

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 91

Complaint HA17-71

A public hospital

March 22, 2019

**Summary: Summary:** The IPC received a complaint under the *Personal Health Information Protection Act (PHIPA)* regarding a decision of the hospital, in which the hospital had stated that it would no longer be responding to access or correction requests in respect of the complainant's personal health information. During the IPC's review of the complaint, it was unable to obtain any clarity from the complainant about the request forming the basis of this complaint. With no request before her, the adjudicator determines in accordance with sections 57(3) and 57(4) of *PHIPA* that no further review of the complaint is warranted.

**Statutes considered:** *Personal Health Information Protection Act, 2004*, sections 54(6), 55(6), 57(3), 57(4) and 57(5).

### BACKGROUND:

[1] This decision addresses a complaint filed with the Information and Privacy Commissioner (the IPC, or this office) under the *Personal Health Information Protection Act, 2004 (PHIPA)* by an individual regarding a request she made to a hospital. The complainant has submitted a significant number of requests to the hospital for access to, and correction of, records of her personal health information. The hospital issued the following letter dated June 7, 2017 in response to one of the complainant's requests:

This correspondence is to confirm receipt of your undated letter received today requesting access to personal health information re: your February 14, 2014 records.

In the past few years we have responded to multiple requests from you and have completed a full and thorough review of the concerns that you raised.

At this time we feel that we have responded appropriately to all of your concerns and moving forward we will no longer respond to any of your requests for additional information or changes in your medical record.

[2] The complainant filed a complaint with this office and the complaint was streamed directly to the adjudication stage of the IPC's process for *PHIPA* complaints.

[3] I decided to conduct a review of the complaint and began my review by sending a Notice of Review to the hospital, inviting its submissions on the issues raised by the complaint, including the nature of the complainant's request which led to the June 7, 2017 letter and whether the hospital was entitled to refuse the complainant's request on the grounds that it is frivolous or vexatious.

[4] The hospital provided written representations in response. After reviewing these representations, I sent the complainant a letter dated October 24, 2018 in which I requested that she send me only a copy of the access or correction request that resulted in the hospital's June 7, 2017 letter, and nothing further. In response, the complainant sent in approximately 150 pages of material, mostly consisting of letters from the complainant to this office.

[5] After reviewing this material, it was not evident to me that it contained the access or correction request leading to the hospital's June 7, 2017 letter. I then sent the complainant a letter advising her of my preliminary view that the review of her complaint should not continue, on the basis that it was not clear what request led to the hospital's response. My preliminary view was based on sections 57(3) and (4) of *PHIPA* and specifically, my preliminary assessment was that without knowing what the request was, there were no reasonable grounds to continue with a review.

[6] In my letter, I invited the complainant to provide submissions to explain why the review should continue, if she disagreed with my preliminary view. I advised the complainant that I would consider any submissions provided in response to my letter before I made a final decision. The complainant provided written submissions in response to my letter.

[7] In this decision, I confirm my previous assessment and I decline to continue with my review under *PHIPA*.

## **DISCUSSION**

### **Commissioner's discretion to review or not to review a complaint**

[8] 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 sections state as follows:

(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;

(b) the complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under this Act;

(c) the length of time that has elapsed between the date when the subject-matter of the complaint arose and the date the complaint was made is such that a review under this section would likely result in undue prejudice to any person;

(d) the complainant does not have a sufficient personal interest in the subject-matter of the complaint; or

(e) the complaint is frivolous or vexatious or is made in bad faith.

### ***Submissions of the Complainant***

[9] The complainant's submissions in response to my request that she provide reasons why the review should continue were lengthy. In those submissions, the complainant repeats concerns regarding her situation and the situations of vulnerable people in general. These concerns relate to the hospital and other health care custodians, and the lack of services provided to her. Again, the complainant did not identify the request that led to the hospital's response.

### ***Analysis***

[10] In this case, it appears that the hospital refused to grant a request for access or correction on the grounds that the request was frivolous or vexatious pursuant to either

section 54(6) (which addresses access requests) or 55(6) (which addresses correction requests) of *PHIPA*. In the usual case, the issue to be decided would be whether the health information custodian has demonstrated that there are reasonable grounds to believe this is the case<sup>1</sup>

[11] However, in the case at hand, neither the hospital nor the complainant has identified what request the complainant made that resulted in the hospital's June 7, 2017 letter. While I understand that the complainant has wide-ranging concerns about the hospital's responses to her various requests, the complainant's stated requirement that I consider all matters relating to her requests to the hospital did not assist me in identifying what request the hospital was addressing in its June 7, 2017 letter.

[12] Without the request before me, it is not possible for me to make a determination as to whether the hospital had reasonable grounds to determine that the request was frivolous or vexatious. I also note that the appropriate order in cases where this office does not uphold a custodian's determination that a request is frivolous, vexatious or made in bad faith is to order the custodian to issue a decision in response to the request under *PHIPA*. In this case, I would not be able to make such an order, because the request at issue has not been identified.

[13] As a result, I maintain my preliminary determination that without knowing what the request was, there are no reasonable grounds to continue with a review of this complaint. I issue this decision in satisfaction of the notice requirement in section 57(5) of the *PHIPA*.

### **NO REVIEW:**

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

Original signed by \_\_\_\_\_  
Gillian Shaw  
Senior Adjudicator

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March 22, 2019

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<sup>1</sup> See *PHIPA* Decision 46.