

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 165

Complaint HA20-00168

Appletree Medical Group

November 25, 2021

Summary: The complainant submitted a correction request under section 55(1) of the *Personal Health Information Protection Act* (the *Act*) to the Appletree Medical Group (Appletree) with respect to information contained in a record relating to a walk-in visit at a clinic run by Appletree. Appletree denied the correction request under section 55(8) of the *Act*, on the basis that the complainant had not established that the record is incomplete or inaccurate for the purposes for which the Appletree uses the information. In this decision, the adjudicator finds that the complainant has not established that the record is incomplete or inaccurate for the purposes for which Appletree uses the information and she upholds Appletree's refusal to correct the record. No order is issued.

Statutes Considered: *Personal Health Information Protection Act, 2004*, sections 3(1), 4(1), 55(8) and 55(11).

Decisions Considered: PHIPA Decision 36.

BACKGROUND:

[1] This decision determines whether the Appletree Medical Group (Appletree) properly denied a request made by a patient under section 55(1) of the *Personal Health Information Protection Act* (*PHIPA* or the *Act*) for correction of his personal health

information in a record about a walk-in clinic visit.

[2] After receiving access to his medical records from Appletree,¹ the patient requested that the phrase "Patient declined triage" be removed from one of the records relating to his visit to Appletree's walk-in clinic.

[3] Appletree issued a decision to the patient in which it refused to grant the requested correction because of its view that there were no inaccuracies in the statement he sought corrected. Appletree advised the patient that he is entitled to have a "Statement of Disagreement" attached to the record pursuant to section 55(11) of the *Act*.

[4] The patient filed a complaint with the Office of the Information and Privacy Commissioner (the IPC), thereby becoming the complainant. A mediator was assigned to explore the possibility of resolution. During mediation, Appletree confirmed that it was refusing to grant the correction request based on its view that the complainant's medical record for the visit is factually accurate and correct. In so doing, Appletree stated that it does not have a duty to correct the record pursuant to section 55(8) of the *Act*. In response, the complainant explained why he believes the correction of his medical record is justified. He stated that Appletree's physician assistant locked him inside a consultation room and tried to force him to listen, and that he had to yell for a physician to get into the room. According to the complainant, he was told the incident would be discussed with management but it never was. He says he contacted clinic management but they refused to address the matter.² It appears that the complainant is arguing that the phrase "patient declined triage" in the record at issue is not consistent with his version of these events.

[5] As Appletree maintained its decision to refuse to correct the record, it was not possible to resolve the complaint through mediation. The complaint was therefore moved to the adjudication stage of the complaints process, where an adjudicator may conduct a review. I decided to conduct a review and invited the parties to provide representations in response to a Notice of Review setting out the factual background and the relevant legislative provisions on the issue of correction. Both Appletree and the complainant provided representations, and I have concluded my review.

[6] In this decision, for the reasons that follow, I find that the complainant has not established that the information that he wishes to have corrected is inaccurate or incomplete for the purposes for which it is used under section 55(8) of the *Act*. As a

¹ After the complainant advised that the handwritten notes on two pages of the records were illegible, Appletree provided a transcription of those pages in a letter to him and also provided it to the IPC.

² The complainant also mentioned that he had filed a complaint with the College of Physicians and Surgeons of Ontario.

result, I find that Appletree is not required to make the requested correction and no order is issued.

RECORDS:

[7] The requested correction relates to the first page of a two-page record about the complainant's visit to an Appletree walk-in clinic on a specific date. The first one and a half pages relate to the clinic visit at issue and the last half page relates to a prior visit. The complainant's requested correction is that the phrase "Patient refused triage" be removed from the record.

DISCUSSION:

[8] There appears to be no dispute between the parties, and I find, that Appletree is a health information custodian as defined in section 3(1) of the *Act*, and that the record at issue contains the complainant's personal health information as defined in section 4(1) of the *Act*.

[9] I note that in its representations, Appletree refers to section 55(6), which addresses frivolous or vexatious requests under the *Act*. However, and as I advised the complainant, I have not considered section 55(6) in my review (or in this decision), because Appletree issued no decision to the complainant pursuant to section 55(6) claiming his correction request was frivolous or vexatious.³

[10] Accordingly, the sole issue before me is whether Appletree is required to grant the correction requested by the complainant under section 55(8).

