

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 100

Complaint HA18-2

A Registered Psychotherapist

October 8, 2019

**Summary:** The complainant sought access to his records of personal health information from his former psychotherapist. The psychotherapist, a health information custodian for the purposes of the *Personal Health Information Protection Act*, denied access based on the exemption at section 52(1)(e)(i) (harm to patient or others) of the *Act*. In this decision, the adjudicator determines that section 52(1)(e)(i) applies. She also determines that the records cannot be severed under section 52(2) such that access can be provided to information that is not exempt under section 52(1)(e)(i). No order is issued.

**Statutes Considered:** *Personal Health Information Protection Act, 2004*, SO 2004, c 3, sections 2, 3(1), 4(1), 52(1)(e)(i), 52(2), 54(8), and 57(3); *Regulated Health Professions Act, 1991*, SO 1991, c 18, section 36(3).

**Decisions Considered:** PHIPA Decision 34 and PHIPA Decision 80.

### BACKGROUND:

[1] A requester sought access to all of his records from his former psychotherapist by submitting an access request under the *Personal Health Information Protection Act* (*PHIPA* or the *Act*). He requested that the records be provided in an electronic format. The requester was a patient of the psychotherapist from approximately October 2014 to October 2016.

[2] The psychotherapist responded by denying access to the requested records. In the decision letter, the psychotherapist advised that she was relying on section 52(1)(e)(i) (harm to patient or others) of the *Act* to deny access, on the basis that:

Granting access could reasonably be expected to result in a risk of serious harm to [the requester's] treatment or recovery and a risk of serious bodily harm to [the requester] and to [the psychotherapist] and to others.

[3] Upon receiving the psychotherapist's decision, the requester submitted a complaint to this office under section 54(8)(a) of the *Act*.

[4] A mediator reviewed the decision with the parties, and determined that no mediated resolution was possible. The file was moved to the adjudication stage of the complaint process. I decided to conduct a review of the issues raised by the complaint and received representations from the psychotherapist and the complainant, which were shared between them in accordance with section 18 of the IPC's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*.

[5] In addition to the representations that I formally invited from the parties, both parties contacted this office to provide additional, unsolicited information that they believed may be relevant to these proceedings. I have reviewed all of the information that has been put before me during the course of this review. However, for the sake of succinctness, I only summarize the points that I find to be directly related to the issues before me, being whether the exemption to the right of access in section 52(1)(e)(i) of *PHIPA* applies to the records and, if so, whether any information can be severed from the records for the purpose of providing access under section 52(2). I have not considered inadmissible documents in coming to my findings.<sup>1</sup>

[6] In this decision, I conclude that the exemption at section 52(1)(e)(i) applies to the records, which cannot be severed in accordance with section 52(2) in order to provide access to information that is not covered by the exemption. Therefore, I uphold the decision to deny access to the records in their entirety.

## **RECORDS:**

[7] The records at issue consist of the complainant's medical records for the time that he was treated by the psychotherapist (approximately October 2014 – October 2016), as well as notations that were made in the complainant's file following the termination of the therapeutic relationship as a result of the ongoing contact between the parties.

## **PRELIMINARY ISSUES:**

[8] *PHIPA* applies to the handling of personal health information by health

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<sup>1</sup> See paras 19-22 of this decision.

information custodians. "Personal health information" and "health information custodian" are defined terms in *PHIPA*.

### **Health information custodian**

[9] Section 3(1) of *PHIPA* lists a number of persons and organizations that may qualify as "health information custodians." It states, in part:

In [*PHIPA*],

"health information custodian", subject to subsections (3) to (11),<sup>2</sup> 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 or 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.
2. A service provider within the meaning of the *Home Care and Community Services Act, 1994* who provides a community service to which that Act applies.
4. A person who operates one of the following facilities, programs or services:
  - vii. A centre, program or service for community health or mental health whose primary purpose is the provision of health care.

[10] Section 2 of *PHIPA* defines "health care practitioner" as a person who is a member within the meaning of the *Regulated Health Professions Act, 1991* or is a member of the Ontario College of Social Workers and Social Service Workers, and who provides health care; or any other person whose primary function is to provide health care for payment.

[11] Section 2 also defines the term "health care" to include "any observation, examination, assessment, care, service or procedure that is done for a health-related purpose" and that is carried out or provided to diagnose, treat or maintain an individual's physical or mental condition, or to prevent disease or injury or to promote health.

