

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 145

Complaint HA20-00160

Dr. Robert Samuel Crozier

May 10, 2021

**Summary:** The complainant sought access to her records of personal health information from Dr. Robert Samuel Crozier (the custodian). This decision determines that the custodian is deemed to have refused the complainant's request for access. The custodian is ordered to provide a response to the complainant in response to her request for access to records of her personal health information in accordance with the *Personal Health Information Protection Act*.

**Statutes Considered:** *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3; sections 2, 3(1), 4(1) and (2), 52, 53 and 54(2), (3), (4) and (7); and *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, section 1(1).

### BACKGROUND:

[1] This is a complaint under the Personal Health Information Protection Act, 2004 (the *Act*).

[2] On August 18, 2020, by email, the complainant made a request to Dr. Robert Samuel Crozier (the custodian) for access to her records of personal health information. The request states:

I am writing to request my medical records. I was a patient of Dr. Crozier's for many years. I am not exactly sure what year I started under Dr. Crozier's care but I was his patient for approximately 12-13 years until the time he stopped seeing patients. I am requesting this information for [certain medical reviews]. Unfortunately, I have not been able to get a referral for another psychiatrist since Dr. Crozier's departure. My family

doctor of over 20 years retired approximately 2 years ago and my new family doctor has no past history to reference for my medical reviews. It is my sincere hope that you will be able to provide me with the necessary information that I am seeking. I look forward to your reply.

[3] On October 5, 2020, the Information and Privacy Commissioner/Ontario (IPC or this office) received a deemed refusal complaint from the complainant indicating it had been more than 30 days since she had submitted her access request to the custodian and she had not received a response. As a result, file HA20-00160 was opened and assigned to me as the Acting Adjudicator.

[4] The complainant advised that the College of Physicians and Surgeons of Ontario (CPSO) had informed her that, effective October 17, 2016, the custodian's certificate of registration<sup>1</sup>, which allows physicians to practise medicine or engage in postgraduate medical training in Ontario, was revoked by the CPSO's Discipline Committee.<sup>2</sup>

[5] Further, because the complainant did not have any contact information for the custodian, Crozier, she advised that the CPSO gave her the email address to which she sent her access request.

[6] As part of my attempt to settle this complaint, I spoke with the CPSO. The CPSO advised that the only contact information on file for the custodian is the same email address that it gave to the complainant. Further, the CPSO advised that it had made many unsuccessful attempts to contact the doctor.

[7] On December 14, 2020, by email, I sent a Notice of Review to the complainant and to the custodian. The notice indicated that the complainant had filed a deemed refusal complaint against the doctor on the basis that he had not responded to her access request within the time period set out in section 54 of the *Act*.

[8] The Notice of Review directed the custodian to immediately issue a response letter to the complainant and to forward a copy to me, the Acting Adjudicator, assigned to this complaint. The notice also indicated that if the doctor failed to do so and the complaint was not settled by January 4, 2021, an order requiring him to issue a response letter to the complainant may be issued.

[9] On November 23 and 30, 2020, December 14 and 28, 2020, January 5, 2021 and

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<sup>1</sup> See <https://www.cpso.on.ca/Physicians/Registration/Requirements#:~:text=The%20CPSO%20issues%20certificates%20of,Regulation%20865%2F93%3A%20Registration>. Also, see Ontario Regulation 865/93. Retrieved April 22 2021.

<sup>2</sup> See <https://doctors.cpso.on.ca/DoctorDetails/Crozier-Robert-Samuel/0040676-54652>. Retrieved April 22, 2021.

February 9, 2021, I sent emails to the custodian regarding this complaint. To date, he has not responded to them.

## **DISCUSSION:**

### **Issue A: Are the records at issue “records” of “personal health information” as defined in sections 2 and 4 of the Act?**

[10] Section 2 of the *Act* defines a “record” as follows:

“record” means a record of information in any form or in any medium, whether in written, printed, photographic or electronic form or otherwise, but does not include a computer program or other mechanism that can produce a record;

[11] The term “personal health information” is defined in section 4(1) of the *Act* as follows:

“personal health information”, subject to subsections (3) and (4), means identifying information about an individual in oral or recorded form, if the information,

(a) relates to the physical or mental health of the individual, including information that consists of the health history of the individual’s family,

(b) relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual,

(c) is a plan of service within the meaning of the *Home Care and Community Services Act, 1994* for the individual,

(d) relates to payments or eligibility for health care, or eligibility for coverage for health care, in respect of the individual,

(e) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any such body part or bodily substance,

(f) is the individual’s health number, or

(g) identifies an individual’s substitute decision-maker.

[12] Further, the term “identifying information” is defined in section 4(2) of the *Act* as “information that identifies an individual or for which it is reasonably foreseeable in the

circumstances that it could be utilized, either alone or with other information, to identify an individual.”

