

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4193

Appeal PA17-547

London Health Sciences Centre

October 5, 2021

**Summary:** At issue in this appeal is whether the appellant's 10-part access request to London Health Sciences Centre (LHSC) is frivolous or vexatious under the *Personal Health Information Protection Act (PHIPA)* and/or the *Freedom of Information and Protection of Privacy Act (FIPPA)*. In this order, the adjudicator finds that LHSC has established that the request is frivolous or vexatious whether considered under section 54(6) of *PHIPA* or section 10(1)(b) of *FIPPA*. She upholds LHSC's decision to refuse access to the responsive records. She also imposes conditions on future requests submitted by the appellant to LHSC.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 10(1)(b); Regulation 460, section 5.1; *Personal Health Information Protection Act, 2004*, S.O. 2004, c.3, Sched. A., section 54(6).

**Orders and Investigation Reports Considered:** Orders P-947, MO-1519, MO-1924 and MO- 2390.

### OVERVIEW:

[1] This appeal arises from a conflict between the requester and the London Health Sciences Centre (LHSC). The requester, who was an in-patient at LHSC for almost two years, disputes decisions made by LHSC regarding his care and care planning, including the level of involvement in the care planning process that was afforded to him by LHSC. Another basis for the conflict between the parties arises from the requester's belief that LHSC interfered with an application he made to an organization that provides funding

for self-directed care.

[2] Against this backdrop, the requester submitted a number of multi-part access requests to LHSC under both the *Freedom of Information and Protection of Privacy Act (FIPPA)* and the *Personal Health Information Protection Act (PHIPA)*. The requester sought access to records that mention him and were created or received during his time as an in-patient at LHSC.

[3] The specific request at issue in this appeal is a multi-part request to LHSC for access to copies of email correspondence to and from 10 named LHSC employees. Specifically, the request stated:

Copies of [named LHSC employee] LHSC emails pertaining to [their] exchanges [about] patient [the requester]. Specifically, this request relates to all [named LHSC employee]'s involvement and exchanges with any individuals regarding [the requester]. Request scope includes: 1. emails sent to all individuals, including [the requester], in which [the requester] was discussed; 2. emails received from all individuals in which [the requester] was discussed. (May 30, 2016 to October 10, 2017).

[4] This exact request was repeated nine times, identifying different LHSC employees.<sup>1</sup>

[5] LHSC issued a decision under *FIPPA* denying access to any responsive records on the basis that the multi-part request is "frivolous or vexatious" as contemplated by section 10(1)(b) of *FIPPA* and section 5.1 of Regulation 460 made under *FIPPA*. In its decision letter, LHSC stated:

We deny your requests on the basis that these requests reflect a pattern of conduct which has led to an abuse of your right of access and interference with the operations of our institution.

[6] Also in its decision letter, LHSC identified a number of factors surrounding the request that it claims support its decision that the request is frivolous or vexatious. These will be set out and considered below.

[7] The requester, now the appellant, filed an appeal of LHSC's decision with the Information and Privacy Commissioner of Ontario (the IPC).

[8] In his appeal letter, the appellant disputed LHSC's decision that his request is frivolous or vexatious. He provided further detail and context for the request at issue, as well as his other requests and responded to some of the factors raised by LHSC in its decision letter. The appellant's submissions in his appeal letter will be set out and

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<sup>1</sup> From its submissions, it appears that LHSC considers this multiple-part request as 10 separate requests. Despite this, in this order I will refer to the multiple-part request in the singular, as "the request."

considered below.

[9] A mediator was assigned to the appeal to attempt to reach a mediated resolution. During mediation, LHSC confirmed that it based its decision to deem the appellant's request frivolous or vexatious on the volume of requests that the appellant has previously made to LHSC and on its position that he has already been provided with the requested records through those previous requests, as well as through requests made to "other sources."

[10] As a mediated resolution was not reached, the matter was transferred to adjudication where an adjudicator may conduct an inquiry. As the adjudicator assigned to the appeal, I decided to conduct an inquiry.

[11] As an institution subject to *FIPPA*, LHSC processed this request under that act. However, there is no dispute that LHSC is also a health information custodian subject to *PHIPA*. Both *PHIPA* and *FIPPA* contain provisions addressing frivolous or vexatious requests. As a result, at the outset of my inquiry, I concluded that it might be necessary to determine whether *PHIPA* or *FIPPA* is the appropriate act under which to consider the request.<sup>2</sup>

[12] I initially sought and received representations from LHSC on whether the request should be considered under *PHIPA* or *FIPPA*, or both, and whether it is frivolous or vexatious under either or both of those acts. LHSC provided representations, which I shared with the appellant in accordance with the IPC's *Code of Procedure and Practice Direction 7*.

[13] I then sought representations from the appellant. The date that was set for the receipt of the appellant's representations was May 10, 2019. The appellant's representative requested a number of consecutive extensions for the submission of representations, on the basis of reasonable accommodation. I granted those extensions, setting new dates for the submission of representations each time.

[14] On October 11, 2019, I agreed to the appellant's request to place the appeal on hold for several months. Following that hold, repeated attempts by the IPC to reach the appellant to re-activate the appeal were unsuccessful. On March 5, 2020, I wrote to the appellant's representative to advise that if I did not receive a response, I would consider the appeal to be "abandoned" and it may be closed.