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<sup>2</sup> These subsections are not reproduced here as they are of no relevance in this complaint.

[12] There is no dispute between the parties that the complainant's former psychotherapist is a health information custodian within the meaning of section 3(1) of *PHIPA*. Specifically, there is no dispute that the psychotherapist is a health care practitioner as defined in section 2 of *PHIPA*, and that she provides treatment and operates a facility that is primarily focused on the provision of health care. For the remainder of this decision, I will refer to the complainant's former psychotherapist as the "health information custodian," or the "custodian."

### **Personal health information**

[13] There is also no dispute between the parties that the custodian is subject to the rules governing the handling of "personal health information" set out in *PHIPA*. "Personal health information" is defined in section 4(1) of *PHIPA* as including identifying information about an individual in oral or recorded form that relates to the individual's physical or mental health, or to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual.<sup>3</sup>

[14] In this case, the complainant seeks access to "all of [his] files" from the custodian in an electronic format. The custodian acknowledges that any information responsive to the complainant's request would constitute his personal health information, as that term is defined in *PHIPA*. Accordingly, I am satisfied that the records at issue are records of the complainant's personal health information, and that section 52 of *PHIPA* will govern his right of access to those records.

### **Related proceedings**

[15] During the course of my review, I learned that there was a separate but related proceeding underway at the Health Professions Appeal and Review Board (HPARB). In particular, HPARB was considering an appeal brought by the complainant of a decision issued by the Inquiries, Complaints, and Reports Committee of the custodian's regulatory college, the College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario (the college). The complainant raised a number of similar issues, including the custodian's denial of his access request, in both forums.

[16] At one point in this review, the custodian suggested that the complainant is engaged in an abuse of process by commencing proceedings in multiple forums that seek to address overlapping issues. The custodian argued that she may find herself in the untenable situation of having to comply with conflicting orders on the same issues as a result of these concurrent proceedings.

[17] Section 54(8) of *PHIPA* provides individuals with a right to complain to this office

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<sup>3</sup> Paragraphs (a) and (b) of the definition of "personal health information" under section 4(1) of the *Act*.

under Part VI of the *Act* if a health information custodian refuses or is deemed to have refused a request for access to a record of personal health information. Moreover, section 57(3), in Part VI of *PHIPA*, provides this office with the power to consider a complaint by conducting a review when satisfied that there are reasonable grounds to do so. This office may decide not to conduct a review if satisfied, for example, that a complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under *PHIPA* (section 57(4)(b)).

[18] Given the custodian's reliance on the exemption at section 52(1)(e)(i) of *PHIPA* to deny access to the requested records of personal health information, I am satisfied that there are reasonable grounds for this office to conduct a review under the *Act*. There is no question this office has jurisdiction to determine the correctness of the custodian's decision to deny access based on section 52(1)(e)(i) of *PHIPA*. Unlike in PHIPA Decision 80, in which this office applied section 57(4)(b) in deciding not to review a complaint, I am not satisfied that the proceedings before the college and HPARB have resulted in determinations on facts and issues that are essentially the same as those before me. Further, given the nature of the issues in this complaint, which raise squarely the rights of access under *PHIPA*, I am also not satisfied that this complaint could be more appropriately dealt with through the proceedings before the HPARB.

[19] Another issue arising from the HPARB proceeding relates to the admissibility of evidence. Section 36(3) of the *Regulated Health Professions Act (RHPA)*<sup>4</sup> provides for a privilege over all documents prepared for proceedings under that act, including proceedings that take place before regulatory colleges. I reproduce section 36(3) here for ease of reference:

No record of a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*, no report, document or thing prepared for or statement given at such a proceeding and no order or decision made in such a proceeding is admissible in a civil proceeding other than a proceeding under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act* or a proceeding relating to an order under section 11.1 or 11.2 of the *Ontario Drug Benefit Act*.

[20] In *M.F. v. Sutherland*, Laskin J. stated the following while discussing the purposes underlying section 36(3) of the *RHPA*:

[...] the purpose of section 36(3) is to prevent not just patients but all participants in College proceedings from using documents generated for

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<sup>4</sup> 1991, SO 1991, c 18.

those proceedings in civil proceedings, in short to keep the two proceedings separate.<sup>5</sup>

[21] Therefore, according to the provisions of the *RHPA*, documents relied upon during proceedings under that act are intended to be confidential and are not meant to be relied upon in any other civil proceeding.<sup>6</sup> The *RHPA* does not provide an exception for documents that parties, either patients or health professionals, may wish to rely on in both *RHPA* and other civil proceedings.