[13] Based on the information before me, I am satisfied that the information contained in the records relates to the provisions of health care to the complainant by the custodian. I am also satisfied that the requested records contain identifying information within the meaning of section 4(2) that relates to the information described in one or more of the paragraphs under section 4(1).

[14] Therefore, based on the aforementioned, I find that the records at issue are records of personal health information within the meanings of sections 2 and 4 of the *Act*.

**Issue B: Is Dr. Robert Samuel Crozier a “health information custodian” as defined in section 3(1) of the Act?**

[15] Section 52 of the *Act*, generally, provides an individual with 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 any of the exceptions set out under this section applies.

[16] The term “health information custodian” is defined in section 3(1)1 of the *Act* as follows:

“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 of 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.

[17] Further, the term “health care practitioner” is defined in section 2 of the *Act*, in part, as follows:

“health care practitioner” means,

- (a) A person who is a member of a regulated profession within the meaning of the *Regulated Health Professions Act, 1991* and who provides health care,

[18] Moreover, the term “health care” is also defined in section 2 of the *Act*, in part, 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, ...

[19] Under section 1(1) of the *Regulated Health Professions Act, 1991*, "member' means a member of a College" and "'College' means the College of a health profession or group of health professions established or continued under a health profession Act."

[20] As indicated above, the complainant is a former patient of the custodian, who was a member of the CPSO<sup>3</sup> and provided her with psychiatric care. As a result, in my view, the custodian would have likely created records relating to this care that would likely be in his custody or control.

[21] Accordingly, based on the aforementioned, I find that the custodian is a "health care practitioner" within the meaning of section 2 of the *Act* and, therefore, a "health information custodian" within the meaning of section 3(1)1 of the *Act*.

**Issue C: Is Dr. Robert Samuel Crozier in a deemed refusal situation pursuant to section 54(7) of the Act?**

[22] Section 53(1) of the *Act* states:

An individual may exercise a right of access to a record of personal health information by making a written request for access to the health information custodian that has the custody or control of the personal health information.

[23] Where a custodian receives a written access request, section 54(1) of the *Act* requires that the custodian issue a response that is in accordance with one of the paragraphs (a) to (d) under this section.

[24] Further, section 54(2) of the *Act* requires that a custodian "give the response required by clause [54] (1) (a), (b), (c) or (d) as soon as possible in the circumstances but no later than 30 days after receiving the request."

[25] However, this 30-day time limit may be extended under section 54(3) of the *Act*. This section states:

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<sup>3</sup> Dr. Crozier's CPSO#54652.

Within 30 days after receiving the request for access, the health information custodian may extend the time limit set out in subsection (2) for a further period of time of not more than 30 days if,

(a) meeting the time limit would unreasonably interfere with the operations of the custodian because the information consists of numerous pieces of information or locating the information would necessitate a lengthy search; or

(b) the time required to undertake the consultations necessary to reply to the request within 30 days after receiving it would make it not reasonably practical to reply within that time.

[26] Section 54(4) of the *Act* requires that the requester be notified of such a time extension as follows:

Upon extending the time limit under subsection (3), the health information custodian shall give the individual written notice of the extension setting out the length of the extension and the reason for the extension.

[27] Under section 54(7), where a "health information custodian does not respond to a request within the [30-day] time limit or before the extension, if any, expires, the custodian shall be deemed to have refused the individual's request for access."

[28] Above, I found that the complainant's medical records are records of "personal health information" under the *Act*. I also found that the custodian is a "health information custodian" under the *Act*.

[29] On August 18, 2020, the complainant made a written access request to the custodian for her medical records. The complainant has complained to this office that, to date, she has not received a response from him to this request. Further, following my multiple attempts to contact the custodian about this matter, I too have not received a response from him.

[30] In the circumstances of this complaint, there is no evidence before me indicating that the custodian has issued a response to the complainant's access request in accordance with section 54(1) within the 30-day time limit required by section 54(2). There is also no evidence that the custodian gave the complainant notice of an extension of the 30-day time limit to respond in accordance with section 54(4). However, I note that, even if such notice was given, the additional time of up to 30 days would have expired long ago.

[31] For these reasons, I find that the custodian has not responded to the complainant's access request within 30 days or before any extension of this time limit and, therefore, pursuant to section 54(7), I find that he is deemed to have refused the complainant's request for access to her medical records.

[32] Accordingly, I will order the custodian to issue a response, in accordance with the *Act*, to the complainant's request for access within ten (10) days of this decision and to provide a copy to my attention to verify compliance.

**ORDER:**

For the foregoing reasons, pursuant to section 61(1) of the *Act*, I order that:

1. The custodian shall provide a response to the complainant regarding her August 18, 2020 request for access to her medical records in accordance with the *Act* and without recourse to a time extension no later than **May 20, 2021**.
2. In order to verify compliance, the custodian shall provide me with a copy of the response referred to in provision 1 by **May 20, 2021**. This should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8.

Original Signed by: \_\_\_\_\_

John Gayle  
PHIPA Mediator/Investigator

\_\_\_\_\_ May 10, 2021