

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 126

Complaint HA16-51-2

Mr. Jeff Packer

September 10, 2020

Summary: The adjudicator decides that the respondent is a health information custodian within the meaning of the *Personal Health Information Protection Act, 2004* in relation to marriage counselling services provided to the complainant. However, he is not a health information custodian in relation to the co-parenting counselling services he provided to the complainant. This decision also determines that the respondent conducted a reasonable search for records of the complainant's personal health information, in response to a request for access to those records.

Statutes Considered: *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, sections 2, 3(1).

BACKGROUND:

[1] This interim decision is about whether a social worker (the respondent) who provided marriage counselling and co-parenting counselling services to the complainant, is a "health information custodian" for the purposes of the *Personal Health Information Protection Act* (the *Act*). The answer to this question determines whether the complainant may rely on the *Act* in seeking access to records relating to those services.

[2] The complainant received counselling from the respondent during two periods of time. The first period, in 2013, is described by both as "marriage counselling". The second period, in 2015, occurred after the complainant separated from his spouse. The counselling during this second period was mandated by a court order, which described it as "co-parenting counselling sessions."

[3] On April 19, 2016, the complainant made a request to the respondent to receive a "clinical copy of the records you have on file". Following this, the complainant filed a complaint to this office to address the respondent's failure to respond to his request. That complaint was resolved after the respondent sent a letter to the complainant setting out his decision on the access request.

[4] In his decision, the respondent granted the complainant partial access to notes from two individual sessions conducted with the complainant in 2015, during the co-parenting counselling. He denied any access to records of joint sessions conducted with the complainant and the complainant's former spouse, on the basis that the joint session records could not reasonably be severed. The respondent also advised that the consent of the co-parent was required in order to grant access to any joint session notes.

[5] The complainant was not satisfied with the decision and filed a further complaint with this office. The complaint was assigned to a mediator to explore a resolution of the issues.

[6] During mediation, and after clarification of the scope of the complainant's request, the respondent issued a supplemental decision. He granted access to emails between himself and the complainant, and the complainant's consent and disclosure form and intake forms. The respondent also stated that although the complainant requested his individual notes from initial meetings in 2013, there are no individual notes as all three sessions in 2013 were couple meetings.

[7] The complainant was not satisfied with the respondent's decision to withhold portions of his individual session notes, and continues to seek access to joint session records from 2013 and 2015 and any reports, agreements or summaries. Therefore, the respondent's denial of access to this information is an issue in this complaint. The complainant also believes that there exist individual session records from 2013 and additional email records that have not been identified by the respondent. As a result, the reasonableness of the respondent's search for records is also an issue in this complaint.

[8] The complainant has advised that he is not pursuing access to certain other records relating to his former spouse—specifically, her individual session notes, intake forms, consent forms or emails.

[9] As no further mediation was possible, this complaint was transferred to the adjudication stage of the complaint process. The adjudicator assigned to this complaint decided to conduct a review and invited the parties to submit representations on the issues before her. The complainant requested, and was granted, an accommodation of a disability during the review process and submitted some of his representations through a narrated PowerPoint presentation. The file was also placed on hold during several periods at the request of the complainant.

[10] The file was then transferred to me to continue with the adjudication of this complaint. In this interim decision, I make the following findings:

- a. The respondent is a health information custodian within the meaning of the Act in relation to the marriage counselling sessions in 2013, and the records related to that counselling are covered by the Act.
- b. I am satisfied that the respondent conducted a reasonable search for records from the 2013 marriage counselling sessions.
- c. As the complainant's right of access to the notes of joint counselling sessions in 2013 affect the interests of his former spouse, I will notify her and give her an opportunity to provide representations on the issues raised by his request for those records.
- d. The respondent is not a health information custodian in relation to the co-parenting counselling sessions in 2015 and, for that reason, records related to that counselling are not covered by the Act and I make no determination on the issues raised with respect to those records

RECORDS:

[11] From my review of the file, the records withheld in full or in part from the marriage counselling sessions appear to be the following items from the Table of Contents prepared by the respondent:

- a. Copy of file cover
- b. Notes Summary Page
- e. Letter dated July 2, 2014 – File summary: July 10th to September 9th 2013
- f. Correspondence dated November 20, 2014 to respondent
- h. Transcript of notes dated June 5, 2013
- i. Session Notes: June 5, 2013
- k. Session Notes: July 10, 2013 (including copies of completed homework); July 24th, 2013
- l. Notes of phone call September 9, 2013

ISSUES:

1. Is the respondent a "health information custodian" as defined in section 3(1) of the *Act*?
2. Did the respondent conduct a reasonable search for records relating to the 2013 marriage counselling?

