

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4247

Appeal PA20-00177

Ministry of Health

March 25, 2021

Summary: The appellant made a request under the *Freedom of Information and Protection of Privacy Act (FIPPA)* to the Ministry of Health (the ministry) for information about Hamilton Paramedical Services' (Hamilton EMS) attendances at McMaster University's athletic centre. In his request, the appellant asked that the responsive information be provided to the Freedom of Information Offices of two named hospitals, and not directly to himself. The appellant's stated aim was to in turn ask the hospitals to cross-reference the information about EMS attendances with patient information already in the hospitals' possession. The appellant explains that by cross-referencing the two types of information, the hospitals will be in a position to provide him with the information he ultimately seeks, which is information about the medical treatment provided to each hospital's patients, as a result of injuries that occurred at the athletic centre.

The ministry denied access to the requested records on the basis that providing the requested information to the hospitals is not permitted under either *FIPPA* or the *Personal Health Information Protection Act (PHIPA)*. The appellant appealed the ministry's decision. In this order, the adjudicator exercises her discretion under section 52(1) of *FIPPA* not to conduct an inquiry into the ministry's decision. The adjudicator also finds that *PHIPA* does not permit the ministry to disclose the requested information to the hospitals. As a result, she finds that the ministry's response to that request cannot be the subject of a complaint under *PHIPA*.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990. C. F.31, as amended, sections 10(1), 21(1)(f), 52(1); *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, sections 2 (definition of "disclosure"), 6(3)(a) and (b), 8(4), 29(a) and (b), 38 to 50, 51(1) and (3), 57 (3) and (4).

OVERVIEW:

[1] This order considers whether I should exercise my discretion not to conduct an inquiry into an appeal of a decision issued by the Ministry of Health (the ministry) relating to the appellant's request made under the *Freedom of Information and Protection of Privacy Act (FIPPA)*.¹ The appellant's request to the ministry was for information related to attendances by Hamilton Paramedical Services (Hamilton EMS) at the David Braley Athletic Centre at McMaster University (the Athletic Centre).²

[2] As background, the appellant submitted requests under *FIPPA* to two hospitals, Hamilton Health Sciences (HHS) and St. Joseph's Healthcare Hamilton (SJHH), for information about any medical treatment provided to individuals as a result of injuries and associated incidents that occurred at the Athletic Centre. Both hospitals denied access to the requested data advising that they do not keep records identifying the location where their patients sustained their injuries or were picked up by Hamilton EMS.

[3] The appellant then made a request under *FIPPA* to the ministry for information related to all instances where Hamilton EMS attended at the Athletic Centre between 2007 and 2017 for a number of specified types of injuries. To respond to the request, the ministry created a record, an Excel spreadsheet, identifying the following information: year, pickup location, pickup address, city, service, destination name (i.e., the hospital the patient was taken to, either HHS or SJHH) and problem (injury) description. The record did not provide any patient identifiers. The ministry granted access to the record that it created. The requester appealed the ministry's decision to the Information and Privacy Commissioner/Ontario (the IPC) and Appeal PA19-00049 was opened. That appeal was resolved through mediation.

[4] As the appellant continued to seek access to the information that he originally requested from HHS and SJHH (information about the medical treatment the hospitals provided to individuals as a result of injuries or incidents that occurred at the Athletic Centre), he sent a subsequent request to the ministry under *FIPPA* for the following information:

1. All information (complete and un-redacted records) related to Hamilton Paramedic Services attendance at the David Braley Athletic Centre at McMaster University since its opening in 2007 until the end of 2017. The requested records are to limited to the following cases (problem description):
 - a. trauma – blunt/assault,
 - b. fracture/dislocation,

¹ Section 52(1) of *FIPPA* and sections 57(3) and (4) of the *Personal Health Information Protection Act (PHIPA)* give the Commissioner (or her delegate) the discretion as to whether or not to conduct an inquiry or a review under those acts, respectively. Those sections will be reproduced and discussed in greater detail below in the discussion section of this order.