[22] During the course of my review, both the custodian and the complainant sought to rely upon documents that were originally prepared for or relied upon in proceedings before the college or HPARB. This evidence primarily consisted of four letters, dated in 2018 and 2019, that were prepared by the complainant's current treating therapist.<sup>7</sup> In addition, the complainant sought to rely on email correspondence between him and the college or HPARB regarding his related proceedings under the *RHPA*. Based on a review of the letters and email correspondence, I find that they were prepared for or, if not specifically prepared for, then relied upon, during the college or HPARB proceedings.<sup>8</sup> As mentioned above, any evidence that was submitted to the college or HPARB during proceedings under the *RHPA* is inadmissible as evidence in this complaint. Accordingly, as a result of section 36(3) of the *RHPA*, the four letters and email correspondence are inadmissible in this proceeding, and I have not considered them in reaching my decision.<sup>9</sup>

[23] I will now address the main issue in this complaint, which is whether the custodian properly denied access under section 52 of *PHIPA*.

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<sup>5</sup> [2000] OJ 2522, at para 36.

<sup>6</sup> In *PHIPA* Decision 80, Adjudicator Ryu determined that proceedings before this office under *PHIPA* are "civil proceedings" for the purpose of section 36(3) of the *RHPA* (paras 67-69).

<sup>7</sup> The custodian relied on the therapist's letter dated March 5, 2018, and the complainant relied on the therapist's letters dated December 27, 2018, January 10, 2019, and March 17, 2019.

<sup>8</sup> In the custodian's representations, she acknowledges that the March 5 letter was "disclosed in various proceedings including a complaint to the regulatory body[...]" It is also clear from the content of the December 27 and January 10 letters that they originally prepared for use in the HRPAB proceedings. While the letter of March 17 indicates that it was prepared in response to correspondence from this office and is regarding the "IPC Review Board Case," the content of the letter suggests that the therapist had prepared it for consideration in the complainant's IPC and HPARB proceedings. I also note that the covering email was sent to the "attention to both members of the IPC and HPARB," and copied a case officer at HPARB.

<sup>9</sup> I was able to reach my conclusion upholding the custodian's decision without considering the inadmissible evidence that she sought to rely on. I reviewed the inadmissible information the appellant submitted and determined that it would not support his position on the issues before me, even if it were admissible.

## DISCUSSION:

### **Does the exemption to the right of access to one's own personal health information in section 52(1)(e)(i) of *PHIPA* apply?**

[24] The custodian relies on the exemption in section 52(1)(e)(i) of *PHIPA* to deny the complainant access to the requested records. This section states:

52(1) Subject to this Part, an individual has a right of access to a record of personal health information about the individual that is in the custody or under the control of a health information custodian unless,

(e) granting the access could reasonably be expected to,

(i) result in a risk of serious harm to the treatment or recovery of the individual or a risk of serious bodily harm to the individual or another person.

[25] The purpose of section 52(1)(e)(i) is to protect the treatment, recovery and physical security of a patient and others. This exemption must be approached in a sensitive manner given the difficulty of predicting future events.<sup>10</sup>

[26] Section 52(1)(e)(i) of *PHIPA* is similar to the exemptions in sections 14(1), 20, and 49(d) of the *Freedom of Information and Protection of Privacy Act (FIPPA)*, which apply, respectively, where disclosure could reasonably be expected to cause harm, prejudice the mental or physical health of the individual, or seriously threaten the safety or health of an individual. In order to satisfy the burden of proof under sections 14(1), 20, or 49(d), it is not enough for the institution denying access to take the position that the harms are self-evident from the record.<sup>11</sup> The institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>12</sup>

[27] In *PHIPA* Decision 34, Adjudicator John Higgins determined that the standard of proof required under section 52(1)(e)(i) of *PHIPA* is the same as the standard under sections 20<sup>13</sup> and 49(d)<sup>14</sup> of *FIPPA*: the evidence must demonstrate a risk of harm that

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<sup>10</sup> *PHIPA* Decision 34.

