

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 79

Appeal HA18-109

Dr. Rita Kolycius

December 21, 2018

**Summary:** The complainant sought access to his sons' records of personal health information from Dr. Rita Kolycius. This decision determines that Dr. Kolycius is deemed to have refused the complainant's request for access. Dr. Kolycius is ordered to provide a response to the complainant regarding his request for access to records of his sons' 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] The complainant is the father of twin sons, who were seen by Dr. Kolycius in 2014.

[3] On June 18, 2018, the complainant made a written request for access, by e-mail, to Dr. Kolycius:

Dr. Rita KOLYCIUS, I, [named complainant], biological father of twin boys: Hereby, legally requests complete files disclosures (sic.) on the "said children" forthwith.[...]

[4] On June 20, 2018, the complainant received an e-mail from Dr. Kolycius' office indicating that they would send him the requested medical file as soon as possible.

[5] On August 2, 2018, the complainant received another e-mail from Dr. Kolycius' office requesting that he provide a current letter from his lawyer requesting access to the medical records in question.

[6] 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 custody or control of the personal health information.

[7] Section 54 of the *Act* requires a health information custodian that receives a request from an individual for access to a record of personal health information 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 response for a further period not to exceed 30 days.

[8] 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.

[9] On August 13, 2018, the office of the Information and Privacy Commissioner of Ontario (IPC) received a deemed refusal complaint from the complainant indicating it had been more than 30 days since he made his request for access to Dr. Kolycius and that he had not received a response. As a result, this complaint file was opened.

## **DISCUSSION:**

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

[10] 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.

[11] 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.

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

[13] The requested records relate to the health care provided by Dr. Kolycius to the complainant’s sons. Based on the information before me, I am satisfied that the information contained in the records relates to the physical or mental health of the complainant’s sons and relates to the provision of health care to the complainant’s sons by Dr. Kolycius.

[14] 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 Dr. Kolycius a “health information custodian” as defined in section 3(1) of the *Act*?**

[15] The *Act* provides an individual with the right of access to records of personal health information about the individual that are in the custody or 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 of the work described in the paragraph, if any:

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

...

[16] 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 of a regulated profession within the meaning of the *Regulated Health Professions Act, 1991* and who provides health care,

...

[17] “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

...

[18] 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 professionals established or continued under a health profession *Act*;

...

“member” means a member of a College;

[19] Applying the definitions, I find that Dr. Kolycius was at the material time a “health care practitioner” and therefore a health information custodian within the meaning of the *Act* as she was a member of the College of Physicians and Surgeons of Ontario, she provided health care to the complainant’s sons and she has custody or control of the records of personal health information as a result of or in connection with the provision of health care to the complainant’s sons.

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

[20] Under section 54(2) of the *Act*, a health information custodian must respond to a request for access to a record of personal health information as soon as possible in the circumstances but not later than 30 days after receiving the request. As previously mentioned, this is subject to an extension of time for a further period not to exceed 30 days if, within 30 days after receiving the request for access, the health information custodian gives the individual written notice of the extension setting out the length of the extension and the reasons for the extension.

[21] Sections 54(3) and 54(4) of the *Act* provide as follows:

(3) Within 30 days after receiving the request for access, the health information custodian may extend the time limit set out in subsection (2) for a further period of time of not more than 30 days if,

(a) meeting the time limit would unreasonably interfere with the operations of the custodian because the information consists of numerous pieces of information or locating the information would necessitate a lengthy search; or

(b) the time required to undertake the consultations necessary to reply to the request within 30 days after receiving it would make it not reasonably practical to reply within that time.

(4) Upon extending the time limit under subsection (3), the health information custodian shall give the individual written notice of the

extension setting out the length of the extension and the reason for the extension.

[22] On June 18, 2018, the complainant made a written request for access to Dr. Kolycius. On June 20, 2018, Dr. Kolycius' office e-mailed the complainant indicating that they would provide access to the requested records as soon as possible. Dr. Kolycius' office subsequently e-mailed the complainant on August 2, 2018, requesting that he provide a current letter from his lawyer requesting access to those records. The complainant indicated and I have concluded, that Dr. Kolycius did not respond to his request for access within 30 days of the request and has not provided a response in accordance with section 54 of the *Act* to date.

[23] There is no evidence to suggest that, within 30 days of receiving the request for access, Dr. Kolycius 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 also expired.

[24] On August 21, 2018, the IPC sent a Notice of Review to both the complainant and Dr. Kolycius. The Notice of Review stated that the complainant filed a complaint alleging Dr. Kolycius is deemed to have refused the complainant's request for access by not giving a response within the time period set out in section 54 of the *Act*. The Notice of Review requested Dr. Kolycius to immediately respond to the complainant's request for access and to forward a copy to the Analyst. The Notice of Review indicated that if Dr. Kolycius failed to do so by September 5, 2008, the IPC may issue an order requiring Dr. Kolycius to provide a response to the complainant.

[25] The Analyst assigned to this complaint contacted Dr. Kolycius' office on August 30, 2018, and reception staff noted that Dr. Kolycius was not available to discuss the matter. Reception staff at Dr. Kolycius' office explained that Dr. Kolycius had forwarded our office's Notice of Review to the Canadian Medical Protective Association (CMPA) and directed the Analyst to discuss the matter with the CMPA. The Analyst assigned to this complaint subsequently left two voice messages for Dr. Kolycius between September 7, 2018 and September 14, 2018 which were not returned. On September 18, 2018, the Analyst assigned to this complaint contacted Dr. Kolycius' office and was again notified by reception staff that Dr. Kolycius was not available to discuss this matter and directed to contact the CMPA. Reception staff at Dr. Kolycius' office was unable to confirm that the CMPA had agreed to respond to this matter on behalf of Dr. Kolycius and was unable to provide the name and contact information of anyone at the CMPA authorized to discuss this matter.

[26] Our office has encouraged Dr. Kolycius to meet her statutory obligations under the *Act* by providing the complainant with a response to his request for access to records of personal health information. The lack of response from Dr. Kolycius to the written request for access of the complainant which was made over six months ago, on June 18, 2018, is unacceptable. This has been further exacerbated by the lack of

response from Dr. Kolycius to attempts by this office to contact her.

[27] 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 Dr. Kolycius 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. Dr. Rita Kolycius shall provide a written response to the complainant regarding his request for access to the records of his sons' personal health information in accordance with the *Act* and without recourse to a time extension no later than **January 8, 2019**.
2. In order to verify compliance, Dr. Rita Kolycius shall provide me with a copy of the response referred to in Provision 1 by **January 8, 2019**. 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: \_\_\_\_\_  
David Craig  
Analyst

\_\_\_\_\_ December 21, 2018