[15] On March 20, 2020, the appellant's representative requested that I adjourn the appeal *sine die*.<sup>3</sup> In the circumstances, I declined to do so. However, after considering

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<sup>2</sup> Despite the fact that both *PHIPA* and *FIPPA* might apply to the request at issue, as LHSC processed the request under *FIPPA*, in this order I will be using the terminology used when considering appeals filed under *FIPPA*, rather than the terminology used when considering complaints under *PHIPA*.

<sup>3</sup> Black's Law Dictionary defines the Latin term *sine die* as "without day; without assigning a day for further meeting or hearing." *Black's Law Dictionary*, (9<sup>th</sup> ed. 2009).

the circumstances explained by the appellant's representative, I agreed to grant several additional extensions over the next few months. On November 11, 2020, I received representations from the appellant in response to LHSC's initial representations. I shared the appellant's representations with LHSC inviting a reply. LHSC declined to provide a reply and I concluded my inquiry.

[16] For the reasons that follow, I find that LHSC has established that the request is frivolous or vexatious whether it is considered under section 54(6) of *PHIPA* or section 10(1)(b) *FIPPA*. I uphold its decision to refuse access to the responsive records on that basis. Additionally, I impose conditions on future requests submitted by the appellant to LHSC.

## **PRELIMINARY ISSUE:**

### **Does *PHIPA* or *FIPPA*, or both, apply in these circumstances?**

[17] There is no dispute that LHSC is a body subject to *PHIPA* pursuant to section 3(1) of *PHIPA*, and an institution subject to *FIPPA* within the meaning of section 2(1) of *FIPPA*.

[18] As a result, in certain circumstances, LHSC is subject to both *PHIPA* and *FIPPA*. This means that when it receives a request for access to information, it must decide whether *PHIPA* or *FIPPA*, or both, apply to the request.

[19] In making this decision, LHSC must consider the nature of the request (i.e., whether the request is for personal health information, for information that is not personal health information, or both); the contents of the records responsive to the request (i.e., whether the responsive records(s) contain personal health information, or information that is not personal health information); and, in the case of a request for personal health information, whether the requester is a person authorized under *PHIPA* to exercise a right of access to that information.<sup>4</sup>

[20] LHSC submits that the request is covered by both *PHIPA* and *FIPPA*. It submits that the request is expansive and captures both records containing the personal health information of the appellant under section 4 of *PHIPA* and general records that include personal information of other individuals, as defined by section 2(1) of *FIPPA*. It further submits that some of the records may be dedicated primarily to the personal health information of the appellant and subject to *PHIPA*, while other more general records may not be found to be dedicated primarily to the personal health information of the appellant and contain information that may be subject to exemption under *FIPPA*.

[21] The appellant does not make any specific submissions on whether *PHIPA* or *FIPPA* or both, might apply to his request.

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<sup>4</sup> See *PHIPA* Decisions 17, 27, 73, 96 and 107 and Order MO-3644.

[22] It is my preliminary view that the records responsive to the appellant's request are covered by both *PHIPA* and *FIPPA*. However, in this case, as the LHSC deems the request to be frivolous or vexatious, it has not processed it and has not searched to locate and retrieve the responsive records. As a result, the records themselves are not before me. Although my preliminary view is that the records responsive to the appellant's request would be covered by both *PHIPA* and *FIPPA*, in the absence of the records, I cannot make a definitive finding in that respect. However, as both *PHIPA* and *FIPPA* have provisions that address frivolous or vexatious requests, I will consider whether the appellant's request is frivolous or vexatious under *PHIPA* or *FIPPA*, or both. As I explain below, I come to same conclusion regardless of which statute applies.

## **DISCUSSION:**

### **Is the request frivolous or vexatious under *PHIPA* and/or *FIPPA*?**

[23] LHSC refused to grant the appellant access to the requested records on the basis that the request is frivolous or vexatious.

[24] As noted above, both *PHIPA* and *FIPPA* have provisions that contemplate circumstances where a custodian or an institution may refuse access to requested records if they believe, on reasonable grounds, that a request is frivolous or vexatious.

[25] The frivolous or vexatious provisions in *PHIPA* and *FIPPA* provide custodians and institutions respectively with a summary mechanism to deal with frivolous or vexatious requests. This discretionary power can have serious implications to a requester's ability to obtain information under the acts, and therefore it should not be exercised lightly.<sup>5</sup> Orders under *FIPPA* and its municipal equivalent, the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*, have also stated that an institution has the burden of proof to substantiate its decision that a request is frivolous or vexatious.<sup>6</sup>

[26] If an access request is found to be frivolous or vexatious, the IPC will uphold the institution's decision to deny access on that basis. In addition, it may impose conditions such as limiting the number of active requests and appeals the appellant may have in relation to a particular institution.<sup>7</sup>

### ***Grounds for a frivolous or vexatious claim under PHIPA***

[27] In *PHIPA*, the provision addressing frivolous or vexatious claims is found in section 54(6), which reads:

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<sup>5</sup> Order M-850.

<sup>6</sup> See, for example, Order M-850.

<sup>7</sup> Order MO-1782.

A health information custodian that believes on reasonable grounds that a request for access to a record of personal health information is frivolous or vexatious or is made in bad faith may refuse to grant the individual access to the requested record.