<sup>11</sup> Order PO-2040 and *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)

<sup>12</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

<sup>13</sup> The exemption at section 20 of *FIPPA* states: A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

is well beyond the merely possible or speculative although the custodian need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.

## ***Representations***

### *The custodian's representations*

[28] The custodian maintains that there is a reasonable and significant risk of serious harm to the complainant's treatment and recovery, and a risk of serious bodily harm to the complainant and others, including herself, such that the exemption to the complainant's right of access in section 52(1)(e)(i) of the *Act* applies. Accordingly, the custodian maintains that the complainant should not be provided access to his records of personal health information. The custodian provided lengthy and detailed representations in support of her position. The majority of her representations<sup>15</sup> are confidential in nature<sup>16</sup> and will not be summarized in this decision; however, I have considered them in their totality in deciding this issue.

[29] In explaining why she believes the exemption applies,<sup>17</sup> the custodian summarizes her history with the complainant from the start of their therapeutic relationship in October 2014 to its termination on October 1, 2016, and the events that followed. The custodian explains that she terminated her therapeutic relationship with the complainant as a result of his abusive and threatening behaviour.

[30] The custodian advises that the complainant has a complex mental health condition. She maintains that he does not know the full contents of the record, which include her professional insights and recommendations, as well as information and documentation that the complainant shared with her while in a dissociated state.

[31] To further support her position, the custodian's representations include numerous excerpts from entries in the record, such as emails that she received from the complainant. She submits that the selected excerpts are illustrative of the complainant's history of violence against himself, and the harassment and threats of violence that he has made toward herself and others. The custodian explains that the record is replete with entries similar to the excerpts provided. She maintains that each

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<sup>14</sup> The exemption at section 49(d) of *FIPPA* states: A head may refuse to disclose to the individual to whom the information relates personal information that is medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual.

<sup>15</sup> This includes the custodian's reply and supplementary representations.

<sup>16</sup> Per section 18 of the IPC's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*.

<sup>17</sup> Although the custodian requested that her written submissions and supporting documentation remain confidential, she consented to a summary of her position being shared with the complainant.



entry in the records “poses a real risk to the complainant if reviewed [...] as does the entire complete record itself.”

[32] The custodian refers to the following submissions from the Royal Ottawa Health Group, which were relied upon by Adjudicator Higgins in PHIPA Decision 34:

At the time of the refusal to grant the complainant access to his personal health information he was acutely ill. Specifically, the complainant requested copies of interdisciplinary notes that are drafted by health care professionals, which are primarily nursing staff. Should the [hospital] have granted him access, the complainant would likely have misinterpreted the content of these notes and potentially incorporated the content into his delusional beliefs ultimately affecting nursing staff. Importantly, this could expose the authors of the drafted notes to violence by the complainant. Therefore, the [hospital] maintains its decision to withhold disclosure of the requested records to the complainant.

[33] With reference to the circumstances of this complaint, the custodian submits that the complainant, by his own admission, is “triggered” when he communicates with her, reviews paperwork with respect to his treatment with her, and when he communicates with any person of authority relating to the various and ongoing matters between him and the custodian.<sup>18</sup> The custodian submits that the records contain details of the complainant’s diagnosis, root cause of the diagnosis, and other information that, in her opinion, can reasonably be expected to overwhelm the complainant and prejudice his mental and physical health. The custodian submits that if the complainant is triggered, he would likely misinterpret the record and potentially incorporate its contents into delusional beliefs, which may result in violence against himself, the custodian, or others.

[34] The custodian differentiates this situation from the facts in Order PO-2560, in which Adjudicator Higgins considered the exemption in section 49(d) of *FIPPA*. In doing so, the custodian quotes the following from an expert opinion that was relied upon by Adjudicator Higgins in that order:

The Affected Party does not say that he has any specific concerns about the risk of self-harm to the Appellant, nor does he have any specific information whatsoever regarding whether the Appellant had maintained the status quo, from a psychological and emotional perspective, some two plus years (it is now four) since he last saw him. He has no factual information concerning any potential more recent perturbations in the Appellant’s mental state, animosity towards him (or anyone), etc. In brief,

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<sup>18</sup> Such as this complaint and the complaint before the college.

there is no meaningful current information to in any way suggest that the appellant harbours any aggressive feelings towards the affected party, his ex-wife, her family, or himself. Nor is there any clear information that the Affected Party has ever been threatened by the appellant, even at times when the latter engaged in an episode of shouting in the affected party's office.

