

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 200

Complaint HA21-00129

St. Joseph's Healthcare Hamilton

January 30, 2023

Summary: The complainant requested from St. Joseph's Healthcare Hamilton (the hospital) access to a complete copy of his file for a specified time period. The hospital initially denied the request in full, relying on sections 52(1)(e)(i) (harm to the requester or others) and 52(1)(e)(iii) (confidential source) of *PHIPA*. During the IPC review of the complaint, the hospital agreed to provide the complainant with most of the information at issue. However, it continued to withhold portions under section 52(1)(e)(iii) (confidential source). In this decision, the adjudicator upholds the hospital's claim that the section 52(1)(e)(iii) exemption applies to the remaining information and dismisses the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A, section 52(1)(e)(iii).

Decisions Considered: PHIPA Decision 100.

BACKGROUND:

[1] The complainant made two related and overlapping requests under the *Personal Health Information Protection Act, 2004* (*PHIPA*) to St. Joseph's Healthcare Hamilton (the hospital) for access to a copy of his hospital file for a specified time period. In response, the hospital decided to deny access to the records on the basis of sections 52(1)(e)(i) (harm to the requester or others) and 52(1)(e)(iii) (confidential source).

[2] The complainant then made a complaint about the hospital's decision to the

Office of the Information and Privacy Commissioner of Ontario (IPC). The IPC first attempted to mediate the complaint. After mediation, the complaint remained unresolved and it was transferred to the adjudication stage of the complaint process where an adjudicator may conduct a review under the *Act*.

[3] I decided to conduct a review and I invited and received representations from the hospital, initially. The hospital provided representations that it asserted were confidential and not to be shared with the complainant because to do so would reveal the contents of the records at issue. After considering the criteria at section 18.03(a) of the IPC's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*. I agreed with the hospital's position but asked the hospital to provide me with representations that set out its position in a way that did not reveal the contents of the records, which it did.

[4] I shared the hospital's non-confidential representations with the complainant and he made representations in response. The complainant also asserted that his representations were confidential and not to be shared with the hospital. I decided that the interests of fairness did not require me to share the complainant's representations with the hospital and they were not shared.

[5] Although the confidential representations received from both parties are not described in this decision, I have reviewed and considered these arguments to reach the conclusions below.

[6] After I received and reviewed the parties' representations, I requested that the hospital consider whether it could grant access to some information contained in what was a voluminous set of records. The hospital then issued a revised decision, deciding to provide the complainant with access to portions of the records that it had initially claimed were exempt under section 52(1)(e)(i), the exemption that applies when access could reasonably be expected to result in serious harm to the individual or others. As a result of the revised decision, the hospital provided the complainant with access to almost all of the information in the records.

[7] The hospital continued to withhold portions of the records under section 52(1)(e)(iii), the exemption that applies when access could reasonably be expected to identify a confidential source. When he received the hospital's revised access decision, the complainant confirmed that he wished to pursue access to the withheld portions of the record.

[8] For the following reasons, I uphold the hospital's decision that the exemption at section 52(1)(e)(iii) applies to the withheld information. I therefore dismiss the complaint and issue no order.

RECORDS:

[9] The information at issue consists of the withheld portions of the hospital's file about the complainant for a specified period of time. Although more than 2500 pages of records were initially at issue, the hospital's revised decision significantly narrowed the scope to portions of approximately 20 pages.

DISCUSSION:

[10] The sole issue to be decided in the complaint is whether the hospital is permitted to deny the complainant access to records of his own personal health information on the basis of the exemption in section 52(1)(e)(iii) – the exemption that applies when providing access could reasonably be expected to identify a confidential source of information. In the discussion that follows, I explain why I uphold the hospital's decision.

Preliminary issues

[11] There is no dispute and I find that the hospital is a "health information custodian" within the meaning of *PHIPA*.¹ There is also no dispute that the records at issue are records of the complainant's "personal health information" within the meaning of *PHIPA*.² Because the records at issue are records of the complainant's personal health information, section 52 of *PHIPA* provides for a right of access to those records, subject to any applicable exemptions.

The hospital has established that granting access could reasonably be expected to identify a confidential source

[12] The hospital relies on the section 52(1)(e)(iii) exemption, which states:

52(1) Subject to this Part, an individual has 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,

(e) granting the access could reasonably be expected to,

(iii) lead to the identification of a person who provided information in the record to the custodian explicitly or implicitly in confidence if the custodian considers it appropriate in the circumstances that the identity of the person be kept confidential;

¹ "The person who operates" the hospital is a health information custodian under paragraph 4.1 of section 3(1) of *PHIPA*.

² Section 3(1) of *PHIPA*.

[13] The hospital has the burden of proof³ to demonstrate that granting access “could reasonably be expected to” lead to the harm in paragraph 52(1)(e)(iii). To establish that granting access “could reasonably be expected to” result in a specified harm, the hospital must provide detailed evidence about the potential for the harm, demonstrating that the risk of harm is beyond the merely possible or speculative.⁴ Although it need not prove that granting access will in fact result in such harm, how much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.⁵

[14] The hospital submits that disclosure of the remaining portions of the records would identify individuals who have spoken with the complainant’s treatment team and provided information about him to assist in his treatment. It also submits that the information was provided by the individuals in confidence. In support of all of its arguments in this complaint, the hospital also asserts that the risk of the claimed harms is evident from the records themselves. Generally speaking, the appellant disputes the custodian’s rationale for withholding the records and states that he has an inherent right to access his own personal health information.

[15] I have reviewed the records and considered the representations of the parties. I am satisfied that granting access to the withheld information could reasonably be expected to lead to the identification of individuals who provided certain information to the hospital. Considering the broader context illuminated by the records themselves, I am also satisfied that this information was provided to the hospital in confidence.

[16] Lastly, I am satisfied that the hospital has considered and decided that it is appropriate to keep these identities confidential. I have reached this conclusion because it is my view that the hospital has demonstrated in the course of this complaint, including its decision to release most of the records to the complainant, that it is working to balance the complainant’s right to access records of his own personal health information with the interests protected by section 52(1)(e)(iii). I agree with the hospital that it was appropriate to keep the information at issue confidential in the circumstances.

[17] I uphold the hospital’s decision to deny access to the remaining portions of the records on the basis of section 52(1)(e)(iii). I dismiss the complaint and no order is issued.

³ Section 54(8)(b) of *PHIPA*.

⁴ See *PHIPA* Decisions 34 and 100. Although decided in the context of paragraph 52(1)(e)(i), the stated standard of proof is the same.

⁵ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras 52-4.

NO ORDER:

For the reasons stated above, no order is issued.

Original Signed By: _____
Valerie Jepson
Adjudicator

_____ January 30, 2023