

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 140

Complaint HA19-00150

Toronto Central Local Health Integration Network

February 3, 2021

Summary: On behalf of his child, the complainant made a request to the LHIN under *PHIPA* for access to all of his child's formal assessments or case notes authored by various Community Care Access Centre (CCAC) case coordinators since 2010. The LHIN provided several records to the complainant in response to the request.

Unsatisfied with the LHIN's response and believing that additional records ought to exist, the complainant complained to this office. During the mediation, the particular records sought were specified and the LHIN conducted additional searches. After further searches, the LHIN was not able to locate the particular records sought by the complainant and provided the complainant with explanations as to why. The complainant remained unsatisfied and the file transferred to the adjudication phase where an adjudicator may conduct a review.

Although the complainant initially established a reasonable basis as to why the particular records ought to exist, the adjudicator was satisfied that the LHIN had already searched in the areas where those records would be, if they exist, and that further searches would not yield the records. In this decision, the adjudicator determines that no review of the complaint is warranted under sections 57(3) and 57(4)(a) of *PHIPA*.

Statute Considered: *Personal Health Information Protection Act, 2004, S.O. 2004, c. 3*, sections 53, 54, 57(3), 57(4)(a).

Decisions Considered: PHIPA Decision 78.

BACKGROUND:

[1] On behalf of his child, the complainant made a request under the *Personal Health Information Protection Act, 2004 (PHIPA)* to the Toronto Central Local Health Integration

Network (the LHIN) for access to all of his child's formal assessments or case notes authored by various Community Care Access Centre (CCAC)¹ case coordinators since 2010.

[2] After an initial delay,² the LHIN provided some records to the complainant. However, he believed that additional records exist and accordingly filed a complaint with this office.

[3] A mediator was assigned to the complaint and held extensive discussions with the parties, sharing information between them. The complainant specified and provided details about the records that he believed ought to exist: 2010, 2011 and 2014 formal assessments that supported the CCAC's decision to approve homecare services for the complainant's child.

[4] Also during the mediation, representatives of the LHIN explained the steps it took to conduct the search, conducted additional searches and provided explanations as to why the records may not exist. The LHIN's representatives also provided information about the assessment process and explained that its managers conducted the searches of its electronic file system, which they said, was its only file system.

[5] To establish a reasonable basis that additional records exist, the complainant produced a record that he said ought to have been located in the search, but which was not. The LHIN believed that it had, in fact, provided the complainant with that record.

[6] The LHIN also provided the complainant with following written explanation:

Our understanding is that you are asking for an explanation as to why [the LHIN] does not have documentation you believe should be part of your [child]'s health record.

[The LHIN's] care coordinators use the Nursing Assessment Tool and PSW Assessment Tool to support the development of plans of service. These tools were also used by the Toronto Central CCAC; however, in the case of your [child], we do not have documentation in our client information system (CHRIS) related to the Nursing Assessment Tool from the 2010, 2011 and 2014 assessments by the Toronto Central CCAC care coordinators. Toronto Central LHIN cannot speculate about the documentation and assessment practices of the Toronto Central CCAC employees at that time.

...

Please let me know if you have any further questions or concerns. I am happy to meet with you at your convenience.

[7] The complainant was not satisfied with the LHIN's explanation, maintaining his

¹ At the time of the request, the LHIN had assumed responsibility for functions previously carried out by the CCAC.

² Initially, the complainant did not receive a response and accordingly appealed to this office. The IPC sent a Notice of Deemed Refusal to the LHIN, which resulted in a response.

position that the 2010, 2011 and 2014 assessments occurred and that the LHIN should have formal documentation regarding the level of approved homecare services for his child. The file was transferred to the adjudication stage of the complaint process where an adjudicator may conduct a review under section 57 of *PHIPA*.

[8] After considering the information in the file, I determined on a preliminary basis that no review of the complaint was warranted (sections 57(3) and 57(4)(a)) and I invited and received submissions from the complainant about my preliminary determination.

[9] After considering the complainant's submissions, I have reached a final decision that no review is warranted, and I dismiss the complaint. My reasons are set out in this decision.

DISCUSSION:

Should the complainant's reasonable search complaint proceed to a review under *PHIPA*?

[10] Under sections 57(3) and (4) of *PHIPA*, I have the authority to decide whether or not this office should conduct a review of this complaint. These provisions state:

57(3) [...] the Commissioner may review the subject-matter of a complaint made under this Act if satisfied that there are reasonable grounds to do so.