Does Appletree have a duty to make the requested correction under section 55 of *PHIPA*?

[11] The purposes of *PHIPA* are set out in section 1, and include, at paragraph (c):

[providing] individuals with a right to require the correction or amendment of personal health information about themselves, subject to limited and specific exceptions set out in [*PHIPA*].

[12] Section 55(1) of the *Act* permits an individual who has received access to a

³ Review under the *Act* flows from a decision made by a health information custodian; because there is no decision from Appletree relying on the frivolous or vexatious provision in section 55(6), which would trigger a corresponding right to complain to the Commissioner under section 55(7), consideration of the issue does not arise on the facts here.

record of personal health information to request that a health information custodian correct the record “if the individual believes that the record is inaccurate or incomplete for the purposes for which the custodian has collected, uses or has used the information...”

[13] Section 55(8) of the *Act* provides for a right of correction to records of an individual’s own personal health information in some circumstances. It states:

The health information custodian shall grant a request for a correction under [section 55(1) of the *Act*] 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.

[14] Section 55(9) of the *Act* sets out exceptions to the duty to correct records. This section reads:

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 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 a custodian has made in good faith about the individual.

[15] Read together, these provisions set out the criteria pursuant to which an individual is entitled to a correction of a record of their own personal health information.

[16] Depending on the circumstances of the correction request, the information that the individual is seeking to have corrected, and the reasons for the custodian’s refusal to correct the records, the IPC may approach the analysis initially under section 55(8) or under section 55(9). In this case, I review the issue of correction under section 55(8) of the *Act*. Given my finding under that provision, it is not necessary for me to consider the exceptions in section 55(9).

The parties’ representations

[17] Appletree submits that the complainant, in requesting correction, did not satisfy it (Appletree) that the record in question is incomplete or inaccurate for the purposes for which it uses the information. Appletree states that it found, further to its own internal review, that the complainant refused triage. Appletree argues that the complainant did not provide further information or evidence to establish that correction of the entry was required and it takes the position that the complainant failed to meet

the required onus under section 55(8).

[18] In his representations, the complainant maintains that he did not refuse triage. He explains, as he says he did at the mediation stage of this complaint, his view that the entry in dispute resulted from a physician assistant's behaving unacceptably and he maintains that Appletree did not address his concerns and refused to investigate despite his many attempts to see that this was done. As stated, it appears that the complainant is arguing that as his version of these events does not align, and is not consistent, with the phrase "patient declined triage" in the record at issue, Appletree is obliged to correct the record.

Analysis and findings

[19] In all cases where a complaint regarding a custodian's refusal to correct records of personal health information is filed with the IPC, the individual seeking the correction has the onus of establishing whether or not the "record is incomplete or inaccurate for the purposes for which the custodian uses the information" under section 55(8) of the *Act*.

[20] In particular, under section 55(8), the health information custodian must grant a request for correction if the individual seeking it:

1. 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
2. gives the custodian the information necessary to enable the custodian to correct the record.

[21] The IPC's approach to the interpretation of section 55(8) of the *Act* was established by PHIPA Decision 36, in which Adjudicator Jennifer James stated:

There is no question that the accuracy of records containing personal health information is essential to the effective provision of health care. However, the correction provisions of *PHIPA* are limited by the requirement that the individual requesting the correction "demonstrate to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information." The accuracy of the information that is requested to be corrected is therefore *connected to the purposes* for which the information is used.

In interpreting these provisions of the *PHIPA*, I find it helpful to have regard to section 11(1), which requires health information custodians that use [personal health information] about an individual to take "reasonable steps to ensure that the information is as accurate, complete and up-to-date as is necessary for the purposes for which it uses the information." The duty to use accurate information under section 11(1) can be viewed

as the corollary to the duty to correct inaccurate information under section 55(8). In both, the purpose for which the information is used is key to understanding the scope of the duty.