[28] To date, the IPC has interpreted section 54(6) of *PHIPA* twice, once in circumstances where the custodian took the position that the complainant's request for access to the requested records was made in bad faith<sup>8</sup> and once, in a situation where the complainant was found to meet the criteria for being a vexatious litigant and her requests were dismissed as frivolous or vexatious.<sup>9</sup> In determining whether section 54(6) of *PHIPA* might apply, it is also helpful to consider the manner in which the IPC has interpreted the frivolous or vexatious provisions in *FIPPA* and *MFIPPA*, which are similar to the *PHIPA* provision.<sup>10</sup>

### ***Grounds for a frivolous or vexatious claim under FIPPA***

[29] In this case, as *FIPPA* may apply to all or some of the records, section 10(1)(b) of *FIPPA* is also relevant. That section reads:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

[30] Section 5.1 of Regulation 460 made under *FIPPA* elaborates on the meaning of the terms "frivolous" and "vexatious":

A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,

(a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or

(b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.

[31] In other words, under *FIPPA*, the head of an institution is required to conclude that a request for access is frivolous or vexatious if he or she is of the opinion on reasonable grounds that it fits into one or more of the following categories:

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<sup>8</sup> PHIPA Decision 87.

<sup>9</sup> PHIPA Decision 136.

<sup>10</sup> See, for example, section 10(1) of *FIPPA* and Section 5.1 of Regulation 460, and section 4(1) of *MFIPPA* and Section 5.1 of Regulation 823.

- it is part of a pattern of conduct that,
  - amounts to an abuse of the right of access, or
  - would interfere with the operations of the institution, or
- it is made in bad faith, or
- it is made for a purpose other than to obtain access.

[32] In my view, if an institution establishes on reasonable grounds that a request falls into any one of the above categories, the request can also be considered as frivolous or vexatious under section 54(6) of *PHIPA*. The language of the two statutes, while not identical, is similar.

[33] In this appeal, LHSC claims that the appellant's request is frivolous or vexatious under both *PHIPA* and *FIPPA* on the grounds that it is a part of a pattern of conduct that amounts to an abuse of the right of access, and would interfere with the operations of the institution. LHSC representations also suggest that it believes that the appellant's purpose for making the request is other than to obtain access and that it may have been submitted in bad faith. I consider first whether there is sufficient evidence before me to conclude that the appellant has engaged in a pattern of conduct that amounts to an abuse of the right of access.

***Pattern of conduct that amounts to an abuse of the right of access***

[34] While both section 54(6) of *PHIPA* and section 10(1)(b) *FIPPA* use the terms "frivolous or vexatious," it is only under *FIPPA* that those terms have been elaborated upon in a regulation made under the act. The first part of section 5.1.(a) of Regulation 460 under *FIPPA* sets out that one way that a request can be determined to be frivolous or vexatious is if the institution establishes reasonable grounds for concluding that the requests are a pattern of conduct that amounts to an abuse of the right of access. What constitutes "reasonable grounds" requires an examination of the specific facts of each case.<sup>11</sup> In my view, whether considering whether a request is "frivolous or vexatious" under *FIPPA* or *PHIPA* it is useful to consider how the terms "frivolous or vexatious" have been addressed in Regulation 460 under *FIPPA* as well in previous orders under both *FIPPA* and *MFIPPA*.<sup>12</sup>

[35] For the reasons that follow, I find that LHSC has established that it had reasonable grounds to conclude that the appellant's request is part of a pattern of conduct that amounts to an abuse of the right of access contemplated by the first part of section 5(1)(a) of Regulation 460 under *FIPPA*. As a result, I find that the appellant's

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<sup>11</sup> Order MO-3292.

<sup>12</sup> These terms were also addressed Regulation 860 under *MFIPPA*, which contain identical provisions to those found in Regulation 460 under *FIPPA*.

request is frivolous or vexatious under section 10(1)(b) of *FIPPA*. For similar reasons, I also find that because LHSC has established the existence of a pattern of conduct that amounts to an abuse of the right to access, it has also established reasonable grounds on which to conclude that the request is frivolous or vexatious under section 54(6) of *PHIPA*.

*"Pattern of conduct"*

[36] As a result of the requirements set out in section 5.1 of Regulation 460 under *FIPPA*, previous IPC orders under *FIPPA* have addressed the meaning of the phrase "pattern of conduct," prior to determining whether that pattern of conduct amounts to either an abuse of the right of access or would interfere with the operations of the institution.<sup>13</sup> For example, in Order M-850, former Assistant Commissioner Tom Mitchinson stated:

[I]n my view, a "pattern of conduct" requires recurring incidents of related or similar requests on the part of the requester (or with which the requester is connected in some material way).

[37] The former Assistant Commissioner also pointed out that, in determining whether a pattern of conduct has been established, the time over which the behaviour occurs is a relevant consideration. The reasoning in Order MO-850 has been considered in many subsequent orders issued by the IPC, which have also established that the cumulative nature and effect of a requester's behaviour may be relevant in the determination of the existence of a "pattern of conduct".<sup>14</sup>

*Pattern of conduct that amounts to "an abuse of the right of access"*

[38] Once it has been established that a request form part of a pattern of conduct, it must be determined whether that pattern of conduct amounts to "an abuse of the right of access." In making that determination, institutions may consider a number of factors, including the cumulative effect of the number, nature, scope, purpose and timing of the requests.<sup>15</sup> Order MO-2390 provides a helpful summary of the main factors found in previous IPC orders to be relevant, including:

- the number of requests – whether the number is excessive by reasonable standards;
- the nature and scope of the requests – whether they are excessively broad and varied in scope or unusually detailed, or, whether they are identical to or similar to previous request;

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<sup>13</sup> The phrase has also been considered in orders under *MFIPPA* and Regulation 860 under that act.

