

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 92

Complaint HA17-119

LifeLabs

April 24, 2019

Summary: An individual sought access to her records of personal health information from LifeLabs. LifeLabs issued a decision granting access to the responsive records in their entirety. The individual filed a complaint with this office on the basis of her belief that additional records should exist. In particular, the individual believed that there may be notations or instructions on her patient file that LifeLabs had not yet located. The sole issue in this complaint is whether LifeLabs conducted a reasonable search for responsive records. In this decision, the adjudicator upholds LifeLabs' search as reasonable and dismisses the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004*, SO 2004, c 3, sections 53 and 54.

Decisions Considered: PHIPA Decision 18.

BACKGROUND:

[1] A requester sought access to her records of personal health information from LifeLabs, pursuant to her right of access under section 52 of the *Personal Health Information Protection Act (PHIPA or the Act)*. In response, LifeLabs issued a decision granting full access to the responsive information.

[2] The requester, now the complainant, filed a complaint with this office on the basis that some of the records she received were incomplete and others were missing. The complainant also took issue with the fee for requesting the records and explained that LifeLabs should have sent the records directly to her physician instead of requiring the complainant to pay LifeLabs for access.

[3] During mediation, the complainant advised that she no longer wished to pursue her complaint with respect to fees. She also provided additional details regarding the information she believes is missing from the records. For example, the complainant advised that the number of lab test results in the LifeLabs lab report differed from the number indicated on the personal claims history that she obtained from the Ministry of Health and Long-Term Care. She also mentioned a specific code that appeared on the personal claims history associated with the results.

[4] In response, LifeLabs provided the mediator with information concerning the OHIP code and a copy of the OHIP Schedule of Benefits, and explained that the billing code concerns the interpretation of laboratory results. This explanation was provided to the complainant, who confirmed that she understood.

[5] The complainant also expressed that, based on her experience with LifeLabs, she believes that there may be instructions on her records of personal health information regarding the process to follow when she has multiple requisitions. The mediator raised this question with LifeLabs. In response, LifeLabs reviewed the complainant's file and confirmed that there are no such instructions in the complainant's records of personal health information. LifeLabs' response was provided to the complainant.

[6] The complainant was not satisfied with LifeLabs' response and requested that the matter of reasonable search proceed to the adjudication stage of the complaint process. Specifically, the complainant maintained that additional records exist in the form of notes in her patient file, as described above.

[7] Given that a mediated resolution was not possible, the file was transferred to the adjudication stage where I decided to conduct a review of the complaint. I began my review by sending a Notice of Review to LifeLabs, inviting written representations on the issue of reasonable search. Upon receipt of LifeLabs' representations, I shared the representations with the complainant inviting her to provide representations in response. Reply and sur-reply representations were also sought and received from the parties.

[8] For the reasons that follow, I find that LifeLabs has demonstrated that it conducted a reasonable search for records responsive to the complainant's request, in compliance with the obligations set out in the *Act*.

DISCUSSION:

[9] As a preliminary matter, I find that LifeLabs provides "health care" to patients and is therefore a "health information custodian" as those terms are defined in sections 2 and 3(1) of the *Act*, respectively. There is no dispute between the parties that the records requested from LifeLabs are records of "personal health information" of the complainant, as that term is defined in section 4 of the *Act*.

Did LifeLabs conduct a reasonable search for records responsive to the complainant's request?

[10] The sole issue I must decide is whether LifeLabs conducted a reasonable search for records responsive to the complainant's access request, as required by sections 53 and 54 of *PHIPA*. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold LifeLabs' decision. If I am not satisfied, I may order further searches.

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

(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.

[12] 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.¹ 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*. This approach has been adopted and applied in more recent *PHIPA* decisions,² and I adopt it for the purposes of this complaint.

¹ See, for example, *PHIPA* Decisions 18, 43, 48, 52, 57, and 61.

² See, for example, *PHIPA* Decisions 43, 48, 52, 57, 61 and 76.

Representations

LifeLabs' representations

[13] LifeLabs requests that this complaint be dismissed on the basis that it conducted a full search of all of its files relating to the complainant and located no additional notes in her patient records.

[14] In support of its position, LifeLabs explains that the request for access to "written instructions on [the complainant's] records of personal health information for staff regarding the process to follow when the complainant has multiple requisitions" came from the mediator during the mediation stage of this complaint. LifeLabs submits that there was no confusion arising from the request; therefore, it did not contact the complainant for clarification before conducting a search for additional responsive records.

[15] LifeLabs submits that it keeps all of its patient records in a digital database, organized by patient identity. When searching the database, a patient profile is generated, which includes all information relating to a given patient with the exception of their test results. This includes their address, medical conditions, patient notes, and other miscellaneous details.