² The complete request that is at issue is reproduced in more detail, below.

c. fall,

and when the patients were delivered by EMS to the identified HHS or SJHH facilities (see Tab. 4 (HHS) and 5 (SJHH), attached).

2. In order to protect any type of personal health information (protected under *PHIPA*) the requested records are to be sent directly to
 - a. Hamilton Health Sciences (36 records, Tab. 4) Privacy & Freedom of Information Office
[Facility address, telephone number and email]
 - b. St. Joseph's Healthcare Hamilton (9 records, Tab. 5) Privacy Office
[Facility address, telephone number and email]

[5] In the request, the appellant advised that he would notify the Freedom of Information Offices of HHS and SJHH that the requested data was to be sent directly to them from the ministry.

[6] In a detailed explanation of his request, the appellant referred back to the information in the Excel spreadsheet created and provided to him by the ministry in response to his earlier request for information related to Hamilton EMS attendance at the Athletic Centre between 2007 and 2017 for the identified types of injuries. He enclosed the spreadsheet disclosed to him by the ministry in the previous request as Tab 1 of Attachment A to his request.

[7] The appellant also enclosed with his request Tab 4 and Tab 5, both referred to in the request itself, which were spreadsheets the appellant had created set out in the same format as the one provided to him by the ministry in response to his earlier request. The appellant had taken the spreadsheet provided by the ministry and had created two spreadsheets, one for patients taken to HHS and the other for patients taken to SJHH. The appellant explained that he would like the ministry to provide the information from Tab 4 to HHS and the information from Tab 5 to SJHH.

[8] The appellant explained that by having the ministry provide this information directly to HHS and SJHH, the hospitals would then have in their possession the information they required to respond to the requests that he originally made directly to them. The appellant reasoned that even though the hospitals themselves do not keep records identifying the location where their patients were picked up by EMS, by cross-referencing their own patient records with the information from the records that he is requesting that the ministry provide them with, the hospitals would be able to provide him with information about any medical treatment provided to individuals as a result of injuries and associated incidents that occurred at the Athletic Centre.

[9] The ministry issued a decision in response to the request, denying access to the requested information. It stated:

The Ministry of Health confirms that **unauthorized access** to or disclosure of personal information to anyone other than the individual to whom the personal record pertains without consent of same or a court order granting access, including to the hospitals/offices mentioned in the request, would be classified as a privacy breach. The *Freedom of Information and Protection of Privacy Act (FIPPA)* s.21(1)(f), states: "A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except, if the disclosure does not constitute an unjustified invasion of personal privacy."

The ministry, as custodian of the record, must ensure the confidentiality, security and integrity of the information collected and created for the purpose of providing health care to the patient. The requested records would also be considered [to] contain Personal Health Information and are protected by the *Personal Health Information Protection Act (PHIPA)*. Section 52(3) states: "if a record is not a record dedicated primarily to personal health information about the individual requesting access, the individual has a right of access only to the portion of personal health information about the individual in the record that can reasonably be severed from the record for the purpose of providing access."

[emphasis in original]

[10] The appellant appealed the ministry's decision to the IPC and a mediator was assigned to attempt to help the parties reach a resolution. Once no further mediation was possible, the file was transferred to the adjudication stage of the appeal process where an adjudicator may conduct an inquiry.

[11] As the adjudicator assigned to the matter, I read and considered the appellant's access request, the ministry's decision and the Excel spreadsheets that contain the information that the appellant requests the ministry provide to the hospitals. I informed the appellant, by letter, that I had reached a preliminary decision to exercise my discretion under section 52(1) of the *FIPPA* not to conduct an inquiry and under sections 57(3) and (4) of *PHIPA* not to conduct a review because there was no reasonable prospect of success under either Act. I explained that because the right of access in Part II of *FIPPA* does not contemplate the disclosure of information to a party not requesting access to it, I could not order the ministry to disclose the information in the manner in which he requested. I also explained that *PHIPA* does not require or permit the ministry to provide the requested information to the hospitals in the circumstances. I advised the appellant that if he disagreed with my preliminary assessment, he was to provide me with representations substantiating the need for an inquiry or a review. The appellant provided representations in response, and I have considered them in coming to my decision.