DISCUSSION:

Issue 1: Is the respondent a "health information custodian" as defined in section 3(1) of the *Act*?

[12] The *Act* provides individuals with a right of access to records of their "personal health information" that are in the custody or under the control of a "health information custodian" (section 52(1)).

[13] In order for the *Act's* access provisions to apply, it must therefore be established that the records of personal health information are in the custody or under the control of a "health information custodian." The term "health information custodian" is defined at section 3(1) of the *Act*. The following extract from section 3(1) is relevant in this complaint:

"health information custodian", subject to subsections (3) to (11), 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.

[14] "Health care practitioner" is defined at section 2 of the *Act* to mean:

- a. a person who is a member within the meaning of the *Regulated Health Professions Act, 1991* and who provides health care,
- b. [repealed]
- c. a person who is a member of the Ontario College of Social Workers and Social Service Workers and **who provides health care**, or
- d. any other person whose primary function is to provide health care for payment;

[emphasis added]

[15] It is not in dispute that the respondent is a member of the Ontario College of Social Workers and Social Service Workers (the College) and therefore falls into one of the categories of persons who could be health information custodians under the *Act*. The question is whether, in 2013 and 2015, he provided "health care" to the complainant, as set out above. If the services he provided to the complainant were not "health care", then the records relating to that service are not in connection with his performing duties as a health care practitioner and he is not a health information custodian in respect of those records.

[16] "Health care" is defined at section 2 of the *Act* as follows:

"health care" means any observation, examination, assessment, care, service or procedure that is done for a health-related purpose and that,

(a) is carried out or provided to diagnose, treat or maintain an individual's physical or mental condition,

(b) is carried out or provided to prevent disease or injury or to promote health, or

(c) is carried out or provided as part of palliative care,

and includes,

(d) the compounding, dispensing or selling of a drug, a device, equipment or any other item to an individual, or for the use of an individual, pursuant to a prescription, and

(e) a community service that is described in subsection 2 (3) of the *Home Care and Community Services Act, 1994* and provided by a service provider within the meaning of that Act[.]

Parties' representations

[17] The respondent asserts that neither the "marriage counselling" nor "co-parenting counselling" services were the provision of health care. He distinguishes between relational and psycho-educational services, and individual health-related treatment. He submits that services related to inter-personal relations, problem-solving skills, communication skills and other elements of interpersonal relations have not in any context been considered the provision of "healthcare" services.

[18] The respondent further states that the *Regulated Health Professions Act* does not require individuals providing parenting coordination or marriage counselling to be a member of a self-regulatory College and these services are often provided by people with backgrounds in religion or education or with training in a health discipline, but who are not registered with any College. He states that family services are relational in nature and

fundamentally educative and not related to treatment (or the prevention of health issues which would require treatment).

[19] The respondent states that he did not provide "therapeutic" counselling, in that he was not "treating" any individual diagnosis. His services were to educate and promote better relationships. He states that he did not provide psychotherapy to the complainant, and that the file itself does not show any provision of mental health services to him.

[20] Respondent's counsel also submits that this office should be cautious of the broader implications of finding marriage counselling and co-parent counselling to be covered by the *Act*. Given the high number of marriages (and common-law relationships) that will come to an end, the extension of the *Act* to cover services in the "family relations world" would be a material expansion of what the legal community has traditionally understood to be the scope of *Act*.

[21] Most of the complainant's representations were directed at the co-parenting counselling services. He emphasizes the use of the terms "counselling" and "therapist" in the court order, which was made on consent, and states that the respondent repeatedly used the term "counselling services" to refer to his services. The complainant submits that individual and joint therapy during the period of co-parenting counselling focused on a number of mental health topics including coping with stress, parenting, relationship improvement, false allegations of child abuse, anxiety, depression and the impact of the conflict the children had been exposed to.

