

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 89

Complaint HA16-68-2

Mississauga Halton Local Health Integration Network (formerly the Mississauga Halton  
Community Care Access Centre)

February 20, 2019

**Summary:** An individual sought access to his late wife's records of personal health information from the Mississauga Halton Local Health Integration Network (formerly, the Mississauga Halton Community Care Access Centre). After confirming that the individual was authorized to receive access, the LHIN issued a decision granting access to the responsive records. The individual filed a complaint with this office regarding the LHIN's decision on the basis of his belief that additional records should exist. The sole issue in this complaint is whether the LHIN conducted a reasonable search for responsive records. In this decision, the adjudicator upholds the search as reasonable and dismisses the complaint.

**Statutes Considered:** *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sched. A, as amended, section 54.

**Decisions Considered:** PHIPA Decisions 18, 48, and 76.

### BACKGROUND:

[1] An individual made an access request under the *Personal Health Information Protection Act (PHIPA or the Act)*, to Mississauga Halton Community Care Access Centre (the CCAC) for the following information:

Complete health record from Mississauga Halton CCAC and any agencies providing care on behalf of Mississauga Halton CCAC. From the records of [the complainant's wife].

[2] Once the CCAC was satisfied that the requester was the estate trustee for his late wife, it issued a decision, stating the following:

As the Estate Trustee you have a right to access records of her personal health information that [are] in the custody or control of our CCAC.

Accordingly, access to these records [has] been provided. Please note that in accordance with [the] *Personal Health Information Protection Act, (PHIPA)* we have provided access to all records that contain the personal health information of [the complainant's wife]. With respect to records that are not primarily related to the health care of [the complainant's wife], we have severed all of the non-health related information and have only provided access to the portions of these records that contain [the complainant's wife's] health information. These severances have been made in accordance with section 52(3).

[3] The requester submitted a complaint to this office regarding the CCAC's decision.

[4] During mediation, the complainant advised that he believed the health record should include records from service provider organizations that provided care to his wife. The CCAC agreed to conduct another search with respect to the complainant's concerns that further records exist and to reconsider the exemptions applied to the records provided.

[5] On May 31, 2017, pursuant to the *Patients First Act, 2016*, home and community care services and staff transferred from CCACs to Local Health Integration Networks (LHINs).

[6] The Mississauga Halton LHIN (the LHIN),<sup>1</sup> being the health information custodian for the purposes of this complaint, issued a supplemental decision advising that it had contacted the service providers who provided care to the complainant's wife and requested copies of her records. The LHIN advised that it intended to provide the complainant access to the health care records that were in the possession of the service providers.

[7] The LHIN subsequently issued a revised decision and provided the complainant access to all records in full, including the records of the service providers. The decision stated, in part:

Although we had previously claimed exemptions with respect to two of the records at issue, we are now providing access to all records in full.

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<sup>1</sup> References will be made to the "LHIN" throughout this order, including instances where the parties' submissions referred to the "CCAC".

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Therefore, the enclosed records constitute the entire health record of [the complainant's wife] that in the custody and control of the Mississauga Halton LHIN.

[8] After receiving the above noted decision, the complainant advised the mediator that he did not believe the disclosed health record was complete and that he was not satisfied with the LHIN's search for responsive records. The complainant is of the view that further records related to his and his wife's contact with the LHIN should exist.

[9] Accordingly, the complaint file was moved to the adjudication stage of the complaint process, where an adjudicator may conduct a review under *PHIPA*. I decided to conduct a review and began my review by inviting representations from the LHIN. A copy of the LHIN's representations was shared with the complainant, in accordance with this office's sharing procedures.<sup>2</sup> I invited the complainant to provide representations in response to the issue of reasonable search set out in the Notice of Review, as well as in response to the representations submitted by the LHIN. The complainant provided representations by way of affidavit. The LHIN then provided representations in response to the complainant's submissions.

[10] For the reasons that follow, I uphold the LHIN's search for records as reasonable and dismiss the complaint.

## **DISCUSSION:**

### **Did the LHIN conduct a reasonable search for records responsive to the complainant's request?**

[11] The sole issue I must decide is whether the LHIN conducted a reasonable search in this complaint. Since the complainant claims that additional records exist beyond those identified by the LHIN, I must decide whether the LHIN conducted a reasonable search for records as required by sections 53 and 54 of *PHIPA*. If I am satisfied that the searches carried out were reasonable in the circumstances, I will uphold the LHIN's decision. If I am not satisfied, I may order further searches.

[12] Section 54 of *PHIPA* is relevant when reviewing the adequacy of a health information custodian's search for records that are responsive to a request. This section states, in part:

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<sup>2</sup> As set out in Section 18 of the IPC's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*.

(1) A health information custodian that receives a request from an individual for access to a record of personal health information shall,

(a) make the record available to the individual for examination and, at the request of the individual, provide a copy of the record to the individual and if reasonably practical, an explanation of any term, code or abbreviation used in the record;

(b) give a written notice to the individual stating that, after a reasonable search, the custodian has concluded that the record does not exist, cannot be found, or is not a record to which this Part applies, if that is the case.