[12] For the reasons set out below, I am unpersuaded that I should change my preliminary assessment. Under section 52(1) of *FIPPA*, I decline to conduct an inquiry into the ministry's decision to deny the appellant's request to provide HHS and SJHH

with the information relating to Hamilton EMS's attendance at the Athletic Centre in response to three different types of injuries.

DISCUSSION:

Discretion to conduct an inquiry or a review

Section 52(1) of FIPPA

[13] Section 52(1) of *FIPPA* gives the Commissioner (or her delegate) the discretion as to whether or not an inquiry will be conducted. That section states:

The Commissioner **may** conduct an inquiry to review the head's decision if,

(a) the Commissioner has not authorized a mediator to conduct an investigation under section 51; or

(b) the Commissioner has authorized a mediator to conduct an investigation under section 51 but no settlement has been effected.

[emphasis added]

[14] In certain circumstances, under this section the IPC will dismiss a matter that is not within its jurisdiction or where the matter should not proceed through the inquiry process for other reasons.

Sections 57(3) and (4) of PHIPA

[15] Section 57(3) and (4) of *PHIPA* give the Commissioner (or her delegate) the discretion as to whether or not to conduct a review. Those sections state, in part:

(3) If the Commissioner does not take an action described in clause (1)(b) or (c) or if the Commissioner takes an action described in one of those clauses but no settlement is effected within the time period specified, the Commissioner **may review the subject-matter of a complaint** made under this Act if satisfied that there are reasonable grounds to do so.

(4) The Commissioner **may decide not to review** the subject matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that,

[...]³

[Emphasis added]

³ Paragraphs (a) to (e) list specific circumstances where the Commissioner may decide not to conduct a review. None of paragraphs (a) to (e) are relevant in this case.

Preliminary assessment letter

[16] On careful consideration of the request, the ministry's decision, the mediator's report and the other material in the file, I concluded, on a preliminary basis, that the appeal had no reasonable prospect of success. My preliminary assessment was that I ought to exercise my discretion under section 52(1) of *FIPPA* not to conduct an inquiry and under sections 57(3) and (4) of *PHIPA* not to conduct a review.

[17] The appellant submitted his request under Part II of *FIPPA*. Section 10(1) of that act grants individuals a general right of access to records in the custody or under the control of an institution, such as the ministry.⁴ In his request, as well as in his communications with the IPC, the appellant states that he is not seeking access to the requested information for himself, but, rather, requests that it be provided to two third parties, the hospitals identified in the request. As Part II of *FIPPA* does not contemplate the disclosure of information to a party not requesting access to it, it was my preliminary view that I cannot make the order the appellant was seeking.

[18] I also considered the provisions of *PHIPA*. I noted that sections 57(3) and (4) of *PHIPA* give me, as the Commissioner's delegate, the discretion as to whether or not to conduct a review into a complaint under that act. I considered the appellant's request, the ministry's decision, the mediator's report and the other information in the file. I made the preliminary assessment that as the appellant did not have a right of access to the requested information under *PHIPA* and as *PHIPA* did not permit or require the ministry to disclose the information to the hospitals in the circumstances, there are no reasonable grounds for me to review the matter under *PHIPA*.

[19] I also noted that the appellant stated that if the information that he requested from the ministry were provided to the hospitals, the hospitals would then be in a better position to respond to the requests for information that he submitted to them.⁵ I stated that the appellant, in his request, as well as in his communications with the IPC, acknowledges that the information that he ultimately seeks from the hospitals likely contains the personal health information of individuals other than himself. However, I noted that the appellant also stated that he is not requesting that this personal health information be provided to him. Rather, I noted, the appellant was requesting that the ministry provide information to the two hospitals to enable them to combine the ministry's information with their own records in a way that would prevent the disclosure of personal health information of other individuals to him.

