

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 220

Complaint HA21-00210

Halton Healthcare Services

August 21, 2023

Summary: The complainant, the husband of a deceased individual, sought a complete copy of the deceased individual's medical records from a group of hospitals (the custodian). The custodian provided access to the responsive records. The complainant was not satisfied with the completeness of the records he received, and filed a complaint with this office challenging the reasonableness of the custodian's search for records. In this decision, the adjudicator upholds the custodian's search as reasonable and dismisses the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004*, c 3 Sched A, as amended, sections 53 and 54.

Decisions Considered: PHIPA Decision 18.

BACKGROUND:

[1] This decision resolves a complaint from the husband of a deceased individual. The complainant's wife was a patient of Halton Healthcare Services (the custodian). The complainant says that she was treated at multiple hospitals and passed away shortly after being transferred from one hospital to another. The complainant, who is the estate trustee for his deceased wife (the patient) made a request under the *Personal Health Information Protection Act* (PHIPA or the *Act*) to the custodian for the following information relating to her:

Cumulative summary report, blood count, chemistry, urinalysis, microbiology, medication summaries, etc, doctors consultations, surgical reports, progress notes for all procedures during her hospital stay at Georgetown, Milton & Oakville Trafalgar hospitals during her hospital stay [specified dates] the date of her death.

[2] In response to the request, the custodian provided the requester with a copy of the responsive records.

[3] The complainant made a complaint to the Office of the Information and Privacy Commissioner of Ontario (the IPC) alleging that additional responsive records should exist in the custodian's record-holdings.

[4] During mediation, the mediator explored resolution with the parties. At the end of mediation, the complainant confirmed that he still believed that additional records responsive to parts 2, 4 and 5 of his request should exist.

[5] No further mediation was possible and the complaint was transferred to the adjudication stage of the complaint process. The adjudicator previously assigned to the complaint decided to conduct a review. She sought and received representations from the custodian and the complainant, as well as reply and sur-reply representations from each party. Representations were shared in accordance with the *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*.

[6] I was then assigned to the complaint. I reviewed the parties' representations and determined I did not need further representations from either party. I note that in his representations, the complainant spends considerable time setting out his concerns regarding each hospital's record keeping procedures. For instance, throughout his representations, the complainant questions if the transfer nurse and other hospital staff had a legal obligation to make additional notes, other than was located by the custodian. However, the issue before me in this complaint is whether the custodian conducted a reasonable search for responsive records. While I can certainly appreciate the complainant's desire to obtain as much information as possible regarding the events preceding his wife's death, the issue of whether the hospitals' staff's note taking met the standards of their regulatory colleges or other legal requirements is not before me nor within my jurisdiction to decide. Accordingly, this decision will be limited to the custodian's search efforts, and the hospitals' staff's record keeping practices will not be discussed in detail.

[7] For the reasons that follow, I uphold the custodian's search as reasonable and dismiss the complaint.

DISCUSSION:

[8] The sole issue in this complaint is whether the custodian conducted a reasonable

search for records. The complainant takes the position that the custodian's search should have located additional records which would respond to the following parts of his request:

2. Patient transfer records for transfer from Georgetown hospital to Oakville [specified date 2]. (no records for when the patient was taken from Georgetown to Oakville and returned, no notes and did a nurse travel with the patient? If so, where is the documentation?);
4. Pre-operative and post-operative care, surgery notes, reports and any relevant documentation from the procedure at Milton on [specified date 1, the day before specified date 2] (for example, there is no record of Post-Anesthetic Care);
5. Pre-operative and post-operative care, surgery notes, reports and any relevant documentation from the procedure at Oakville on [specified date 2] (for example, as noted above, there is no record of Post-Anesthetic Care);

[9] Where a requester claims that additional records exist beyond those identified by a custodian, the issue to be decided is whether the custodian has conducted a reasonable search for records as required by sections 53 and 54 of *PHIPA*. If I am satisfied that the search carried out was reasonable in the circumstances, the custodian's decision will be upheld. If I am not satisfied, I may order further searches.

[10] The IPC has extensively canvassed the issue of reasonable search in orders issued under the *Freedom of Information and Protection of Privacy Act (FIPPA)* and its municipal counterpart the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. It has also addressed the issue of reasonable search under *PHIPA*.¹ In *PHIPA* Decision 18, Adjudicator Catherine Corban concluded that the principles established in reasonable search orders under *FIPPA* and *MFIPPA* are relevant in determining whether a custodian has conducted a reasonable search under *PHIPA*.² I adopt and apply this approach for the purposes of this complaint. In addition to what is set out in *PHIPA* Decision 18, the principles outlined in orders of the IPC addressing reasonable search under *FIPPA* and *MFIPPA* are instructive to the review of this issue under *PHIPA*.