[22] The complainant described the clinical goals of the co-parenting counselling as to "[b]ring parenting styles into sync in order to improve health by

- Reducing conflict, stress, and of triggers exacerbating my mental health
- Improve my mental health (adjustment disorder, depression, panic attacks)
- "Healing the wounds" of the divorce

[23] He states that the respondent was chosen to deliver the co-parenting services because he knew the complainant's history and the main issues that caused his anxiety and depression. The complainant referred in his submissions to portions of the notes of his individual sessions, which he received from the respondent. They refer to his state of mental health, his medication, and his health care providers.

[24] In relation to the marriage counselling, the complainant stated that the sessions focused on a number of mental health topics including coping with stress, parenting, relationship improvement, false allegations of child abuse, anxiety, depression and the impact of parental conflict on the children.

Analysis and findings

The marriage counselling services

[25] In 2013, the complainant and his former spouse engaged the respondent to provide marriage counselling services. As evident from the above, the complainant and respondent describe the nature of the marriage counselling sessions in starkly different terms. This is also the case with respect to the co-parenting counselling. In view of these differences, I find it useful to look to the documents generated at the time these services were provided, in understanding the nature of the services provided by the respondent to the complainant. Although the weight to be given to these documents must also be carefully assessed, I find the contemporaneous records a more reliable record of the intentions of the parties at the time, than their representations in this complaint. The documents before me include: the respondent's Disclosure and Consent Statement, signed for each set of sessions, and certain notes, correspondence and emails exchanged or created at the time the services were provided, and submitted with the complainant's representations.

[26] With respect to the marriage counselling, the complainant signed the respondent's Disclosure and Consent Statement in June 2013, at the beginning of those sessions with the respondent. The form has a section describing the respondent's "Therapeutic Qualifications", which notes, among other things, that he specializes in "clinical individual, couple/marital and group counselling". The form states that the respondent has attended extensive training programs on marriage and family therapy as well as other topics.

[27] The section of the form titled "Therapeutic Process" starts by telling the client that "you have taken a courageous step toward finding solutions and feeling better by contacting a therapist." In describing the nature of the counselling services, the form states that

[d]iscussions identify existing and new problem solving techniques, effective decision making and conflict resolution skills. They also reveal creative cognitive-behavioural strategies for coping with and managing challenging thoughts, feelings, behaviours and situations. Information and referral services may also include linking you with community resources.

[28] Also from the form is the following:

Topics often include; coping with life stressors (e.g. health, work etc.) communication, parenting, school performance, childhood development (social, sexual, psychological & intellectual) depression, anxiety, disordered eating behaviours, diabetes, adolescent maturation, relationship improvement, separation, divorce & reforming of families, stress and anger management, abuse & violence, intimacy, sexuality, legal system involvement/ criminal rehabilitation, grief, loss, motivation, spirituality,

values and employment satisfaction & productivity. Providing information, support and effective solutions to your specific challenges is the focus of our work.

[29] Other than this form, I have little documentation from this period of counselling. The parties did not rely on the respondent's notes of these counselling sessions to support their positions on this issue, and I found it unnecessary to review them. Ultimately, the Disclosure and Consent Statement is the most objective evidence from this period as to the nature of the services provided by the respondent in 2013.

[30] The respondent asserts that the "standard paperwork" that all clients sign is meant to cover a variety of services that may be provided and does not define the specific services to be provided in a particular case. He states that he intends to provide "customized documentation" in the future, depending on the type of services offered. While that may be, the form serves as some contemporaneous indication of the intention of the parties when the complainant engaged the respondent to provide marriage counselling.

[31] As quoted above, the form characterizes the services to be offered as "therapeutic". While the term "therapeutic" could cover a range of beneficial remedies, not all of which would be included in the concept of "health care", the primary understanding of it is in relation to the treatment of physical or mental health.¹

[32] The types of issues listed as potential areas to be addressed during the marriage counselling include matters relevant, in my view, to the treatment or maintenance of an individual's physical or mental condition, as set out in the definition of "health care" in the *Act*. Topics such as stress and anger management, abuse and violence, intimacy, sexuality, all of which could arise as part of the marriage counselling, engage services done for a health-related purpose, to treat or maintain an individual's physical or mental condition.

[33] The respondent, as indicated above, suggests that the broad range of individuals who are engaged in the provision of similar services, some of whom are not members of a self-regulated profession, argues against treating these services as the provision of health care. However, as set out above, the definition of "health care practitioner" is not restricted to members of a regulated health profession or the college of social work. It includes "any other person" who provides health care for payment.

