

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 94

HC15-99

PHIPA Decision 84

Mackenzie Health

July 4, 2019

Summary: The complainant requested a reconsideration of this office's PHIPA Decision 84, which dealt with a complaint made under the *Personal Health Information Protection Act* (the *Act*) about Mackenzie Health (the hospital). In particular, the complainant alleged that the hospital did not respond to her access request in accordance with section 54 of the *Act*, that the records she received from the hospital were not responsive to her request, and that the hospital used and disclosed her personal health information in contravention of the *Act*. The adjudicator determines that there are no grounds for reconsideration and the complainant's request for reconsideration is dismissed.

Statutes considered: *Personal Health Information Protection Act, 2004*, section 64(1).

Cases considered: *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848.

Decisions considered: PHIPA Decisions 25 and 84.

INTRODUCTION:

[1] On January 24, 2019 I issued PHIPA Decision 84, relating to a complaint made under the *Personal Health Information Protection Act* (the *Act*) that the hospital did not respond to the complainant's access request in accordance with section 54 of the *Act*, that the records she received from the hospital were not responsive to her request, and that the hospital used and disclosed her personal health information in contravention of the *Act*. The complainant now requests that I reconsider PHIPA Decision 84.

[2] For the reasons that follow, I deny the complainant's request to reconsider PHIPA Decision 84.

BACKGROUND:

[3] In PHIPA Decision 84, I considered the following four issues:

- Did the hospital respond to the complainant's request for access to audits of her records of personal health information in accordance with section 54 of the *Act*;
- Were the records provided by the hospital responsive to the complainant's request for access;
- Was the complainant's personal health information used in accordance with the *Act*; and
- Did the hospital improperly disclose the complainant's personal health information after the implementation of a lock box.

[4] I found that the hospital responded to the complainant's request for access to audits in accordance with section 54 of the *Act*, the records were responsive to the access request, the complainant's personal health information was used in accordance with section 20(2) of the *Act*, and her personal health information was not improperly disclosed by the hospital.

[5] I declined to issue an order, and dismissed the complaint.

[6] The complainant now requests that I reconsider PHIPA Decision 84 on the basis that I did not take into consideration any of the evidence she provided in her submissions to this office.

DISCUSSION:

Grounds for reconsideration

[7] Section 64 of the *Act*, which the complainant did not rely on in making her request for reconsideration, provides for reconsideration of orders made after a review. Section 64 states, in part:

64. (1) After conducting a review under section 57 or 58 and making an order under subsection 61(1), the Commissioner may rescind or vary the order or make a further order under that subsection if new facts relating to the subject-matter of the review come to the Commissioner's attention or if there is a material change in the circumstances relating to the subject-matter of the review.

[8] In PHIPA Decision 25, Assistant Commissioner Sherry Liang received a request for reconsideration from a health information custodian. Assistant Commissioner Liang found that section 64(1) of the *Act* did not apply to the request for reconsideration because there was no order made in the PHIPA Decision that was the subject matter of the reconsideration request, and the health information custodian had not submitted any new facts or material change in circumstances relating to the subject matter of the review. In addition, she found that the authority under section 64(1) is discretionary.

[9] Applying the approach taken by Assistant Commissioner Liang in PHIPA Decision 25, I find that section 64(1) of the *Act* does not apply to the complainant's request for reconsideration. As was the case in PHIPA Decision 25, in PHIPA Decision 84, I declined to issue an order, and I also find that the complainant has not submitted new facts or a material change in circumstances relating to the subject matter of the review.

[10] However, under section 27 of this office's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004* (the *Code of Procedure*), it may reconsider a decision on certain grounds. Section 27 of the *Code of Procedure* states:

27.01 The IPC may reconsider a Decision, at the request of a person, who has an interest in the Decision or on the IPC's own initiative, where it is established that:

- a) there is a fundamental defect in the adjudication process;
- b) there is some other jurisdictional defect in the Decision;
- c) there is a clerical error, accidental error or omission or other similar error in the Decision; or,
- d) new facts relating to an Order come to the IPC's attention or there is a material change in circumstances relating to the Order.

[11] The complainant has not specified in her representations on what ground(s) PHIPA Decision 84 should be reconsidered. The complainant states:

. . . [A]fter carefully reading your decision I concluded that you did not take into consideration any of my physical evidence which proved my numerous attempts to have access to my records prior to [a specified time period]. While I understand you may think this was a reasonable decision because of how the hospital misused the *Act* to cover up their mistakes in their representations to you, but this is not a correct decision because clearly you have not considered any of my evidence that I have submitted to you in this matter which this now also leads me to believe that this is abuse of power of authority and of the *Act*.

[12] In the remainder of her representations, the complainant re-argues her position

on the issues that were considered during my review of her complaint. She also provided three emails with her representations. One of the emails relates to another physician, who was not the subject matter of the complaint. The other two emails were considered during the review of the complaint, as the complainant had previously provided them to this office. I find that the substance of the complainant's reconsideration representations are an attempt to re-argue the complaint. I find that this reiteration of the complainant's arguments does not establish new facts or a material change in circumstances.

[13] In PHIPA Decision 25, Assistant Commissioner Liang analysed the approach taken to reconsideration requests in the context of the *Freedom of Information and Protection of Privacy Act*. She concluded that the approach taken under that legislation should be applied to requests for reconsideration under the *Act*. In making this finding, she stated:

It is important to note that the reconsideration power is not intended to provide a forum for re-arguing or substantiating arguments made (or not made) during the review, nor is reconsideration intended to address a party's disagreement with a decision or legal conclusion.¹ As Justice Sopinka commented in *Chandler v. Alberta Association of Architects*,² "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals."

On my review of the ministry's submissions, I conclude that they amount to re-argument of issues decided in PHIPA Decision 19, including arguments that the ministry could have but did not raise in the review. I am satisfied, therefore, that there are no grounds to reconsider PHIPA Decision 19. Even if the ministry's submissions establish grounds for reconsidering PHIPA Decision 19, for the reasons below, I would still exercise my discretion to deny the ministry's request.

[14] Applying the approach taken by Assistant Commissioner Liang, I find that the complainant's reconsideration representations essentially consist of re-arguing the points she made in the representations she provided during the review of the complaint, which does not establish a ground for reconsideration under the *Code of Procedure*.

¹ See *Ontario (Health and Long-Term Care) (Re)*, 2015 CanLII 83607 at paras. 21-24. Although this decision arises in the context of the *Freedom Information and Protection of Privacy Act*, the principles expressed in this decision, and in the other decisions quoted therein, are generally applicable to a request for reconsideration under the *Act*, while recognizing the different legislative context and the fact that the *Act* contains the power set out in section 64.

² [1989] 2 S.C.R. 848, at 861.

[15] Consequently, I find that the complainant has not established that there is a fundamental defect in the adjudication process, some other jurisdictional defect in the Decision, or a clerical error, accidental error or omission or other similar error in the Decision. Moreover, no new facts relating to an Order have come to the IPC's attention, nor is there a material change in circumstances relating to the Order. Consequently, I find that the complainant has not established any of the grounds for reconsideration of PHIPA Decision 84.

NO RECONSIDERATION:

For the foregoing reasons, the reconsideration request is dismissed.

Original Signed by: _____

Cathy Hamilton
Adjudicator

July 4, 2019 _____