The following discussion in *Guide to the Ontario Personal Health Information Protection Act*⁴ elaborates on the relationship between the accuracy of personal health information and the purposes of its use, in section 11(1):

[The] obligations regarding the use and disclosure of personal health information include an important limitation. Through *PHIPA*'s inclusion of the phrase "as is necessary for the purposes" of the use or disclosure, the accuracy, completeness, and up-to-date character of the information is tied to the purposes of the use and disclosure. *As a result, the personal health information upon which a health information custodian relies need not be accurate or complete in every respect. It may be inaccurate or incomplete in a way that is not significant to the custodian because the custodian is not relying on it for a purpose relevant to the inaccuracy or omission.* [emphasis in original]⁵

[22] Adjudicator James went on to conclude that not all personal health information contained in records held by a health information custodian needs to be accurate in every respect. She also found that where the custodian is not relying on the information for a purpose relevant to the accuracy of the information, the custodian is not required to correct the information.

[23] Many subsequent IPC decisions have adopted this approach to correction of personal health information under the *Act*.⁶ I agree with this approach, and I adopt it in this complaint as well.

[24] With consideration of the approach articulated above, and having reviewed the complete complaint file, the requested correction, Appletree's decision and the parties' representations, I find that Appletree is not required to make the correction requested by the complainant.

[25] The complainant seeks correction of the phrase "Patient declined triage" in a record of his personal health information because, in his view, it does not reflect what happened during the clinic visit in question. He maintains that he did not refuse triage,

⁴ Halyna Perun et al. (Toronto: Irwin Law Inc., 2005).

⁵ PHIPA Decision 36 at paras 25-27.

⁶ PHIPA Decisions 39, 40, 59, 81, 85 and others.

while Appletree claims that he did. I do not have a basis upon which to prefer one version of the complainant's clinic visit over the other. Regardless, even if I did have a basis for concluding that the complainant had not refused triage, this would not be sufficient to establish a duty to correct the record under section 55(8). As identified in previous IPC decisions following the reasoning in PHIPA Decision 36, the inaccuracy of the information the complainant seeks to correct is not determinative of whether it must be corrected in accordance with section 55(8). The information must also be shown to be inaccurate or incomplete for the purposes for which Appletree uses or used it.

[26] Aside from his assertion that he did not decline triage, the complainant offers no additional information to support the existence of a duty of correction under section 55(8) of the *Act*. In my view, whether the complainant did or did not decline triage is not information that Appletree would rely on for a purpose relevant to its accuracy since, from the remaining content of the record before me, it is evident that the patient visit continued that day. Given the evidence before me, I agree with Appletree, and I find, that the complainant has not met the onus of establishing that the entry at issue is "incomplete or inaccurate for the purposes for which the custodian uses the information." As stated above, the individual requesting the correction must meet both requirements under section 55(8). The complainant has failed to establish them here. Accordingly, I find that Appletree has no duty to grant the requested correction under section 55(8).

[27] While the encounter that day was evidently upsetting for the complainant, and he has communicated his dissatisfaction about his clinic visit clearly to me, this is not sufficient to establish correction under section 55(8) of the *Act*. The complainant's upset is unfortunate, but his concerns about the visit are not matters within my authority to address in this correction complaint under *PHIPA* because they do not support a finding that the record is incomplete or inaccurate for the purposes for which Appletree uses the information as required by section 55(8).

[28] Regarding the complainant's indication that he wanted the objectionable phrase removed from his record, I note that even if the right of correction had been established in this situation, there is no right in *PHIPA* to have incorrect information in a record removed, replaced, or amended in such a manner that it is completely obliterated – it must remain legible.⁷

[29] Finally, there is no evidence before me to suggest that the complainant has exercised his right, under section 55(11) of the *Act*, to require that a statement of

⁷ Section 55(10)(a)(i)(A) states that upon granting a request for a correction, the health information custodian shall make the requested correction by recording the correct information in the record and striking out the incorrect information in a manner that does not obliterate the record.

disagreement be attached to the record for this clinic visit. In particular, section 55(11) provides that the complainant, having been refused the requested correction, may "prepare a concise statement of disagreement that sets out the correction that the health information custodian has refused to make" and require that it be attached to his record and disclosed whenever Appletree discloses the information. Accordingly, I would remind the complainant that he is entitled to submit a statement of disagreement to Appletree in accordance with section 55(11), if he so wishes.

ORDER:

For the foregoing reasons, no order is issued.

Original Signed by: _____
Daphne Loukidelis
Adjudicator

November 25, 2021