<sup>14</sup> Order MO-2390.

<sup>15</sup> Orders M-618, M-850 and MO-1782.



- the timing of the requests – whether the timing of the requests is connected to the occurrence of some other related event, such as court proceedings; and
- the purpose of the requests – whether the requests are intended to accomplish some objective other than to gain access without reasonable or legitimate grounds. For example, are they made for “nuisance” value, or is the requester’s aim to harass the government or to break or burden the system?<sup>16</sup>

[39] Other factors, particular to the case under consideration, can also be relevant in deciding whether a pattern of conduct amounts to an abuse of the right of access.<sup>17</sup>

[40] Previous orders have also stated that the focus should be on the cumulative nature and effect of a requester’s behaviour because, in many cases, ascertaining a requester’s purpose requires the drawing of inferences from his or her behaviour.<sup>18</sup>

#### *LHSC’s representations*

[41] At the outset of its representations, LHSC stated that it recognizes “the serious implications that a denial of access can have on a requester[,]” and as a result, it “carefully considered the requests of the appellant, bearing in mind a number of contextual factors.” It submits that it “intentionally and specifically did not exercise [its] discretion lightly.”

[42] In its decision advising the appellant that it considered his request to be frivolous or vexatious, LHSC set out a number of factors in support of its decision. In its representations to me, LHSC raised the same factors but provided more detail about their impact. I have summarized the factors that LHSC considered in determining the request to be frivolous or vexatious here:

- the volume of requests is excessive and appears to be directed at a purpose other than access to information;
- the volume of requests places an undue burden on LHSC’s Privacy Office;
- the requests are overly detailed and excessively broad and generate an unusually large number of responsive records, many of which are a result of the high volume of emails that the appellant sends to staff across the hospital;
- responding to the requests requires a significant amount of resources;
- the appellant has submitted requests addressing the same content as earlier requests before those earlier requests had/have been processed or while appeals to the IPC with respect to earlier requests are pending;

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<sup>16</sup> Orders M-618, M-850, MO-1782 and MO-1810.

<sup>17</sup> Order MO-1782.

<sup>18</sup> Orders MO-1782 and MO-1850.

- the appellant is already in possession of many of the records that he seeks access to in the request at issue because many of his previous requests have been for emails;
- previous requests submitted by the appellant have been for the same or substantially similar records as records that have already been disclosed to him;
- the appellant has made requests to other organizations such as the Local Health Integrated Network (LIHN) and the patient Ombudsman's office for the same information LHSC has already provided to him.

[43] Addressing more specifically how the appellant's request forms part of a pattern of conduct that amounts to an abuse of the right of access, LHSC submits:

- Including the parts of the multi-part request at issue in this appeal, the appellant submitted 33 requests for records related to his care while an in-patient at LHSC within a six-month period.
- The sum total of the appellant's requests represented the majority of access requests received by LHSC in the year that they were submitted.
- In total, 1,061 pages of records have been released to the appellant under *FIPPA* and 12,662 pages of records have been released to the appellant under *PHIPA*. In total, 13,723 pages of records have been reviewed and provided to the appellant.
- The appellant has also made requests for information to LHSC's Patient Ombudsman's Office, Community Care Access Centres, and the South West Local Health Integration Network (SW LHIN), among others. LHSC has received notice and been involved in these other requests as a third party.
- The appellant has initiated several appeals to the IPC including the current appeal and a related appeal, PA17-423. These other appeals have included requests for emails and in some cases, have requested the same or substantially similar records as in previous requests, before those requests and appeals could be processed. On a number of occasions, the appellant has requested records which have already been disclosed to him.
- Although the purpose of the appellant's requests may not be explicit, a reasonable inference can be drawn that the purpose is improper based on the totality of circumstances.

[44] Specifically addressing its position that the appellant's purpose for making these requests is other than to obtain access, LHSC submits:

The appellant has made public his desire to receive self-directed government funding for homecare services. In pursuit of this funding or, at least, proximate in timing, he has engaged with media organizations, made complaints to professional colleges, and commenced legal proceedings against the hospital and a number of institutions. He has covertly recorded staff and posted such recordings, in addition to his own, to YouTube. He posts regularly to Twitter in a manner which is highly critical of the hospital and health care.

It is evident that the appellant wishes to leverage any and all means available to him to advance his claim for funding. Such means have included attempting to impose public pressure on the hospital and other institutions. Similarly, the excessive requests under *PHIPA* and *FIPPA* have resulted in a financial and resourcing strain on the organization. Due to the nature of the appellant's requests, fees, beyond nominal fees, are not permitted under the legislation. As a result, there are few, if any, safeguards, save for the frivolous and vexatious provisions, to protect against an overwhelming and improper volume and breadth of requests. The volume and nature of the appellant's requests are inconsistent with the spirit of *PHIPA* and *FIPPA* and would reasonably appear to be directed at a purpose other than access to information.

#### *Appellant's representations*

[45] The appellant disputes that his access request is part of a pattern of conduct that amounts to an abuse of the right of access. He acknowledges that he has made other access requests but submits that taking into account the length of time that he spent as an in-patient at LHSC, the total number of access requests that he has submitted is not excessive. He also submits that although some of his requests have been broad, they were necessarily so because LHSC excluded him from discussions about his care.