⁴ Section 10(1) of *FIPPA* states:

Subject to section 69(2), every person has a right of access to a record or part of a record in the custody or under the control of an institution unless,
(a) the record or the part of the record falls within one of the exemptions under sections 12 to 22; or
(b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

⁵ As indicated above, in response to those requests, both hospitals indicated that they did not keep records identifying the location where their patients sustained their injuries or were picked up by Hamilton EMS.

[20] I stated that under *PHIPA*, the right of access to personal health information belongs to the individual to whom the information relates, or to a person authorized to make a request for access on the individual's behalf.⁶ I stated that *PHIPA* does not otherwise provide a general right of access to records of personal health information. I stated that it is clear that if the appellant was seeking access to the requested personal health information from the hospitals, he would have no right of access to it under *PHIPA*.

[21] I acknowledged that *PHIPA* also contains provisions governing when a health information custodian should turn its mind to the disclosure of personal health information.⁷ I stated that under *PHIPA*, disclosure is a separate matter from access, although in some circumstances, a custodian faced with an access request should also turn its mind to whether disclosure is permitted under any of *PHIPA*'s disclosure provisions. I stated, however, that it was my preliminary view that none of the disclosure provisions apply in circumstances of the appellant's request.

[22] For all the reasons set out above, I concluded, on a preliminary basis, that the appeal had no reasonable prospect of success and that, as a result, I should exercise my discretion under section 52(1) of *FIPPA* not to conduct an inquiry and sections 57(3) and (4) of *PHIPA* not to conduct a review. I invited the appellant to provide representations in response.

The appellant's response to the preliminary assessment letter

[23] The appellant provided representations in response to my preliminary assessment letter. In his representations, the appellant confirms that he does not dispute the portions of my preliminary assessment that set out the history and background of his request and of the appeal. He provided the following as his reasons why there is a reasonable basis to conduct either an inquiry under *FIPPA* or a review under *PHIPA*.

[24] The appellant submits that because he specifically requested that the responsive record be sent directly to HHS and SJHH and not himself, his request is not contrary to either *FIPPA* or *PHIPA*. He submits that he has made it clear that he himself does not seek access to the personal information or the personal health information of other individuals. He says that the purpose of requesting that the information be sent to the hospitals was to enable the hospitals to provide him with the information he seeks about patient treatment while ensuring that the personal information or personal health information of others is not disclosed to him. The appellant requests that his appeal be allowed and the ministry be ordered to release the information to the hospitals as requested.

[25] The appellant submits that when considering whether I should conduct an inquiry under *FIPPA*, the key portion of the ministry's decision that I should consider is

⁶ See section 52(1) of *PHIPA*.

⁷ Disclosure under *PHIPA* is set out Part IV, sections 38 through 50.

the last sentence of the first paragraph which reproduces the text of section 21(1)(f) of *FIPPA*. The appellant reproduced the text of that section, as follows, highlighting the portion that he submits is particularly relevant to my decision of whether or not to conduct an inquiry:

21(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates **except,**

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

[Emphasis added by appellant].

[26] The appellant reiterates that the requested records are to be sent directly to the hospitals, and not to him. He submits that the ministry governs the Ontario health care system of which the ministry itself and the medical providers, including hospitals, are a part. He submits that "sharing the requested information within this system, including ... the personal [health] information of patients (i.e. their [Ontario Health Insurance Plan] related information) is a business procedure which is natural for all health care affiliates." He submits:

This procedure is regulated by law to allow natural flow of information/documents in order to provide health care services to all Ontario residents.

Therefore, sending the requested information to the health care affiliates, namely Hamilton Healthcare Sciences (HHS) and St. Joseph's Healthcare Hamilton (SJHH) **cannot be qualified as a disclosure of personal information or unauthorized access to this information.** As such, this can [not be] **classified as a privacy breach.**

[Emphasis in original].

[27] The appellant refers to the *Statement of Information Practices* found on the ministry's website,⁸ which states that the ministry uses and discloses personal health information to, among other purposes: plan and manage the health system, facilitate the provision of health care, and analyze data by/through prescribed entities to inform health sector planning and management.