[34] A member of a health professions college may, as the respondent points out, provide services for payment which are not health care. By its definition of "health care practitioner", the *Act* also contemplates the possibility that a person who is not a member of a college may provide "health care". Thus, "health care" is not limited to services

¹ Merriam Webster.

regulated through the *Regulated Health Professions Act*, and the "health care" activities of "observation, examination, assessment, care, service or procedure" carried out to "diagnose, treat or maintain" an individual's physical or mental condition are not restricted to the types of activities carried out by regulated health professionals.

[35] The complainant has pointed out that the respondent raised no objection to the complaint to this office under the *Act*, issued a decision under the *Act*, and relied on the provisions of the *Act* in responding to the complainant's request to access the counselling records. Only later in the processing of this complaint did the respondent take the position that all of the counselling services provided were outside the scope of the *Act*. Although relevant, I give these facts little weight. The application of the *Act* was raised as an issue by this office, based on the facts in the complaint. There was some reason to doubt whether all of the services provided by the respondent were "health care". It was within the respondent's rights to respond to this issue on its merits, despite his previous actions. In this decision I find, as discussed below, that some of the services were indeed not "health care".

[36] On the question of whether the marriage counselling services were the provision of "health care", I also find helpful the College's Privacy Toolkit, to which the complainant referred me. Although the information and examples in that Toolkit cannot bind my determinations, I found it instructive to review the advice the College gives to its members, through this Toolkit. On page 13 of the Toolkit is an example of a service that the authors describe as the provision of health care, in circumstances where a social worker is asked to help a child who has been "bothered by his peers' comments about his weight" and whose parents wish him to "improve his physical fitness level and confidence in social situations".

[37] The authors note that, in this situation, the social worker or social service worker is now making "observations" and "assessments" about a specific child for a "health-related purpose" that is "carried out to diagnose (a "social work diagnosis"), treat or maintain the child's physical or mental condition". I find that this example bears similarities to the marriage counselling services provided by the respondent, as described in the Disclosure and Consent form. In providing "information, support and effective solutions" to challenges that include relationship improvement and may include a range of other topics relevant to relationship improvement, the respondent makes "observations" and "assessments" about the couple for a "health-related purpose" that is carried out to provide a social work diagnosis, treat or maintain the physical or mental condition of the individuals in the marriage.

[38] Further, on page 46 of the Toolkit, couples counselling and family counselling are cited as examples of services in which the personal health information of more than one client may be found in the records. Page 14 lists "individual, couple, family or group therapy" as health care services that may be provided in a group practice. Thus, it is contemplated by the College that couples counselling may be governed by the *Act*.

[39] I do not take these above-cited excerpts from the Toolkit to lead to the conclusion that all marriage counselling qualifies as health care. The facts of a particular case must be taken into consideration. However, I agree with the thrust of the advice in that document, to the effect that at least some marriage counselling services qualify as health care services. In my view, this answers the respondent's submission of September 23, 2019, in which he distinguishes "relational" services from individual counselling. There is no reason why services directed at improving relationships are, for that reason alone, excluded from the scope of "health care".

[40] As described above, the respondent's submissions refer to a "traditional understanding" of the legal community that the type of services at issue are excluded from the scope of the *Act*. He also stated that services related to inter-personal relations have "in no context" been treated as healthcare services. He provided no support for these broad statements, and the advice in the Toolkit in fact contradicts these assertions.

[41] In the current case, taking into consideration all of the above, I conclude that the marriage counselling services provided by the respondent in 2013 were for a health-care purpose. The result of this is that the respondent is a health information custodian in respect of the records relating to the marriage counselling services and the complainant has a right under the *Act* to seek access to his records of personal health information in relation to those services. Below, I will consider his complaint that the respondent has not conducted a reasonable search for his records of personal health information, and his contention that additional records should exist. I will also turn to the next steps in the complainant's quest for the notes of the joint counselling sessions in 2013, which affect the interests of his former spouse.

[42] I will now turn to the question of whether the co-parenting counselling in 2015 qualifies as health care, for the purposes of the *Act*.

The co-parenting counselling services

[43] In contrast to my finding above, I conclude that the co-parenting counselling services provided by the respondent to the complainant in 2015 were not "health care" within the meaning of the *Act*.