[46] The appellant submits that the suggestion that any of his requests, including the one at issue, are "frivolous" or that he is not entitled to the information are baseless and "an affront to transparency and the spirit and purpose of [*FIPPA*] and [*PHIPA*]." He submits that his requests, including the one at issue, are neither frivolous nor vexatious but were submitted solely for the purpose of access to records that "demonstrate why LHSC staff blocked his access to services to live-in self-directed home care."

[47] The appellant explains why he has made multiple requests for access to emails between various LHSC staff members. He submits that his hospital chart and clinical records are inaccurate and incomplete. He submits that records provided to him through his requests have revealed "undocumented meetings, omitted summaries, hidden orders, concealed discussions, and other full details regarding [his] care, case, treatment, planning, options, outcome..." that were not recorded in his chart. He submits that this demonstrates that he has not received "adequate information from his

circle of care regarding all aspects of his case and treatment.”

[48] The appellant also explains that it was at the suggestion of a LHSC staff member that he make a request for staff emails. He submits that he has a right to know what happened to him and believes that the emails might fill in the details that are missing from his records

[49] The appellant further submits that LHSC administration blocked him from meetings regarding the planning of his care and failed to keep him informed about the plans made regarding his care. He submits that these meetings resulted in a “forced discharge attempt” by LHSC. He believes that obtaining access to the emails he has requested is the only way he can find out what happened in these meetings.

[50] Responding directly to certain submissions made by LHSC in its representations, the appellant submits:

- Each of the 10 parts of the request at issue, and all of his prior access requests pertain to different individuals, different email accounts, and different specific time frames.
- The records he was granted access to as a result of his previous requests are for different time periods and/or different individuals than those identified in the request at issue. He submits the results will provide completely different email threads, attachments, and content.
- All of his requests, including the one at issue, are precise and accurate requests that identify specific individuals by name, provide their email addresses, and set out a time frame for the records he seeks. He references the request at issue in this appeal as an example. He submit that because each of the 10 parts identifies a specific individual, email address, or time-period it is specific and cannot be considered “broad.”
- He was in the hospital for over 22 months; his requests are not unusually large for a patient who has resided in the hospital for so long.
- He has the right to contact clinical staff and leadership regarding his well-being, best interests, outcome, case, care, needs, and concerns. The number of emails he sent is not a relevant excuse for the institution to deny him access to communications that he is neither included in nor has possession of.
- The access request at issue is not related to [two identified] decisions that were appealed to the [IPC]: "APPEAL PA17-423". Appeal PA17- 423 is not for the same content.

- His requests to the SW LHIN and the Patient Ombudsman Office should generate entirely different responsive records than those responsive to his requests to LHSC.

*Analysis and finding on a pattern of conduct that amounts to an abuse of the right of access*

Pattern of conduct

[51] In determining whether there are reasonable grounds to conclude that the request forms part of “a pattern of conduct that amounts to an abuse of the right of access” under section 5.1(a) of Regulation 460, I will consider first, whether the facts relevant to this case establish that a “pattern of conduct” exists.

[52] The request at issue in this appeal is a multi-part request seeking copies of emails sent and received by 10 named individuals regarding the appellant over an 18-month period.

[53] LHSC says that in the six months preceding the request at issue in this appeal, the appellant made 23 similar requests to LHSC under *FIPPA* for records relating to him and emails in which he was discussed, all of which were processed. LHSC submits that the 10 additional requests that are at issue in this appeal bring the total number of requests made by the appellant in a six-month period to 33 requests.<sup>19</sup>

[54] The appellant does not dispute that, in addition to the request(s) at issue, he made 23 other requests to LHSC for records related to his care that were generated during an 18-month period. However, he argues that his previous requests are not identical to the 10 at issue in this appeal as they pertained to different individuals, different email accounts and different time frames.

[55] I am satisfied that the request(s) at issue before me, together with the appellant’s 23 previous access requests over six months to LHSC for records in which he is mentioned constitutes recurring incidents of related or similar access requests on the part of the appellant. Although the requests may not be identical because, as submitted by the appellant, they pertain to different individuals and different time frames, it is indisputable that the type of information that he seeks in all of his requests is substantially similar or, at the very least, related. All of the requests appear to be for emails among LHSC personnel who communicated about the appellant in relation to his care at LHSC.

[56] Given these circumstances, I find that the appellant’s request that is at issue in this appeal is part of a “pattern of conduct” as contemplated by section 5.1(a) of Regulation 460.

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<sup>19</sup> LHSC’s characterization of the request at issue as 10 separate requests will be discussed in more detail below.

Pattern of conduct that amounts to “an abuse of the right of access”

[57] As I have found that the request(s) at issue are part of a pattern of conduct, I will now consider the factors noted above that previous IPC orders under *FIPPA* and *MFIPPA* have found may be relevant to a determination of whether the request forms part of a pattern of conduct *that amounts to an abuse of the right of access*.