[35] The custodian advises that in contrast to the facts before the adjudicator in Order PO-2560, the complainant's current treating therapist has acknowledged that any contact with the custodian or her representatives is "highly triggering" for the complainant. The custodian maintains that this supports her reliance on section 52(1)(e)(i) of the *Act* in denying the complainant access to the requested records.

[36] The custodian notes that the complainant has been arrested and charged as a result of his threatening behaviour toward her, and suggests that this also differentiates this matter from the facts in Order PO-2560. In addition to the arrest, the custodian refers to various other instances of police involvement, such as times when she contacted the police to have them escort her to her vehicle outside her office, and to demand that the complainant stop contacting her. The custodian submits that the complainant's harassing and threatening behaviour only ceased when he was arrested.

[37] The custodian adds that she offered to transfer the records to the complainant's current treating therapist, but that the complainant did not respond to that offer. The custodian also explains that the current treating therapist has advised that there is no need to transfer the records, as they are of no therapeutic value and would not impact the complainant's ongoing treatment.

#### *The complainant's representations*

[38] The complainant submits that he should be granted full access to the requested records. He maintains that he is currently working on moving on from his experiences with the custodian, and obtaining access to his records of personal health information is the only outstanding item in doing so.

[39] In support of his position, the complainant maintains that it has been more than two years<sup>19</sup> since he last saw the custodian and she therefore has no knowledge of how he has progressed in his mental health journey during that time. The complainant submits that the custodian is withholding his records to retaliate against him in response to his various complaints against her.

[40] The complainant claims that despite the custodian's concerns, he has not had a

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<sup>19</sup> Now, three years.

dissociative episode in the past year. The complainant suggests that a third party could assess him concerning the alleged harms that may result from obtaining access to the records at issue.

[41] The complainant maintains that the custodian has “played games” with him and that she has not taken into account the consequences of her actions. In support of this position, the complainant explains that the letters he received from the custodian in response to his access request led him to believe that he would be granted access to the requested records. However, despite those letters, the custodian’s eventual decision letter informed him that his access request had been denied pursuant to section 52(1)(e)(i) of the *Act*. The complainant submits that this was an abuse of power and process. The complainant questions why the custodian waited until she issued her decision letter to raise the safety concern, rather than raising it in her first, or subsequent, letters prior to the decision.

[42] Lastly, the complainant maintains that the complaint process is flawed. He expresses concern that the legislation and this process are not sympathetic to individuals with disabilities.

*The custodian’s reply representations*

[43] Regarding the complainant’s submission that the custodian’s knowledge of his condition is outdated, the custodian submits that she has not relied solely on information obtained during the therapeutic relationship. She maintains that there is current evidence supporting her position, which includes the complainant’s communications during and regarding the various proceedings involving the parties. The custodian submits that there is no evidence that the risks referred to in her original submissions have changed or been adequately addressed, medically or legally. Accordingly, she continues to maintain that there is ample evidence to support her decision to deny access based on there being a reasonable risk of the harms described in section 52(1)(e)(i).

[44] In response to the complainant’s request for a third party assessment, the custodian submits that an assessment administered during a single session by a practitioner without adequate knowledge of the complainant’s diagnoses, history, and behaviour patterns would be less reliable and useful than an assessment that takes place over a longer period of time.

[45] The custodian denies ever having “played games” with the complainant. She maintains that she acted professional and ethically in accordance with her statutory and common law obligations. The custodian explains that the various letters sent in response to the complainant’s request reflect the evolution of her position once she sought legal advice.

*The complainant's sur-reply representations*

[46] In response to the custodian's reply representations, the complainant maintains that he will continue to "fight for his rights" and "will not rest" until he receives all of his files in electronic format, as requested. He states that he has followed the procedures required by various governing bodies only to have his "mental health attacked by a [...] mental health professional and a professional association."<sup>20</sup>

*The parties' supplementary representations*

[47] Both parties provided supplementary representations, which focused primarily on letters prepared by the complainant's current treating therapist. As I explained above, these letters are inadmissible in this proceeding as a result of section 36(3) of the *RHPA*. Without being able to rely on these letters, the parties' supplementary submissions lack necessary context; therefore, I will not summarize them here.