[44] In arriving at this conclusion, I find the following factors relevant. First, the consent order describes the purpose of the co-parenting counselling as "to assist them in managing their parenting style differences". The terms of the order do not imply that in providing this counselling, the respondent will "diagnose, treat or maintain [the complainant's] physical or mental condition", within the definition of "health care." I acknowledge that the actual provision of services may develop in a manner that brings it into the realm of health care, despite the terms of a court order such as this. Nevertheless, this is a relevant factor.

[45] Second, the court order refers to a number of other services that the complainant has agreed to engage or continue. It states that the "The Applicant and the Respondent shall continue with their own individual counseling to assist them with their individual issues." The order thus anticipates individual counselling for the complainant, separate and apart from the services provided by the respondent. Again, the fact that the parties had individual counselling is not determinative of whether the counseling before me is "health care". Nonetheless, I find it also to be a relevant factor in the circumstances.

[46] Third, the characterization of the services as "co-parenting counselling" captures the fact that the services are primarily about benefiting the welfare of the children, through assisting the parents to "managing parental style differences." This distinguishes the nature of the co-parenting counselling services from the marriage counselling services, which are directly about the welfare of the parties to the marriage. Learning to manage parental style differences is not a service carried out to "diagnose, treat or maintain" the physical or mental condition of the parents.

[47] In a summary of the co-parenting sessions provided to the complainant after termination of services, the respondent describes the complainant's goal as "improving parental unity". The respondent described the discussions as including such topics as: exploration of goals around safety issues, transfer and exchange of children, mental health supports, health and education communication strategies, recreational scheduling and flexibility, one-on-one time for the children with each parent, method and frequency of parent-child communication while with the other parent, allowance possibilities and discipline strategies. This description is consistent with my observations above, about the primacy of the welfare of the children in the co-parenting counselling.

[48] I acknowledge that the complainant has expressed his strong disagreement with some of the contents of this letter. Nevertheless, I find it useful as an expression of the respondent's contemporaneous understanding of the services that he provided, at a time well before a legal dispute arose between the parties over the issue of whether or not the services were "health care". In the same vein is the email enclosing the respondent's account, in which he states that he is open to continuing to provide "co-parenting coaching and assisting you with the development of a more unified and cooperative parental approach for your family's future."

[49] As I have indicated, in their submissions on this complaint, the parties' description of the services differed dramatically, and show little common ground. Again, in understanding the nature of the services, I find more useful and compelling the documentary evidence existing at the time, as described above.

[50] I must acknowledge that the complainant signed the same Disclosure and Consent form at the time of the co-parenting counselling, as the one signed in 2013. Above, I rely on the contents of that form in coming to my conclusion that the marriage counselling services provided by the respondent in 2013 were "health care" within the meaning of the *Act*. Although also relevant to the question of whether the co-parenting counselling was

also a "health care" service, I find the form less persuasive when placed beside the other evidence I cite above.

[51] Given my conclusion that the co-parenting counselling was not health care, records related to that counselling are not covered by the *Act* and I make no determination on the issues raised with respect to those records.

Issue 2: Did the respondent conduct a reasonable search for records relating to the 2013 marriage counselling?

[52] The complainant believes that there exist additional email records and notes of individual sessions conducted in 2013 that have not been identified by the respondent. This raises the issue of the reasonableness of the search for records in response to the complainant's access request.

[53] This office has addressed the issue of reasonable search under both the *Act* and public sector access and privacy legislation (the *Freedom of Information and Protection of Privacy Act (FIPPA)*, and its municipal counterpart). In particular, in PHIPA Decisions 17 and 18, this office observed that the principles established in reasonable search orders issued under *FIPPA* and its municipal counterpart provide guidance in determining whether a health information custodian has conducted a reasonable search under the *Act*.

[54] Where a requester under the *Act* claims that additional records exist beyond those identified by a custodian, the issue to be decided is whether the custodian has conducted a reasonable search for records as required by sections 53 and 54 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the custodian's decision. If I am not satisfied, I may order further searches.

[55] The *Act* does not require the custodian to prove with absolute certainty that further records do not exist. However, the custodian must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.² To be responsive, a record must be "reasonably related" to the request.³

[56] 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 which are reasonably related to the request.⁴

[57] A further search will be ordered if the custodian does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁵

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Orders M-909, PO-2469 and PO-2592.

[58] Although a requester will rarely be in a position to indicate precisely which records the custodian has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁶

[59] In this case, the complainant's request was initiated by an email that stated, in part,

I would like to receive a clinical copy of the records you have on file. Please confirm an estimate of these costs.