**Number and timing of access requests**

[58] LHSC submits that the appellant has submitted 33 requests for access to information over a six-month period. However, I note that in characterizing the appellant’s requests as 33 requests for access, LHSC appears to consider each part of the appellant’s multi-part requests as a separate request. For example, for the 10-part request at issue in this appeal, LHSC identifies each part that seeks access to the emails of a particular individual as a distinct and separate request. LHSC has not provided me with copies of, or the wording of any of the other 23 requests it submits the appellant made. Accordingly, I do not know any details about them including how many of those other requests are multi-part requests and whether those requests and/or the separate parts of any multi-part requests are similar to those in the request before me or not. In any event, whether the prior requests are characterized as 23 requests or some smaller number of multi-part requests, as I explain below, I am satisfied that the sum total of the appellant’s requests, however calculated, is, by reasonable standards, an excessive number of requests to have been submitted by a single individual over a period of six months.

[59] The appellant does not dispute the number or timing of his requests. However, he submits that given his lengthy stay as an in-patient at LHSC the number of requests he has submitted should be considered reasonable. I disagree. Whether the appellant’s requests are 33 multi-part requests or 33 related or similar requests contained in a smaller number of multi-part requests, at minimum LHSC can be said to have received 33 different, single-part requests for access to records. The appellant’s requests would have LHSC responding to, on average, more than five requests from a single individual per month over a six-month period. Given these circumstances and considering the evidence before me that demonstrates that his requests are for a large number of responsive records, I find that the number of requests submitted by the appellant to LHSC is excessive, by reasonable standards.

[60] Additionally, I accept LHSC’s submission that the appellant’s requests, made over a six-month period, represent the majority of the total requests that LHSC received during the year that they were submitted. In my view, this fact also supports a conclusion that the number and timing of the appellant’s requests is excessive, by reasonable standards.

[61] Accordingly, I find that the sum total of the appellant’s requests, however counted, is sufficiently high to be considered a factor weighing heavily in favour of a finding that a pattern of conduct exists that amounts to an abuse of the right of access.

### **Nature and scope of the requests**

[62] At the beginning of his representations, the appellant concedes that in some cases his requests could be considered to be “broad.” He submits that their scope was a result of the fact that LHSC excluded him from discussions about his care. However, later in his representations, the appellant submits the opposite. He argues that the nature and scope of his requests, including the one that is before me in this appeal, are not excessively broad. The appellant submits that his requests are specific, in that they seek access to emails that mention him and were created or received by various LHSC staff, identified by name. He also submits that each request limits the scope of responsive records to a specific time frame representing a portion of his time as an in-patient at LHSC.

[63] I accept that the types of records sought by the appellant through each individual part of his multi-part requests are not particularly varied (largely, he seeks email records) and acknowledge that the appellant is of the view that by identifying a time frame for the records he sought to limit their scope. However, previous orders have noted that when considering the nature and scope of a collection of requests, the focus should be on the cumulative nature and effect of a requester’s behaviour.<sup>20</sup>

[64] In my view, the cumulative nature and effect of a request can be assessed, in part, by considering nature and scope of responsive records that the requests, as a whole, generate. LHSC submits that in addition to the 10-part request at issue in this appeal, the appellant has submitted 23 other multi-part requests over a six-month period. LHSC has submitted, and the appellant has not disputed, that overall, it has identified and reviewed a total of 13,723 pages of records in responding to requests submitted by the appellant. That amount does not include records that would be responsive to the request that is at specifically at issue in this appeal. In this case, therefore, the evidence provided by LHSC demonstrates that each separate part of the appellant’s multi-part requests has generated a significant number of responsive records. From the wording of the request that is at issue in this appeal, I accept that it too would generate a significant number of responsive records.

[65] Additionally, LHSC submits that some of the requests submitted by the appellant have been for the same or substantially similar records as records that have already been disclosed to him as a result of other requests. Although the appellant disputes this, stating that his requests identify different individuals over different time frames, considering that many of his requests target emails that were sent to multiple people and distribution lists, it is reasonable to conclude that the nature and scope of the appellant’s requests would generate a substantial overlap of responsive records.

[66] Considering all of the circumstances, I accept that the cumulative effect of the appellant’s requests reveals that in terms of their nature and scope they are excessively broad by reasonable standards. I accept this due to the sheer number of responsive

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<sup>20</sup> Order MO-1782.

records that the requests generate as well as due the substantial overlap in those records. Taken as a whole, the appellant's requests appear to effectively target most, if not all, copies of emails in LHSC's email system that mention him over the course of his lengthy stay as an in-patient.

[67] In these circumstances, I find that I have been provided sufficient evidence to conclude that the nature and scope of the appellant's requests are excessively broad or have the cumulative effect of being excessively broad by reasonable standards. Accordingly, I accept that this is a factor that must be considered in my determination of whether the request forms part of a pattern of conduct that amounts to an abuse of the right of access and that it carries significant weight.

### **Purpose of the requests**

[68] LHSC submits that the appellant's purpose for making his requests is other than to obtain access and that this is a factor in favour of finding that the requests are part of a pattern of conduct amounting to an abuse of the right of access. The appellant disagrees.

[69] Previous decisions of the IPC have considered a request to be made for a purpose other than to obtain access if the requester is motivated not by a desire to obtain access, but by some other objective.<sup>21</sup> In Order MO-1924, former Senior Adjudicator John Higgins provided guidance on when a request may be found to have a purpose other than to obtain access. He stated:

In order to qualify as a "purpose other than to obtain access," ... the request would need to have an improper objective above and beyond a collateral intention to use the information in some legitimate manner.<sup>22</sup>

[70] Previous decisions of the IPC have also recognized, however, that a requester's conduct often gives a more accurate picture of their purpose than do their words. In Order M-947 the adjudicator considered a situation where the requester did not feel he was receiving the service to which he felt entitled, he began using the freedom of information process as a means to express his personal attacks on the personnel involved in the process. The adjudicator found that the circumstances in that case revealed that the apparent purpose of the requester's access requests changed focus from one based on a reasonable or legitimate ground to a purpose which could be characterized as seeking to accomplish some object unrelated to the access process.