[28] The appellant also notes that the ministry, in denying access to the requested information, referenced section 52(3) of *PHIPA* which states:

...If a record is not a record dedicated primarily to personal health information about the individual requesting access, the individual has a right of access only to the portion of personal health information about

⁸ The appellant enclosed this document with his representations.

the individual in the record that can reasonably be severed from the record for the purpose of providing access.

[29] The appellant submits that his request is fully compliant with section 52(3) of *PHIPA* because, in order to protect any personal health information, he specifically requested that the responsive record be sent directly to HHS and SJHH. Section 52(3), which relates to section 52(1) of *PHIPA* that addresses an individual's right of access to a "record of personal health information about the individual,"⁹ considers the severability of a record of personal health information about the individual.¹⁰

[30] Finally, the appellant notes that in my letter to him I stated:

...[A]s Part II of *FIPPA* does not contemplate the disclosure of information to a party not requesting access to it, it is my preliminary view that I cannot make such an order.

[31] The appellant submits that he "cannot accept [that] statement" as a valid reason for my inability to make an order based on the arguments that he has presented in his representations, set out above. He also submits that he cannot accept that statement as a valid reason for my inability to conduct an inquiry because this was not the position of the ministry itself. He submits that the ministry stated their position differently and the way in which they stated their position "contradicts the established system for the regular flow of information as it is organized in the entire Health Care system in Ontario." He submits that:

Dismissing the appeal [on the basis of that statement] will create a dangerous precedent for abusing widely the right [to] information in the future. As an example, a head of an institution could easily reject any request when the requested information, in order to be collected, is claimed to be moved between different parts, departments/services/affiliates, of that institution.

Analysis and findings

[32] I have considered the appellant's representations in response to my preliminary assessment letter. I find that they do not establish any grounds on which I should revise my preliminary decision that neither *FIPPA* nor *PHIPA* permit the appellant to request that the ministry provide specific information to the two hospitals named in his request. For the reasons set out below, I maintain that because the appellant's appeal

⁹ Section 52(1) sets out an individual's 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. That section will be reproduced and discussed in more detail below, in the Analysis and Findings section of this order.

¹⁰ Section 52(3) states:

Despite subsection (1), if a record is not a record dedicated primarily to personal health information about the individual requesting access, the individual has a right of access only to the portion of the personal health information about the individual in the record that can reasonably be severed from the record for the purpose of providing access.

has no reasonable prospect of success under *FIPPA* I should exercise my discretion under section 52(1) to decline to conduct an inquiry. I also maintain that the matter should not be addressed as a complaint under *PHIPA*.

Consideration of the request under FIPPA

Access under FIPPA

[33] The appellant's submissions do not provide any basis upon which to change my preliminary view that Part II of *FIPPA* does not contemplate an institution, in response to an access request, disclosing information to a party other than the requester or their authorized representative.

[34] As noted above, section 10(1) of *FIPPA* grants individuals a general right of access to records in the custody or under the control of an institution, such as the ministry. It states, in part:

Subject to section 69(2), every person has a right of access to a record or part of a record in the custody or under the control of an institution unless,

(a) the record or the part of the record falls within one of the exemptions under sections 12 to 22; or

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

[35] In his representations, the appellant reiterates that he is not seeking access himself to the requested information under *FIPPA* but, rather, he is requesting that that information, which is in the custody or under control of the ministry, be provided to two third parties, the hospitals identified in the request. Under Part II of *FIPPA* the right of access belongs to the party requesting access to it and does not contemplate the disclosure of information to a party not requesting access to it. As a result, I find that *FIPPA* does not require the ministry to disclose the information to the hospitals as requested by the appellant and I cannot order it to do so.

[36] As I cannot order the ministry to comply with to the appellant's request, the appeal does not have a reasonable prospect of success. For this reason, I exercise my discretion under section 52(1) of *FIPPA* not to conduct an inquiry.

