review of this matter will be conducted under Part VI of *PHIPA*.

Original Signed by: _____
Daphne Loukidelis
Adjudicator

December 18, 2018 _____