[16] LifeLabs submits that a Client Services Manager who regularly works with the database, is trained in its use, and had full access to the complainant's profile, was responsible for conducting the search. LifeLabs submits that in conducting a search of the complainant's patient profile, the Client Services Manager did not impose any limitations on the scope of the request. The result of the Client Services Manager's search was that no notes were found to have been made on the complainant's profile. To verify the results of this search, screenshots of the complainant's patient profile were included with LifeLabs' representations, and shared with the complainant.

[17] LifeLabs explains that the only other sources of information that exist in relation to the complainant are the actual lab test results, which were previously provided to the complainant and are not at issue.

[18] LifeLabs submits that it does not permanently delete notes from patient profiles, and therefore they do not believe that additional responsive records once existed but no longer exist.

The complainant's representations

[19] The complainant says that she would like to access the notes on her patient file to help explain her experience with LifeLabs. In particular, the complainant believes that her treatment when presenting with multiple requisitions at a single visit has been different from what is provided for in LifeLabs' policy.

[20] The complainant provides a detailed history of her interactions with LifeLabs giving rise to her concerns. For example, she submits that at one time, she was able to sign a consent form permitting lab results to be sent to multiple physicians. However, at a later date, she was told that practice was no longer permitted because one of her physicians had questioned why “his test results” were being shared with another physician. The complainant explains that since that time, she has been required to attend LifeLabs multiple times on consecutive days for duplicate tests. The complainant submits that obtaining access to the requested records may explain this experience.

[21] In response to LifeLabs’ representations, the complainant maintains that she has been seeking access to the notes on her patient file all along. She also notes that the screenshots provided in support of LifeLabs’ position appear to be incomplete, as screenshots for the “Medical Conditions” and “Miscellaneous” tabs of her patient profile were not included.

[22] With regard to the “Address” tab of her patient profile, the complainant points to a notation that reads, “Fields on the tab must be updated in IntRlab,” which she submits indicates that another system is in use at LifeLabs. She questions whether records responsive to her request could be located in a system other than the patient profile that was searched.

[23] The complainant also asks whether it is possible that responsive records might only be available at the LifeLabs location that she visits, as opposed to LifeLabs’ central record holdings.

LifeLabs reply representations

[24] In response to the complainant’s representations, LifeLabs provided screenshots of both the “Miscellaneous” and “Medical Conditions” tabs of the complainant’s patient profile, neither of which contained any notes.

[25] LifeLabs explains that IntRlab is LifeLabs’ Lab Information System, which records patient demographic data, test orders, test results, ordering physician information, and any comments related to tests. LifeLabs submits that it searched IntRlab and did not locate any comments related to the complainant.

[26] LifeLabs maintains that it does not keep hard copies of patient records at any of its patient service centres. All requisitions presented to staff at the centres are entered into its lab information system, and the requisition itself is scanned into LifeLabs’ requisition storage system before the hardcopy is shredded.

[27] The remainder of LifeLabs’ reply representations focus on whether the complainant’s request for access to notes on her patient file was within the scope of her original access request; its responses to issues that have already been resolved in the processing of this complaint, such as providing an explanation as to why LifeLabs bills OHIP for some tests; and its policy on handling multiple requisitions brought by a

patient in one visit. On the latter point, LifeLabs provided a brief explanation of its policy. However, given that LifeLabs' policy is not relevant to the issue of reasonable search, and given that LifeLabs' reply representations have already been shared with the complainant, it is not necessary for me to summarize or consider this portion of LifeLabs' representations for the purpose of deciding this complaint.

The complainant's sur-reply representations

[28] The complainant notes that the screenshots indicate that her patient profile was last modified on a specific date. She questions what those modifications were and asks whether it is possible that there were previously notes on her profile that have since been removed.

[29] The complainant submits that without knowledge of LifeLabs' various systems, she does not specifically know what type of records to ask for. With respect to the IntRlab system, which she learned about through LifeLabs reply representations, the complainant questions whether it might contain notations regarding physicians consenting or not consenting to sharing her lab results. If not in IntRlab, she requests that LifeLabs provide her with access to records related to physicians' preferences on sharing of her lab results with other physicians. The complainant provides additional details, such as the dates and physician names that correlate to a few of her past requisition orders, that she thinks may be relevant to this request. She also requests that LifeLabs provide her with the general information in her records from the IntRlab system, such as her demographic information.

[30] Regarding LifeLabs position that no hardcopy records are stored at its patient service centres, the complainant submits that she has seen staff retrieving paper files from a filing cabinet for use regarding her lab work. She therefore requests that LifeLabs inquire with her local centres to verify whether they keep any paper files. She provided the addresses of the centres in question.

[31] The complainant also asks whether LifeLabs Customer Care Centre has records separate from LifeLabs' central systems and, in particular, records that have not yet been disclosed to her. She suggests that such records may include "general records / notes" and "notes related to other requests for [her personal health information]."