[48] In addition to the supplementary representations that I invited during the course of my review, the complainant provided additional, unsolicited submissions for my consideration. Most of this correspondence relates to the proceedings before HPARB and the custodian's regulatory college, although the complainant maintains they should be considered in this review. The complainant also alludes to certain negative outcomes that may result from him being denied access to his records of personal health information.

***Analysis and findings***

[49] As mentioned above, in PHIPA Decision 34, Adjudicator Higgins determined that a custodian seeking to rely on the exemption at section 52(1)(e)(i) of *PHIPA* must provide evidence demonstrating a risk of harm that is well beyond the merely possible or speculative. The custodian does not need to prove that providing access will in fact result in the harms contemplated by the exemption. The type and quantity of evidence required is dependent on the type of issue and seriousness of the potential consequences.

[50] Based on the parties' submissions, including the specific and compelling evidence provided by the custodian, I am satisfied that section 52(1)(e)(i) applies to the records at issue. There is ample evidence before me demonstrating the complainant's history of threatening behaviour directed toward himself and others, including the custodian. This includes evidence of the complainant misinterpreting communications as threatening and an attack on his health, safety, and well-being. I am satisfied that the complainant has acted in harmful ways against himself and others as a result of communications

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<sup>20</sup> In reference to his proceedings before the college and Health Professions Appeal and Review Board.

relating to his past treatment with the custodian, and that there is a reasonable prospect that reviewing the records may result in similar harm.

[51] I acknowledge that it has been approximately three years since the custodian terminated her therapeutic relationship with the complainant. I also acknowledge that the complainant has attended therapy with a new healthcare provider since his relationship with the custodian ended. I am aware that the complainant has continued to work on his mental health, and may have made some improvement during that time. I also acknowledge that the complainant feels that he has been treated unfairly both in this proceeding, and in the related proceedings that he and the custodian are involved in.

[52] However, overall, I find that the evidence establishes a risk of the harm contemplated by section 52(1)(e)(i) that is well beyond the merely possible or speculative. In particular, I am satisfied that granting access to the responsive records could reasonably be expected to result in a risk of serious bodily harm to the complainant or another individual. In making this finding, I note that the custodian is not required to prove that disclosure will in fact result in such harm occurring; rather it need only establish that there is a reasonable expectation of harm. I am satisfied that the custodian has done so.

[53] Based on the wording of section 52(1)(e)(i), only one of the types of harm specified in the exemption must be established in order for the exemption to apply. Therefore, as a result of my finding above, it is not necessary for me to also decide whether providing access could also reasonably be expected to result in a serious risk of harm to the complainant's treatment or recovery.

[54] In response to the complainant's position that denying access will negatively impact his treatment or recovery, I note that the *Act* does not contemplate scenarios where access to personal health information must be granted, despite the established application of an exemption from the right of access. The starting place for any analysis under section 52 is that a person has a right of access to a record of their personal health information. In other words, a requester does not need to establish a reason for needing access to such records. I have reached my conclusion that the section 52(1)(e) exemption applies in this case only after careful consideration of the evidence. Having found the exemption applies, *PHIPA* does not require a further consideration of factors favouring access.

[55] Based on these reasons, I uphold the custodian's decision to deny access based on the exemption at section 52(1)(e)(i) of *PHIPA*.

**Is there information that can be severed from the records under section 52(2) and disclosed to the complainant?**

[56] Section 52(2) of *PHIPA* provides that an individual has a right of access to the part of a record of personal health information about the individual that can reasonably

be severed from the part of the record to which the individual does not have a right of access under the exemptions at sections 52(1)(a) to (f).

[57] The custodian maintains that there is nothing that can be severed from the records to be provided to the complainant in accordance with section 52(2) of *PHIPA*. Again, the custodian provided confidential representations in support of this position. In the non-confidential portion of the custodian's representations, the custodian submits that the complainant is not aware of the full content of the records. The custodian maintains that a real risk to the complainant exists regardless of whether he is provided access to the entire record or severed snippets of individual entries.

[58] Based on the totality of the evidence before me, I accept the custodian's position that the records cannot reasonably be severed in order to provide the complainant with access to information that is not exempt from his right of access under section 52(1)(e)(i), and I uphold the custodian's decision.

[59] This complaint is therefore dismissed.

**ORDER:**

1. For the foregoing reasons, no order is issued

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Jaime Cardy  
Adjudicator

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October 8, 2019