57(4) The Commissioner may decide not to review the subject matter of the complaint 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.

[11] Where a complainant claims that additional records exist beyond those identified by a health information custodian (the LHIN in this case), the issue to be decided is whether the custodian has conducted a reasonable search for records as required by sections 53 and 54 of *PHIPA*.

[12] The IPC has extensively canvassed the issue of reasonable search for responsive records in orders issued under the *Freedom of Information and Protection of Privacy Act* and its municipal counterpart, the *Municipal Freedom of Information and Protection of Privacy Act*. It has also addressed the issue of reasonable search under the *Act* in *PHIPA* Decision 18, among others.

[13] The LHIN is not required to prove with absolute certainty that further records do not exist. However, it must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.³

³ Orders P-624 and PO-2559.

[14] 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

[15] Although a complainant will rarely be in a position to indicate precisely which records the custodian has not identified, the complainant still must provide a reasonable basis for concluding that such records exist.⁵

[16] A further search may 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.⁶

Complainant's submissions

[17] The complainant believes that a review is warranted. He believes that additional, formal, records exist for the assessments that occurred in 2010, 2011 and 2014. The complainant states that he has demonstrated throughout the course of this complaint, and in other proceedings involving the LHIN, that records relating to the lesser assessments carried out by the CCAC were located.

[18] Regarding the LHIN's written explanation, he takes issue with the LHIN's reliance on the fact that it was the CCAC that had responsibility for the assessments at issue. He says that the LHIN is performing the same functions as the CCAC and that the LHIN's obligations regarding records are the same. He submits that although the CCAC's duties shifted to the LHIN, his child's care was continuous and the responsibility for the records associated with it ought to be unaffected by the shift to the LHIN.

[19] The complainant describes other proceedings⁷ involving the LHIN that he has undertaken on his child's behalf and through which he has been successful at restoring homecare services provided to his child. He says that the records he seeks in this complaint would have assisted in the other proceeding. He says that the other proceeding establishes some motive on the part of the LHIN to misplace the records.

[20] The complainant states that even if the records are truly missing, which he does not believe to be the case, a review is necessary to "get to the bottom of that lack of fiscal accountability for the ... considerable homecare charges."

Analysis and findings

[21] The only possible outcome in favour of the complainant that may flow from this complaint is an order that the LHIN carry out further searches. It cannot result in an admonishment of the LHIN for failing to create or maintain the records.

[22] I reviewed and considered the complaint, the information provided by the LHIN and

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2246.

⁶ Order MO-2185.

⁷ Before the Health Services Appeal and Review Board.

the complainant in the mediation, and the complainant's submissions made directly to me.

[23] The complainant's expectation that the records he seeks ought to exist is a logical and reasonable one. His request was sufficiently specific and with his assistance it became helpfully more specific and narrow during the mediation, identifying dates and practitioners involved with the assessments.

[24] With the benefit of the specific information, the LHIN provided the mediator (to be shared with the complainant) information about the assessment process and conducted further searches of its electronic file system, which it says is its only file system. Senior LHIN staff were involved in responding to the complaint.

[25] Unable to locate the records, the LHIN provided an explanation. I understand the explanation to be two-fold. First, the records may simply not have ever existed. Second, a more definitive explanation was not possible because the assessments took place when the CCAC had responsibility for them. The LHIN is not saying that it does not have access to records that were created by the CCAC or avoiding its responsibility to be accountable for the CCAC's records. In my view, the LHIN's explanation is a candid statement that demonstrate its efforts to find further records responsive to the request.

[26] When I consider the searches undertaken and the LHIN's explanation, I conclude that a reasonable search has been conducted and that further searches will not yield the records. A quest for a more satisfying explanation does not render the search unreasonable.⁸

[27] I decline to conduct a review of this complaint pursuant to my authority in *PHIPA*. I find there are no reasonable grounds to do so (section 57(3)) and I am satisfied that the LHIN responded adequately to the complaint (section 57(4)(a)). I issue this decision in satisfaction of the notice requirement in section 57(5) of *PHIPA*.

NO REVIEW:

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

Original Signed by: _____

Valerie Jepson
Adjudicator

February 3, 2021 _____

⁸ PHIPA Decision 78.