[71] Additionally, in Order MO-1519, the adjudicator concluded that the appellant in that appeal intended to use the process to further his dispute with the institution rather than simply access information. In so concluding, the adjudicator noted several troubling aspects of the appellant's conduct, including:

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<sup>21</sup> Order M-850.

<sup>22</sup> Order MO-1924.



- that the appellant had not made efforts to work constructively with the city to resolve his request, and
- there was evidence of an escalation of the appellant's uncooperative and harassing manner.

[72] I agree with the approach taken in these orders and find it relevant in my consideration of the circumstances of this appeal.

[73] LHSC argues that although the purpose of the appellant's requests may not be explicit, a reasonable inference can be drawn that the purpose is improper based on the totality of circumstances. It submits that the appellant is leveraging "any and all" means available to him to advance his claim for self-directed care funding including attempting to impose public pressure on LHSC in a variety of ways. It explains that the appellant has engaged with media, made complaints to professional colleges and commenced legal proceedings against LHSC. It submits that the appellant posts regularly to Twitter in a manner that is highly critical of LHSC. It also submits that the appellant has also covertly recorded LHSC staff and posted such recordings to YouTube. The appellant does not dispute LHSC's submissions in this regard.

[74] The records that the appellant seeks contain information about himself and the evidence before me suggests that he desires access to it to further understand details regarding decisions taken regarding his care and care planning that he believes that he has not been privy to. I also acknowledge that he might seek some of this information for the purposes of further a particular objective, most likely to support and advance his claim for self-directed care funding. I am satisfied that these are both legitimate purposes to seek access to records.

[75] As noted above, however, the number of the appellant's requests are excessive and they generate a significant number of responsive records, which I accept places a significant burden on LHSC's resources. I accept LHSC's evidence that suggests that some elements of the appellant's requests are repetitive and many of them seek access to records to which he has already been provided access through other requests. I also accept LHSC's evidence that the appellant has submitted requests without waiting for prior similar requests with overlapping and duplicative records to be processed. Despite this, I note that there is no evidence before me to suggest that the appellant has made any efforts to cooperate with LHSC in identifying the precise records that he seeks or facilitating the processing of his requests in any manner.

[76] I also note the evidence provided by LHSC about the numerous and diverse forums and platforms taken by the appellant to publicly criticize LHSC and its staff. While it is within the appellant's right to make complaints regarding the care he was provided by LHSC and to express his concerns publicly, in my view the extent to which he has engaged these forums does not demonstrate a willingness to be cooperative but rather a desire to exacerbate and escalate the conflict between the parties.

[77] Given these circumstances, I conclude that, in addition to seeking information for legitimate purposes, the appellant is using the access regimes under these acts as a means by which to further exacerbate and escalate the conflict he is engaged in with LHSC. In my view, in addition to seeking access to some of the information for legitimate objectives, the appellant's requests are motivated, in part, by this collateral, improper objective.

[78] Therefore, while I cannot conclude that the appellant does not have the legitimate objective of obtaining access to the information, I find that there is sufficient evidence to conclude that he has more than one purpose in making his requests. He has a secondary, yet still relevant purpose, which appears to be the pursuit of furthering his dispute with LHSC. As a result, I find that the appellant's purpose for making these requests is a factor that weighs in favour of finding that a pattern of conduct exists that amounts to an abuse of the right of access. However, given that I also find that he has a collateral, legitimate objective of access to his own records to obtain further information about decisions surrounding his care while an in-patient at LHSC, I find that this factor carries only moderate weight.

### **Requests for information made through other regimes**

[79] As another basis for LHSC's claim that the appellant's request amounts to an abuse of the appellant's right of access, it notes that the appellant has made requests for the same or similar information through other regimes. Specifically, it submits that in addition to the requests that it has received from the appellant under *PHIPA* and *FIPPA*, it has also been contacted by other organizations to assist them in responding to requests for similar information that the appellant has made to those organizations. LHSC refers again to requests submitted by the appellant to LHSC's own Patient Ombudsman's Office, to Community Care Access Centres, and to the SW LHIN, among others.

[80] Previous IPC orders under *FIPPA* and *MFIPPA* have determined that the abuse of the right of access described by the regulation refers only to the access process under the relevant act, and is not intended to include proceedings in other forums.<sup>23</sup> I acknowledge that LHSC has, as a third party, dedicated substantial resources to the processes initiated by the various organizations mentioned in its representations as having been approached by the appellant. However, for the purposes of establishing that a request is frivolous or vexatious under *FIPPA*, as noted, the only forum or proceeding that is considered for the purpose of the analysis under the regulation is the appeal to the institution itself initiated under *FIPPA*. Similarly, for the purposes of establishing that a request is frivolous or vexatious under *PHIPA*, in my view, the only forum or proceeding that should be considered is a complaint under that act.