[13] The issue of whether a health information custodian has conducted a reasonable search for records under the *Act* has been addressed in several orders issued by this office.<sup>3</sup> In PHIPA Decision 18, Adjudicator Catherine Corban concluded that the principles established in reasonable search orders issued under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* are relevant in determining whether a custodian has conducted a reasonable search under *PHIPA*. Adjudicator Corban adopted the search principles discussed in *FIPPA* and *MFIPPA* orders for the purpose of determining the issue of reasonable search under *PHIPA*. Subsequently, this approach has been adopted and applied in more recent *PHIPA* decisions,<sup>4</sup> and I adopt it for the purposes of this complaint.

### ***Representations***

[14] The LHIN submits that two staff members, a Health Records Specialist (HRS), and a Patient Relations Associate (PRA), searched for all clinical information about the complainant's late wife that had been collected over the course of her care with the LHIN. Both the HRS and the PRA provided affidavit evidence attesting to the searches they conducted. These searches were overseen by the LHIN's Privacy Officer, who also provided an affidavit.

[15] Regarding the searches that were conducted, the LHIN explains that the HRS searched the organization's legacy systems, the Patient Management System and the Client Management System, to determine if the patient had received care prior to 2007. In doing so, the HRS used the wife's name and date of birth. Those searches did not return any responsive records.

[16] Next, the HRS searched the current system, the Client Health Record and

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<sup>3</sup> See, for example, PHIPA Decisions 18, 43, 48, 52, 57, and 61.

<sup>4</sup> See, for example, PHIPA Decisions 43, 48, 52, 57, 61, and 76.

Relation Information System (CHRIS), which revealed that the complainant's wife received services from the former CCAC from May 11, 2011 to March 26, 2016. The LHIN submits that the HRS then compiled the patient's complete health records, including: "all patient notes in CHRIS, all scanned documents in the Document Management System and all patient assessments in Acutenet." The LHIN submits that the results consisted of 329 pages of records, which were printed and compiled in chronological order from admission to discharge, and then provided to the complainant. The LHIN notes that two pages of records contained redactions due to statutory exemptions, which are not at issue in this complaint.

[17] The LHIN submits that during mediation, five service provider organizations were identified as having provided services for the complainant's wife. The LHIN contacted the service provider organizations and requested the wife's complete health records from each agency. While the LHIN submits that these records were not in its possession, it acknowledges that the records may have been within their "custody or control", and it was therefore prepared to provide access to them.

[18] The LHIN submits that upon receipt of the records from the five service provider organizations, it issued a revised decision letter fully disclosing 420 pages of responsive records to the complainant.<sup>5</sup>

[19] The LHIN submits that all of its patient information is maintained in electronic form in databases, which are not destroyed or deleted. Accordingly, the LHIN submits that there are no responsive records that once existed but no longer exist.

[20] In response to the complainant's assertion that further records of his and his wife's communication with the LHIN should exist, the LHIN submits that the complainant's request was for access to the "complete health record" from the LHIN and any agencies providing care on behalf of the LHIN. The LHIN maintains that this is distinct from requesting "any records of his and his wife's communications with the LHIN and its predecessor organization," the CCAC. The LHIN submits that its request was limited by the scope of the original request at issue. Accordingly, the LHIN submits that its searches were limited to those of the complainant's wife's health record, and would not necessarily contain other communications that were not related to her health. In addition, the LHIN submits that it did not include in its search any non-responsive information, such as financial billing statements, service provider offers, metadata, or incident reports involving the complainant or his wife. The LHIN submits that its searches and responses were conducted in this manner in good faith.

[21] In response, the complainant submitted representations by way of affidavit. The

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<sup>5</sup> Included in the second disclosure were copies of the records that had previously been disclosed to the requester.

complainant attests that the LHIN personnel were “involved in misrepresentations” and suggests that the LHIN shared information with others without authority. To the extent that these comments appear to suggest concern about unauthorized disclosure, I confirm that this issue is not before me. Further, since these submissions are not relevant to determining the sole issue of whether the LHIN conducted a reasonable search for records responsive to the request, I will not comment on them in my analysis of the LHIN’s search below.

[22] The complainant submits that he communicated with the LHIN “in the form of speaking, listening, reading and seeing documents.” The complainant indicates that a copy of his late wife’s will was provided to a person/nurse who was attending to her in December 2014. The complainant’s representations appear to suggest that the LHIN should have located the will during its searches and disclosed it to him along with the other responsive records.

[23] In response, the LHIN submits that it is not customary to obtain patients’ wills during the course of treatment, as they are not relevant to a patient’s health care while they are receiving services. Notwithstanding that fact, the LHIN advises that it reviewed the complainant’s wife’s chart close to December 2014 and found no indication that her will was provided to its staff. Accordingly, the LHIN maintains that the complainant’s wife’s will is not in its record holdings.