[60] This email generated some correspondence between the complainant and the respondent, which led the complainant to file a complaint with this office. The respondent then sent the complainant his individual session notes from the co-parent counselling of 2015 but denied access to records of joint counselling sessions with the complainant and his co-parent. The respondent's letter to the complainant made no reference to records from the marriage counselling. The complainant filed a further complaint alleging that the respondent had failed to provide him with copies of his full health record.

[61] During mediation of this complaint, and after clarification of the complainant's request, the respondent searched for and released further records to the complainant, including forms and emails. He asserts, however, that there are no individual session notes from 2013 because all three sessions in 2013 were couple meetings.

[62] The complainant is of the view that individual session records exist from 2013 and that additional email records should exist.

[63] In order to determine whether the respondent has conducted a reasonable search for records of personal health information as required by the Act, the previous adjudicator asked that he provide a written summary of all steps taken in response to the request, and requested that this information be provided in an affidavit. The respondent complied with this request and supplied an affidavit describing the steps he took to search for records relating to the request.

[64] In the respondent's affidavit, he describes his efforts to search for all email records. He states, among other things, that he searched for emails through searching online accounts and on his computer systems. He realized during this search that one email account (with the domain rogers.com) had been closed. He states that, at the time he closed the account, he exercised "due diligence" in transferring email records from the now defunct email address; however, he cannot be 100% certain that all email records were successfully transferred.

⁵ Order MO-2185.

⁶ Order MO-2246.

Analysis and findings

[65] Although the complainant believes that notes of individual sessions exist from 2013, on my review of the evidence before me, I am unable to find support for this. During mediation, the respondent conducted a further search of his files and informed the complainant that there were no notes of individual sessions because all sessions were joint. His affidavit confirms that his search included a review of all the files from the marriage counselling. Emails from this period submitted by the complainant with his submissions show the scheduling of joint counselling sessions. The complainant has not provided evidence that satisfies me that there were individual counselling sessions, in addition to these joint sessions.

[66] With respect to the emails, the respondent described his search of his various email accounts, and his explanation regarding a now defunct account. It appears from the evidence that this account was the one used by the respondent in 2013 to communicate with the complainant. The complainant provided evidence that he sent certain audio files to the respondent, to this now defunct email address, in 2013. As indicated above, the respondent states that although he made efforts to transfer his email records from that decommissioned email address to his current one, he cannot be entirely certain that his efforts were successful.

[67] The evidence from the complainant suggests that these efforts were indeed not entirely successful, in that the audio files sent by the complainant to the respondent in 2013 were not located in his recent search of his email records.

[68] However, based on the evidence, I am satisfied that the respondent conducted a reasonable search for records relating to the 2013 marriage counselling. If certain records cannot now be located, it appears to be as a result of the incomplete transfer of email records from the now defunct email address, and not because the respondent's search for records was inadequate. I am also not satisfied that individual counselling sessions were held with the complainant in 2013. On the evidence before me, I have no reasonable basis to believe additional records exist and in the circumstances, see no reason to order the respondent to conduct an additional search.

Conclusion

[69] The respondent has withheld his notes of the joint marriage counselling sessions on the basis that the information of the complainant could not reasonably be severed from that of his former spouse. The complainant seeks access to these records. His right to access the notes of these joint counselling sessions under the *Act* is an issue which directly affects the interests of his ex-spouse. I will therefore notify her and give her an opportunity to make representations on the complainant's right to access these records.

[70] I note that, in his representations on the complaint, the complainant raises additional issues, such as the legibility of some of the notes he received from the

respondent, and the respondent's alleged non-compliance with the standards set by the College. These matters are beyond the scope of the issues properly before me, and I have not addressed them in this decision.

NO ORDER:

1. I make no order in this complaint.
2. I defer my decision on the complainant's right to access the remaining records relating to the marriage counselling services, including notes of joint counselling sessions. If the complainant informs me within two weeks of this decision that he still seeks access to those records, I will notify the complainant's former spouse and give her an opportunity to provide submissions on the remaining issues raised by this complaint.
3. I am satisfied that the respondent conducted a reasonable search for records relating to the marriage counselling services.
4. I find that records relating to the co-parenting counselling services are not covered by the Act.

Original Signed by: _____
Sherry Liang
Assistant Commissioner Tribunal Services

_____ September 10, 2020