[81] Accordingly, I do not accept that the appellant's requests for access to information made to other organizations through other regimes is a relevant factor in

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<sup>23</sup> Orders M-1066, M-1071, MO-1427, MO-1519, P-1534 and PO-4158-I.

my consideration of whether the appellant request forms part of a pattern of conduct that amounts to an abuse of the right of access.

Summary of finding on pattern of conduct that amounts to an abuse of the right of access

[82] For the reasons set out above, I accept that in the circumstances of this case the number and timing of the appellant's requests, their nature and scope and the appellant's purpose for making the requests are relevant factors to consider. I find that taken together, these factors weigh in favour of and are sufficient to support a conclusion that the request at issue forms part of a pattern of conduct that amounts to an abuse of the right of access.

[83] Accordingly, I accept that LHSC has provided me with sufficient evidence to establish that the appellant's request forms part of a pattern of conduct that amounts to an abuse of the right of access under section 5.1(a) of Regulation 460 under *FIPPA*. Therefore, I find that LHSC has established reasonable grounds for making a finding that the appellant's request is frivolous or vexatious on that basis under section 10(1)(b) of *FIPPA*. For the same reasons, I also find that LHSC has established reasonable grounds for finding the appellant's request to be frivolous or vexatious under section 54(6) of *PHIPA*.

[84] As a result of my finding, it is not necessary for me to consider whether the request is frivolous or vexatious on any of the other grounds alleged by LHSC. Specifically, I need not consider whether the request forms part of a pattern of conduct that would interfere with LHSC's operations, whether it was made for a purpose other than access or whether it was made in bad faith.

**Summary conclusion**

[85] For the reasons set out above, I find that LHSC has established reasonable grounds for finding that the request at issue is frivolous or vexatious within the meaning of section 54(6) of *PHIPA* or section 10(1)(b) of *FIPPA*. Specifically, LHSC has established that the request is part of a pattern of conduct that amounts to an abuse of the right of access. Accordingly, LHSC was entitled to refuse access to the responsive records on the basis that the request is frivolous or vexatious and I uphold its decision to do so.

[86] Despite my finding that the request is frivolous or vexatious, the appellant is not precluded from making future requests to LHSC for access to information under either *PHIPA* or *FIPPA*. However, as noted above, where an access request is found to be frivolous or vexatious, the IPC may determine an appropriate remedy. This may include imposing conditions such as limiting the number of active requests and appeals the

appellant may have in relation to a particular institution.<sup>24</sup>

[87] In this case, I have decided to limit the number of the appellant's active requests with LHSC to one, single-part, request for information at any given time. The decision to limit the appellant's active matters in this way does not preclude a finding, where appropriate, that any current or future request is frivolous or vexatious. The appellant may apply to this office for an order varying the terms of this order after one year has passed from the date of this order.

[88] The parties are encouraged to take a collaborative approach to the processing of any future requests by the appellant for information to help reduce the workload placed on LHSC resulting from a request that might generate duplicate records or encompass records that are already in the appellant's possession.

[89] With respect to any future requests made by the appellant, I remind LHSC of the fee and time extension provisions of the acts.<sup>25</sup> I note that in responding to any future requests by the appellant, LHSC will need to assess whether the records at issue should be assessed under *PHIPA* or *FIPPA*, including for the purposes of the fee and time extension provisions of those acts. In this regard, I draw LHSC's attention to the definition of "personal health information" in section 4 of *PHIPA*, and previous IPC decisions interpreting that term.<sup>26</sup> I also draw LHSC's attention to previous IPC decisions discussing the appropriate act under which to assess fees.<sup>27</sup>

## **ORDER:**

1. I uphold LHSC's decision that the request is frivolous or vexatious under 54(6) of *PHIPA* and/or 10(1)(b) of *FIPPA*. As a result, this appeal is dismissed, without prejudice to the appellant's right to submit new requests for information in accordance with the conditions set out in provision 2 below.
2. I impose the following conditions on the appellant's access requests to LHSC:
  - a. For a period of one year following the date of this order, I am imposing a one, single-part, request limit on the number of requests under either act that may proceed at any given point in time, including any requests that are outstanding as of the date of this order.

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<sup>24</sup> Order MO-1782 and Order PO-4158-I.

<sup>25</sup> Provisions addressing time extension for the processing of requests are found at sections 54(3) and (4) of *PHIPA* and Sections 27(1) and (2) of *FIPPA*. Provisions addressing fees are found in sections 54(10) and (11) of *PHIPA* and section 57 of *FIPPA*, as well as sections 6, 6.1, 7 and 9 of Regulation 460, under *FIPPA*.

<sup>26</sup> *PHIPA* Decision 117.

<sup>27</sup> *PHIPA* Decision 120.

- b. Subject to the one-request limit described in provision 2(a), if the appellant wishes any part of his requests that currently exist with LHSC to proceed to completion, including any portion of the request that gave rise to this appeal, the appellant shall notify LHSC and advise as to which matter he wishes to proceed.
  - c. Pending this notification, any outstanding requests with LHSC are stayed.
- 3. The terms of this order shall apply to any requests made by the appellant or by an individual, organization or entity acting on his behalf or under his direction.
  - 4. At the conclusion of one year from the date of this order, the appellant, LHSC and or any person or organization affected by this order, may apply to this office to seek to vary the terms of this order, failing which its terms shall continue in effect until such a time as a variance is sought and ordered.

Original signed by: \_\_\_\_\_  
Catherine Corban  
Adjudicator

\_\_\_\_\_ October 5, 2021