

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 169

Complaint HA20-00152

Southlake Regional Health Centre

January 14, 2022

Summary: The complainant made a request under the *Act* for records relating to her late mother's admittance at the Southlake Regional Health Centre (the custodian). The custodian located records responsive to the request and granted the complainant complete access to them. The complainant filed a complaint to the IPC on the basis that additional records ought to exist. In this decision, the adjudicator upholds the custodian's search and dismisses the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sch A, section 53.

BACKGROUND:

[1] In August 2020, the complainant submitted a request to the Southlake Regional Health Centre (the custodian) under the *Personal Health Information Protection Act* (the *Act*) for access to her late mother's medical records. The complainant had filed a number of requests for her mother's medical records previously and, in this request, she referred to "missing documents" from the records the custodian had identified and disclosed to her. Specifically, the complainant stated she seeks access to doctor's notes, x-rays and cultures reports regarding her mother. The complainant is the estate trustee of her late mother's estate.

[2] The custodian located records and granted the complainant complete access to them. After reviewing the records, the complainant filed a complaint to the Information

and Privacy Commissioner of Ontario (the IPC) regarding the custodian's access decision. The complainant takes the position that additional responsive records should exist.

[3] During mediation, the complainant provided the mediator with a description of records that she believes should exist that are responsive to her request. The list of outstanding records was shared with the custodian.

[4] In response, the custodian provided the complainant with an explanation of the searches it conducted in response to the complainant's request. Additionally, the custodian conducted another search for responsive records but did not locate any additional records. The custodian claimed it had granted the complainant full access to all of the records and no additional responsive records exist.

[5] The complainant maintained her belief that additional responsive records ought to exist.

[6] A mediated solution could not be reached and the file was transferred to the adjudication stage of the complaints process where an adjudicator may conduct a review of the subject matter of a complaint under the *Act*. I began my review by sending a Notice of Review, summarizing the facts and issue in this complaint, to the custodian. The custodian submitted representations and an affidavit of its Release of Information Secretary (the secretary). I then sought and received representations from the complainant in response to the Notice of Review and the custodian's representations, which were shared in accordance with section 18 of the IPC's Code of Procedure for Matters under the *Personal Health Information Protection Act, 2004*.

[7] In the discussion that follows, I find that the custodian's efforts to locate records containing the information sought by the complainant were reasonable. Accordingly, I uphold the custodian's search for responsive records and dismiss the complaint.

DISCUSSION:

[8] The sole issue to be decided in this complaint is whether the custodian conducted a reasonable search for records responsive to the request. The complainant takes the position that additional records relating to her mother ought to have been located by the custodian in its search for records.

[9] The custodian submits it conducted a reasonable search for records responsive to the complainant's request. Specifically, in responding to the complainant's request, the custodian states it clarified the complainant's requests with her. It states it contacted the complainant to confirm what she meant by "missing documents" in her request. In addition, the custodian notes that the complainant referred to "coroner information" and x-ray information in her request. The custodian states it advised the complainant that it does not have coroner records in its position and that she could

submit a request with the coroner's office.

[10] The custodian provided the following timeline of the complainant's requests for information relating to the deceased:

- February 2015: the complainant made a request for a copy of nursing notes from 2006; the custodian provided the complainant a copy in person on March 23, 2015;
- December 2017: the complainant made a request for a copy of all records from the deceased's 2006 admission; the custodian provided the complainant with the records in person on January 5, 2018;
- January 2018: the complainant made a request for two printed copies of all records; the custodian provided these records to the complainant in person on January 26, 2018; and
- August 2020 (the request that is the subject of this complaint): the complainant made a request for "missing documents"; the custodian provided her with one printed copy and two CDs of all the records in September 2020. After further discussions with the complainant, the custodian sent the complainant two additional sets of her mother's chart on CD and two sets of diagnostic reports.

The custodian waived all fees relating to these access requests.¹ This summary was also included in the secretary's affidavit.

[11] The custodian explains that the secretary conducted the search. The secretary has been in her position since January 2013 and her responsibilities include processing requests for health records from patients or their representatives. The custodian provided an affidavit sworn by the secretary that summarized the search conducted.

[12] The secretary attests that when she was notified of the complaint, she conducted another search with the custodian's Coordinator, Health Information Services (the coordinator). In addition to these searches, the secretary contacted the offices of the doctors who were involved with the deceased's admission to confirm whether they had any additional records. These doctors confirmed they did not.

[13] The custodian advises that it adopted Meditech as its hospital information system in December 2018, which is a centralized system that stores patient health information. Records were uploaded onto Meditech from the previous hospital information system, which stored all of the custodian's records, including those from 2006 and 2007. Once scanned, the custodian states that paper records were destroyed approximately five years later. Given these circumstances, the custodian submits it is highly unlikely there

¹ Section 54(10) of the *Act* allows a custodian to charge a fee for granting access to a record under Part V.

are records other than what have been provided to the complainant but were destroyed during the scanning and transfer process. According to the custodian, the secretary searched Meditech several times and in the presence of another colleague. In her affidavit, the secretary confirmed she searched Meditech again upon being notified of the complaint and "out of abundance of caution" with the coordinator to ensure that all responsive records were located and disclosed to the complainant. The custodian submits it provided the complainant with complete access to any and all records it located.

