

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 125

Complaint HA19-00144

A Hospital

August 26, 2020

Summary: The complainant requested the correction of records of his personal health information that contained a cancer diagnosis because he disagreed with the diagnosis. The hospital denied the correction request based on sections 55(9)(a) and (b) of the *Personal Health Information Protection Act*. No review of the complaint is warranted in accordance with sections 57(3) and 57(4)(a) of *PHIPA* because there are no reasonable grounds for a review. The complainant has not established, under section 55(8), that the hospital has a duty to correct the records and the hospital has responded adequately to the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004*, sections 57(3), 57(4)(a), 55(8), and 55(11).

BACKGROUND:

[1] This decision addresses a complaint filed with the Office of the Information and Privacy Commissioner of Ontario (the IPC) under the *Personal Health Information Protection Act (PHIPA)* by an individual whose correction request was refused by a hospital. In his correction request to the hospital, the complainant asked that all information relating to a specified cancer diagnosis be “completely withdrawn” from his records because he disagreed with the diagnosis. The complainant attached five documents to his correction request—two ultrasound reports, two lab reports and a printout from his OHIP account—with notations on the ultrasound reports and the OHIP printout indicating they needed correction.

[2] In response, the hospital issued a decision denying the correction request on the

basis that the records the complainant wanted corrected did not originate with the hospital. The complainant was not satisfied with the hospital's decision and complained about it to the IPC, which attempted to mediate the complaint. During mediation, the complainant clarified that he was requesting the removal of all references "of any diagnosed disease that correlates to cancer" in any of his records held by the hospital, regardless of where those records originated. In response to the complainant's clarification, the hospital issued a revised denial decision stating that it did not have the authority, under section 55(9)(a) of *PHIPA*, to make corrections to some records of the complainant's personal health information because it did not create them.

[3] Regarding the records that it did create, the hospital stated that they were created based on professional opinions and observations made in good faith by the complainant's health care providers and that the circumstances do not support the correction or removal of personal health information in the complainant's records, as per section 55(9)(b) of *PHIPA*. The hospital added that it considers the information that has been recorded in the complainant's records of personal health information to be accurate and complete for the purposes for which it was collected and used, stating that it has no duty to correct the records under section 55(8) of *PHIPA*.

[4] The hospital also invited the complainant to prepare a Statement of Disagreement¹ form that concisely outlines his remaining concerns regarding the accuracy of his records. It provided a copy of the form to the complainant and stated that it would attach a copy of the completed form to the complainant's records so that the form would accompany his records of personal health information going forward.

[5] The complainant remained unsatisfied with the hospital's response and asked that the matter proceed to the adjudication stage of the complaint process. After reviewing the complaint and the records at issue, my preliminary assessment was that there were no reasonable grounds for a review of the complaint in accordance with sections 57(3) and 57(4)(a) of *PHIPA*. I sent the complainant a letter setting out my preliminary assessment and inviting him to provide representations on it if he disagreed. The complainant did not provide representations. For the reasons that follow, I decline to conduct a review of this complaint under *PHIPA*.

DISCUSSION:

[6] There is no dispute that, the records the complainant seeks to correct are records of personal health information under the *Act* and the hospital is a custodian, as defined in sections 4(1) and 3(1) of *PHIPA*, respectively. One of the purposes of *PHIPA* is to provide individuals with a right to require the correction of personal health

¹ As provided for by section 55(11)(a) of *PHIPA*.

information about themselves, subject to certain exceptions. Section 55(8) of *PHIPA*, which is relevant to this complaint, provides a right of correction to records of personal health information in some circumstances. It states:

The health information custodian shall grant a request for a correction under subsection (1) if the individual demonstrates, to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information and gives the custodian the information necessary to enable the custodian to correct the record.

[7] Section 55(9) sets out exceptions to the duty to correct in section 55(8). It states:

Despite subsection (8), a health information custodian is not required to correct a record of personal health information, if

(a) it consists of a record that was not originally created by the health information custodian and the custodian does not have sufficient knowledge, expertise and authority to correct the record; or

(b) it consists of a professional opinion or observation that the custodian has made in good faith about an individual.

[8] Section 55(8) requires the complainant, as the individual asking for the correction of all mentions of a cancer diagnosis in his records, to demonstrate to the satisfaction of the hospital, that these portions of the records are inaccurate for the purposes for which the hospital uses the information. The complainant has not done this. The only information that the complainant has provided to the hospital about his requested corrections is his assertion that his cancer diagnosis is incorrect, which is reflected in his notations that the ultrasound reports and OHIP printouts need correction. The hospital takes the position that the complainant's assertion and notations on the records do not demonstrate to its satisfaction that the records are incomplete or inaccurate for its purposes.

[9] On my review of the records and the complainant's assertion, and with no information or submissions from the complainant to support his assertion that the cancer diagnosis in the records is inaccurate, I agree with the hospital's position. The complainant has not provided evidence to support his assertion that the portions of the records he wants corrected are inaccurate for the purposes for which the hospital uses the information. The complainant's assertion and notations, with nothing more, are not sufficient to satisfy his onus under section 55(8) of *PHIPA*. Accordingly, I uphold my preliminary assessment that the complainant has not established that section 55(8) of *PHIPA* applies and, as a result, the hospital is not required to grant his correction request.

[10] The hospital also advised the complainant that he was entitled to submit a

Statement of Disagreement form, under section 55(11) of *PHIPA*, that would be included in the complainant's records of personal health information and that would form part of the complainant's records going forward. The hospital thus satisfied its obligation under section 55(11) to notify the complainant about his rights under that section.

[11] Having found that the hospital has no duty to correct the records under section 55(8) and that it satisfied its duty under section 55(11) of *PHIPA*, I uphold my preliminary assessment that the hospital has responded adequately to the complaint and there are no reasonable grounds to review the complaint. Given that the complainant has not established the requirements of section 55(8), there is no need for me to consider the exceptions to the duty to correct in section 55(9).

[12] Under sections 57(3) and 57(4)(a) of *PHIPA*, I have the authority to decline to review a complaint 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 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[.]

[13] In accordance with my authority under sections 57(3) and 57(4)(a) of *PHIPA*, and for the reasons set out above, I decline to review the subject-matter of this complaint because there are no reasonable grounds to do so and because the hospital has responded adequately to the complaint. I issue this decision in satisfaction of the notice requirement in section 57(5) of *PHIPA*.

NO REVIEW:

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

Original signed by _____

Stella Ball
Adjudicator

August 26, 2020 _____