[24] The LHIN maintains that the rest of the complainant’s representations speak to issues beyond the scope of this complaint, which is addressing the sole issue of reasonable search. The LHIN declines to respond to the other issues raised by the complainant based on the understanding that they are not under consideration in this review.

### ***Analysis and findings***

[25] The *Act* does not require health information custodians to prove with absolute certainty that further records do not exist; rather, it requires custodians to provide sufficient evidence to demonstrate that they have made a reasonable effort to identify and locate responsive records.<sup>6</sup> A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records that are reasonably related to the request.<sup>7</sup> In the circumstances of this complaint, I find that the LHIN has provided sufficient evidence to demonstrate that it made a reasonable effort to identify all records responsive to the complainant’s request for his wife’s “complete health record.”

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<sup>6</sup> Orders P-624 and PO-2559, PHIPA Decision 17 and PHIPA Decision18.

<sup>7</sup> Orders M-909, PO-2469 and PO-2592, PHIPA Decision 17 and PHIPA Decision18.

[26] I am satisfied, based on the representations and the affidavit evidence before me, that the LHIN employees who conducted and oversaw the searches, namely the Health Records Specialist, Patient Relations Associate, and Privacy Officer, are experienced employees knowledgeable in the subject matter of the request.

[27] Although the LHIN did not contact the complainant to clarify the scope of his request initially, the request was subsequently clarified through conversations with the mediator after the complainant filed a complaint with this office. I accept that the LHIN understood that the request was for access to the "complete health record" of the complainant's late wife. I also accept the LHIN's position that records responsive to a request for a "complete health record" would not necessarily include documents not directly related to a patient's health care.

[28] In PHIPA Decision 48, Adjudicator Stella Ball noted that records that are administrative in nature may not directly relate to the provision of health care to a patient.<sup>8</sup> In some cases, a requester may indicate that they are interested in obtaining access to specific types of administrative documents or information. However, the request at issue was for access to the complainant's wife's "complete health record." The complainant did not specify that he was seeking access to other types of records not directly related to the provision of health care to his wife, such as a will or communications between himself and the LHIN. The complainant's representations do not explain how his communications with the LHIN reasonably relate to his wife's "complete health record." In the circumstances, I am not satisfied that such communications are responsive. Accordingly, I find that the LHIN properly interpreted the scope of the complainant's request. I am also satisfied that the LHIN appropriately understood that responsive records may be held by the LHIN itself or by any of the service provider organizations that provided services for the wife.

[29] In order to locate the responsive records, the LHIN searched each of its electronic databases using the complainant's wife's name and date of birth. Moreover, the LHIN identified five service provider organizations that were involved in the complainant's wife's care, and requested that they also conduct searches for responsive records. The LHIN provided the complainant with access to all of the records identified by these searches, which amounted to 420 pages. All records identified as responsive to the request were disclosed to the complainant. Based on the evidence before me, I am satisfied that the LHIN's search parameters were aligned with the scope of the request and were reasonable in the circumstances. I am also satisfied that the LHIN expended a reasonable effort to locate records that are reasonably related to the complainant's request.

[30] Although a complainant will rarely be in a position to indicate precisely which

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<sup>8</sup> Paragraph 16.

responsive records a custodian has not identified, the complainant must, nevertheless, provide a reasonable basis for concluding that such records exist.<sup>9</sup> In this case, the complainant's representations do not provide evidence that additional records should exist that have not yet been identified and disclosed. Rather, the stated basis of the complainant's belief that the LHIN did not conduct a reasonable search for his wife's "complete health record" is that he has communicated with the LHIN in various ways and that a last will and testament was provided to a "person/nurse" in December 2014.

[31] As previously stated, the wife's will and records relating to the complainant's communications with the LHIN are peripheral records not directly related to the provision of health care to the complainant's wife. I have already found that such records fall outside the scope of the complainant's request. Therefore, I am not persuaded by the complainant's submissions that there is a reasonable basis for believing that the LHIN has not conducted a reasonable search for responsive records. Accordingly, having considered both parties' positions, I find that the LHIN has expended a reasonable effort to locate records that are reasonably related to the complainant's request.

[32] Finally, I accept the LHIN's submissions regarding the electronic storage of its records, and am satisfied that there is no reasonable basis for concluding that responsive records might have existed, but no longer exist because they have been deleted or destroyed.

[33] For the reasons outlined above, I find that the LHIN conducted a reasonable search for records responsive to the complainant's request in compliance with its obligations under the *Act*. On that basis, I uphold the LHIN's search, and I dismiss the complaint.

**ORDER:**

For the foregoing reasons, no order is issued.

Original signed by: \_\_\_\_\_

Jaime Cardy  
Adjudicator

February 20, 2019 \_\_\_\_\_

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<sup>9</sup> Order MO-2246, PHIPA Decision 17 and PHIPA Decision 18.