[14] Finally, the custodian states that its Records Retention Policy requires that personal health information be retained for at least ten years after discharge, last visit or death for both in- and out-patients who are eighteen years or older. However, the custodian states it follows the recommendation² that hospitals wait for fifteen years prior to destroying records. The custodian submits it is highly unlikely that any responsive records were destroyed.

[15] In response, the complainant states she believes the custodian's secretary, but feels that there are still documents outstanding. The complainant takes the position that the custodian should not be directing her requests for records to the secretary. The majority of the complainant's submissions relate to the deceased's diagnosis, treatment, and condition. I confirm I cannot consider these submissions or make any determinations regarding the deceased's health or treatment in hospital. My jurisdiction in this complaint is limited to determining whether the custodian conducted a reasonable search for responsive records.

[16] The complainant also refers to coroner's records. However, the custodian confirmed it does not have access to or stores coroner's records. If the complainant wishes to pursue access to the coroner's records, she will have to file a request with the coroner's office.

[17] The complainant provided a large number of attachments to her representations, including correspondence with her legal counsel, reports from the custodian and the coroner, and correspondence with the IPC. I have reviewed all of the material the complainant provided, but it does not contain evidence to support her belief that additional responsive records ought to exist. Therefore, I will not comment on these attachments in my analysis of the custodian's search, below.

[18] Where a complainant claims that additional responsive records exist beyond those identified by a health information custodian, the issue to be decided is whether the custodian conducted a reasonable search for records as required by sections 53 and 54 of the *Act*. A reasonable search under the *Act* is one in which an experienced

² The custodian did not directly cite the source of this information. However, see College of Physicians and Surgeons of Ontario [Internet]. Toronto (CA): CPSO; reviewed and updated 2020 March. *Policies: Medical Records Management, Advice to the Profession on Medical Records Management* [cited 2020 Nov 25]. Available from: <https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Medical-Records>

employee, knowledgeable in the subject matter of the request, expends a reasonable effort to locate records which are responsive to the request.³ To be responsive, a record must be *reasonably related* to the request.⁴ If a custodian does not provide sufficient evidence to demonstrate it made a reasonable effort to identify and locate all of the responsive records within its custody or control, I have the authority to order a further search.⁵

[19] The *Act* does not require the custodian to prove with absolute certainty that further records do not exist. However, the custodian is required to provide sufficient evidence to demonstrate it made a reasonable effort to identify and locate responsive records.⁶

[20] In the circumstances of this complaint, I find that the custodian has provided sufficient evidence to demonstrate that it made a reasonable effort to identify all responsive records within its custody and control, including any records relating to the deceased's admittance in 2006. Based on all the information before me, I am satisfied that the search for records, conducted by the secretary with additional support and supervision from the coordinator, was reasonable in scope and execution. Furthermore, the secretary attests that she consulted with two physicians who treated the deceased and asked them to provide any additional records they may have. Upon review of the description of the complainant's various requests and the searches conducted, I accept that experienced employees, who were knowledgeable in the subject matter and in the areas where the responsive records would be located, conducted the searches.

[21] In addition, I note the custodian provided details regarding its information management system and retention policy. Based on my review, I find the custodian has provided sufficient evidence to demonstrate that it is unlikely that any responsive records have been destroyed.

[22] Past IPC decisions on the issue of what constitutes a reasonable search establish that although a requester will rarely be in a position to indicate precisely which records the custodian has not identified, the requester must still provide a reasonable basis for concluding that such records exist.⁷ In this complaint I find the complainant did not provide a reasonable basis for me to conclude that additional records relating to her mother's admittance exist, but have not yet been located. I reviewed the parties' representations and find that the custodian provided sufficient evidence to demonstrate it located all of the responsive records in its custody or control. As stated above, the bulk of the complainant's representations relate to her concerns regarding her mother's condition and treatment. Unfortunately, these concerns are not relevant to whether the custodian conducted a reasonable search for responsive records.

³ See PHIPA Decisions 17, 18, 43, 48 and 57. See also Orders M-909, PO-2469 and PO-2592.

⁴ Order PO-2554.

⁵ Order MO-2185.

⁶ Orders P-624 and PO-2559.

⁷ Order MO-2246. See also PHIPA Decisions 17, 18 and 57.

[23] Overall, I am satisfied the custodian has discharged its onus and demonstrated that it conducted a reasonable search for responsive records in compliance with its obligations under the *Act*. On that basis, I uphold the custodian's search as reasonable and dismiss the complaint.

NO ORDER:

For the foregoing reasons, no order is issued.

Original Signed by: _____

Justine Wai
Adjudicator

January 14, 2022 _____