LifeLabs supplementary representations

[32] LifeLabs provided brief supplementary representations in order to respond to the complainant's remaining questions. LifeLabs advises that the last modification to the complainant's patient profile was when her last requisition was entered into the system, and there are no notes in IntRlab indicating whether a physician agreed or did not agree to sharing lab results with other physicians. LifeLabs also included the complainant's demographic information from the IntRlab system. LifeLabs should send this information directly to the complainant.

[33] LifeLabs submits that it contacted the patient service centres listed in the complainant's sur-reply representations and confirmed that they do not have any physical records regarding the complainant.

[34] With regard to its Customer Care Centre, LifeLabs explains that the IntRlab system records patient demographics, test orders, and test result information. The request for information is logged in a separate spreadsheet in its Customer Care Centre. LifeLabs submits that it does "not have any other record of receiving a request for information from any health care provider other than" what has already been noted in its previous responses. Further, LifeLabs confirms that it does not have any other general records in its Customer Care Centre.

Analysis and findings

[35] The complainant claims that additional records exist in the form of notes on her file with instructions specific to her as a patient; therefore, the issue to be decided is whether LifeLabs conducted a reasonable search for records as required by sections 53 and 54 of *PHIPA*.

[36] Although a requester will rarely be in a position to indicate precisely which records a custodian has not identified, the requester must still provide a reasonable basis for concluding that such records exist.³ The complainant's reason for believing that there are instructions on her file is that, she alleges, her treatment has differed from LifeLabs' policy. Namely, she submits that she has been denied the opportunity to sign a consent form allowing lab results to be shared with multiple physicians, which has resulted in her needing to attend LifeLabs multiple times for duplicate tests. She maintains that this practice began when she was advised that one of her physicians questioned why "his test results" were shared with another physician. Based on the complainant's submissions, I am satisfied that she had a reasonable basis for concluding that a notation on her file, such as instructions from one of her treating physicians, may exist.

[37] However, based on the totality of the evidence before me, I am also satisfied, and I find, that LifeLabs has conducted a reasonable search for records responsive to the complainant's request, as required by the *Act*. In order to make this finding, I must be satisfied that LifeLabs has provided sufficient evidence to demonstrate that they have made a reasonable effort to identify and locate responsive records.⁴ 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

³ Order MO-2246, PHIPA Decision 17 and PHIPA Decision 18.

⁴ Orders P-624 and PO-2559, PHIPA Decision 17 and PHIPA Decision 18.

the request.⁵

[38] The scope of the complainant's access request evolved over the course of the complaint and LifeLabs did not object to this; however, by the time it reached adjudication, the issue was specifically whether LifeLabs had conducted a reasonable search for records containing notations or instructions for LifeLabs staff on the process to follow when the complainant presents with multiple requisitions. I am satisfied that LifeLabs understood the scope of the request and did not unilaterally impose any limitations when conducting its searches.

[39] In order to locate any potentially responsive records, LifeLabs searched its various data holdings, including the complainant's patient profile, the IntRlab system, and the patient services centres that the complainant attended. Although these searches were conducted in a piecemeal fashion and often at the complainant's request, I am satisfied that, at this point, LifeLabs has searched the relevant data holdings and offices where responsive records could reasonably be expected to be located. I am also satisfied based on the representations and evidence before me that LifeLabs has found that no responsive records exist.

[40] LifeLabs explains that the original searches were carried out by a Client Services Manager who regularly works with the patient profile database, is trained in its use, and had full access to the complainant's profile. Based on LifeLabs' submissions, I understand that later searches were coordinated by the General Counsel and Chief Privacy Officer. I am satisfied that these are both experienced employees knowledgeable in the subject matter of the request and of the complainant's rights to obtain access to this type of information, if it exists.

[41] LifeLabs submits that it scans requisitions into a database before shredding the originals and it does not permanently delete notes from patient files. Accordingly, I find that it is unlikely that responsive records once existed but no longer exist.

[42] For the reasons outlined above, I am satisfied that LifeLabs has demonstrated that a reasonable search for records responsive to the complainant's request was conducted in compliance with the obligations set out in *PHIPA*. Accordingly, I uphold LifeLabs' search, and I dismiss the complaint.

ORDER:

For the foregoing reasons, no order is issued.

Original signed by _____

April 24, 2019 _____

⁵ Orders M-909, PO-2469 and PO-2592, PHIPA Decision 17 and PHIPA Decision 18.

Jaime Cardy
Adjudicator

ADDENDUM:

Section 24(1)2 of O.Reg 329/04 contains an exclusion from the right of access provisions in the *Act* for certain information in the custody or control of laboratories in a specified context.

While LifeLabs appears to be a laboratory, neither party raised the issue of whether the exclusion applies in the circumstances of this complaint. In addition, there was insufficient evidence before me to suggest that the exclusion clearly applied and it appeared, from LifeLabs' response to the complainant, that it was willing to provide the complainant with access to the requested information. Accordingly, it was not necessary for me to consider whether the exclusion applied in the context of this complaint.