

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION - 218

Complaint HA23-00106

Dr. Bohdan Pich Medicine Professional Corporation

August 11, 2023

Summary: The complainant through his legal representative submitted an access request to Dr. Bohdan Pich Medicine Professional Corporation (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 regarding his request for access to his records of personal health information in accordance with the *Personal Health Information Protection Act* and without a recourse to a time extension.

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).

BACKGROUND:

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

[2] On January 23, 2023, the complainant's legal representative sent a written request to Dr. Bohdan Pich Medicine Professional Corporation (the custodian) for access to his client's records of personal health information. The request stated the following in part:

Please be advised that I act for the above-named client, whose direction and authorization to you are enclosed herein, regarding Injuries my client sustained in a motor vehicle accident. I am writing to ask that you provide

me with photocopy of your clinical notes and records regarding this patient from November 14, 2019 to present.

[3] The complainant's legal representative also provided a signed "Direction and Authorization" form from his client to the custodian.

[4] Subsequently, the complainant's legal representative made additional attempts and sent written requests for access to the custodian on February 28, 2023, March 17, 2023, and April 10, 2023. A signed "Direction and Authorization" form was enclosed with each request.

[5] On April 17, 2023, the Information and Privacy Commissioner/Ontario (IPC or this office) received a deemed refusal complaint from the complainant indicating that his legal representative had made multiple attempts to obtain access to his medical records. The complainant also advised that it had been more than 30 days since his legal representative had submitted his request for access to the custodian and he had not received a response. As a result, file HA23-00106 was opened.

[6] On May 4, 2023, this office issued a Notice of Review (the Notice) to the parties via email and courier.

[7] The Notice stated that the complainant had filed a complaint alleging that the custodian was deemed to have refused the complainant's request for access to records of personal health information by not providing a response within the time period set out in section 54 of the *Act*.

[8] The Notice directed the custodian to immediately respond to the complainant's request for access and to forward a copy to me, the Acting-Adjudicator assigned to this complaint. The Notice indicated that if the custodian failed to do so and a settlement was not reached by May 19, 2023, an order requiring the custodian to provide a response to the complainant may be issued.

[9] As part of my attempt to settle this matter, I left messages for the custodian with the receptionist on May 25, June 1, and June 12, 2023. I also wrote to the custodian on June 1, 2023.

[10] On June 12, 2023, the custodian contacted me by telephone and confirmed that the complainant was his patient, and that a response to the access request would be issued.

[11] On June 27, 2023, I wrote an email to the custodian inquiring about the status of his response. My email also advised that if a response to the access request was not issued by June 30, 2023, an order would be issued.

[12] Despite several efforts to connect with the custodian, to date, a response has not been issued.

DISCUSSION:

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

[13] 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;

[14] 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.

[15] 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."

[16] According to the information provided during this complaint, the complainant

received medical care from the custodian following a motor vehicle accident. In addition, during a telephone conversation on June 12, 2023, the custodian confirmed to this office that the complainant was his patient.

[17] Based on the information before me, I am satisfied that the information contained in the records at issue relate to the provision of health care to the complainant. 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).

[18] 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. Bohdan Pich Medicine Professional Corporation a "health information custodian" as defined in section 3(1) of the *Act*?

[19] Section 52 of the *Act* provides an individual with a right of access to a record of personal health information that is in the custody or under the control of a "health information custodian". 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.

[20] Further, the term "health care practitioner" is defined in section 2 of the *Act*, which reads 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,

[21] Moreover, the term "health care" is also defined in section 2 of the *Act*, which reads 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, ...

[22] During the processing of this complaint, this office reviewed Corporate Profile Report¹ (the CPR) for the custodian. The CPR lists Dr. Bohdan Pich Medicine professional Corporation as the active Ontario Business Corporation, and lists Dr. Bohdan Pich as the corporation's Director.

[23] 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."

[24] As indicated above, the complainant is a patient of the custodian, who is a member of the CPSO². The custodian also provided the complainant with health care.

[25] In my view, given the above, the custodian would have likely created records relating to the complainant's care and that these records would be in the custody or control of the custodian.

[26] Applying the definitions, I find that at the material time, the custodian was "a person who operates a group practice of health care practitioners" and, therefore, a "health information custodian" within the meaning of section 3(1)1 of the *Act*.

Issue C: Is Dr. Bohdan Pich Medicine Professional Corporation in a deemed refusal situation pursuant to section 54(7) of the *Act*?

[27] 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.

[28] 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.

[29] 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."

¹ The Corporate Profile Report for this business was generated on August 2, 2023.

² Dr. Bohdan Pich's CPSO #55716

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

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.

[31] 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.

[32] 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."

[33] 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*.

[34] On January 23, 2023, complainant, through his legal representative made a written request for access to the custodian. The complainant has complained to this office that, to date, he has not received a response from the custodian. Further, following my multiple attempts to contact the custodian about this matter, I too have not received a response from the custodian.

[35] 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.

[36] In light of the custodian's continued failure to respond to the complainant's

request for access in compliance with the *Act* and to adequately respond to the attempts made by this office to resolve this matter without recourse to a formal order, 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 the custodian is deemed to have refused the complainant's request for access to his medical records.

[37] 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's legal representative regarding his request for access to his client's medical records in accordance with the *Act* and without recourse to a time extension no later than **August 25, 2023**.
2. In order to verify compliance, the custodian shall provide me with a copy of the response referred to in provision 1 by **August 25, 2023**. 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: _____
Soha Khan
Acting Adjudicator

_____ August 11, 2023