[11] These decisions establish that *PHIPA* does not require the custodian to prove with absolute certainty that further records do not exist. However, the custodian must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.³ To be responsive, a record must be "reasonably related" to

¹ See for example *PHIPA* Decisions 18, 43, 48, 52, 57, 61, and 89.

² *PHIPA* Decision 89.

³ Orders P-624; PO-2559.

the request.⁴

[12] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.⁵

[13] A further search will be ordered if the custodian does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁶

[14] Although a requester will rarely be in a position to indicate precisely which records the custodian has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁷

The parties' representations

[15] As discussed above, the complainant believes that records related to three events (a hospital transfer and two hospital procedures) should exist. The custodian was asked for an explanation of their search results, and the complainant was permitted to respond. I have reviewed the complainant's representations in full, but as discussed above, I have determined that portions of his representations are not relevant to my determination of whether the custodian conducted a reasonable search for responsive records. I will only set out the representations that are relevant to the reasonable search issue.

[16] The custodian submits that they conducted a reasonable search for responsive records. In their representations, they described the searches they conducted for records in response to the complainant's request, explaining that six searches in total had been conducted. The custodian described the staff involved in the searches, the places that they searched, and the results of the searches. They explained that throughout the process they invited the complainant to go over the records with custodian staff to help him understand the records. They submit that no responsive records, other than those already provided to the appellant, exist.

[17] The complainant disputed some of the specific dates that the custodian said he interacted with them in their representations, and disputed the timing of the custodian's offers to go over the records with him.

Analysis and decision

[18] As described above, in a reasonable search complaint the complainant must

⁴ Order PO-2554.

⁵ Orders M-909; PO-2469; PO-2592.

⁶ Order MO-2185.

⁷ Order MO-2246.

establish a reasonable basis for concluding that additional responsive records exist that have not yet been identified and located by a custodian.⁸ Considering the evidence before me, I am not satisfied that the complainant has provided sufficient evidence to establish a reasonable basis for his belief that additional responsive records exist.

[19] The custodian has explained how notes are taken during transfers and procedures, and why the records for each hospital visit and transfer differ. I understand that the complainant is not satisfied with their responses and believes additional records should have been created. However, the issue before me in this complaint is whether the custodian conducted a reasonable search for records in response to his request under the *Act*.

[20] With respect to the actual search efforts, the complainant explains that he was told at mediation that no records existed for the first transfer between the hospitals, despite having been provided such documentation. He suggests that this means that the custodian's search efforts were incomplete. I am not persuaded that a mistake in identifying a record that had been provided means that further records exist, or that a further search should be ordered. Additionally, the fact that there is disagreement about the precise dates that the complainant and custodian interacted does not, in my view, mean the custodian's search efforts were inadequate.

[21] The custodian submitted that, in total, they conducted six searches for records, with one additional record being identified in the fourth search, which had already been provided to the complainant earlier. The complainant asserts that additional records should exist, but he did not dispute the amount of searches the custodian conducted, or the completeness of those searches. Considering this, I am not satisfied that ordering a further search would likely produce additional records.

[22] Based on the custodian's representations, I am satisfied that the custodian had experienced employees knowledgeable in the subject matter of the request expend a reasonable effort to locate records which are reasonably related to the request. While it appears that there was some initial confusion about what the complainant was asking for in his request, both parties took steps to clarify this, and it is my view that the custodian understood its responsibility to search for, and provide the complainant access to, the patient's medical records.⁹

[23] Throughout the process, the complainant explained which records he believed had not yet been located and provided to him. In response, the custodian conducted multiple subsequent searches, but did not locate any additional records beyond those already provided to the complainant. Based on the evidence before me, I find that the custodian has met its obligations to conduct a reasonable search as required by the

⁸ Order MO-2246.

⁹ The custodian initially gave the complainant a "physician package," which contained the records they thought the complainant would be most interested in. The complainant later clarified that he was seeking a complete copy of the patient's medical record.

PHIPA.

ORDER:

I uphold the custodian's search as reasonable and dismiss the complaint.

Original Signed by: _____
Chris Anzenberger
Adjudicator

_____ August 21, 2023