[37] I note the appellant's submission that disclosure of the information to the hospitals would not be an unjustified invasion of personal privacy. However, that is not the issue. For the reasons stated above, I cannot make the order the appellant seeks under *FIPPA*.

Access and disclosure under PHIPA

[38] Similarly, the appellant's submissions do not provide any persuasive basis for me

to change my preliminary assessment that *PHIPA* cannot be interpreted as granting the appellant the right to request that the ministry provide the requested information to the hospitals.

Access under PHIPA

[39] An individual's right of access is set out in Part V of *PHIPA*, and specifically, section 52(1), which states, in part:

52(1) Subject to this Part [Part V of *PHIPA*, which sets out rights of access and correction], 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,¹¹

[40] It is not evident that the records that the appellant has requested that the ministry provide to the hospitals are records of personal health information, although they may be. The appellant himself states that by his request he is not seeking personal health information, and he made his access request under *FIPPA*, not *PHIPA*. If the records are not records of personal health information, *PHIPA* does not apply at all.

[41] Even if the records are records of personal health information, the appellant does not argue that they contain his own personal health information. Under section 52(1), the right of access to a record of personal health information under *PHIPA* belongs to the individual to whom that personal health information relates. *PHIPA* does not provide for a general right of access to information.

[42] The appellant does not dispute that he does not have a right of access under *PHIPA* to the personal health information of others. He states clearly that he does not seek the personal health information of any individual. The appellant makes it clear that he seeks general information that contains no personal health information.

[43] Moreover, and in any event, *PHIPA*'s access provisions do not give the appellant the right to request that access to the personal health information of other individuals be provided to a third party (in this case, the hospitals), for the purpose of the latter health information custodian's response to an access request. Since I cannot order the ministry to do so, a review under *PHIPA* would not have a reasonable prospect of success and I would exercise my discretion under sections 57(3) and (4) of *PHIPA* not to conduct one.

Disclosure under PHIPA

[44] I also find that *PHIPA* does not permit or require the ministry to disclose the requested information to either the appellant or to the hospitals named in the request.

[45] In addition to the right of access discussed above, *PHIPA* contains disclosure provisions which, if applicable, permit a health information custodian to disclose

¹¹ Paragraphs (a) to (f) list a number of exceptions to that right.

personal health information in certain circumstances.¹² In some cases where a requester has been found not to have a right of access under *PHIPA*, the IPC has considered the potential application of these disclosure provisions.¹³

[46] The disclosure provisions are in keeping with one of *PHIPA*'s central purposes which is that, in order to protect the confidentiality of personal health information and the privacy of individuals while facilitating the effective provision of health care, the disclosure of personal health information must occur with consent, except in specified circumstances.¹⁴

[47] Section 29 of *PHIPA* considers that disclosure can either be made with the consent of the individual whose personal health information is at issue or without the consent of that individual.¹⁵ Disclosure of personal health information without the individual's consent is prohibited unless specific provisions of *PHIPA* apply to permit a health information custodian to disclose the information.

[48] Sections 38 to 50 of *PHIPA* set out a number of circumstances in which a health information custodian can exercise its discretion to disclose personal health information without the consent of the individual to whom the personal health information relates.

These circumstances include disclosures:

- related to providing health care (section 38),
- for health or other programs (section 39),
- related to risks (section 40),
- for proceedings (section 41),
- to a successor of the health information custodian (section 42),
- related to specific circumstances in *PHIPA* or other Acts (section 43),
- for research (section 44),
- for planning and management of the health system (section 45),

¹² The term "disclose" is defined at section 2 of *PHIPA* to mean, in relation to personal health information in the custody or under the control of a health information custodian or a person, "to make the information available or to release it *to another health information custodian or to another person*, but does not include to use the information, and "disclosure" has a corresponding meaning." (my emphasis)

¹³ See, for example, *PHIPA* Decisions 20, 96, 128 and 158.

¹⁴ See *PHIPA* Decision 96.

¹⁵ Section 29 of *PHIPA* states:

A health information custodian shall not collect, use or disclose personal health information about an individual unless,

- a. it has the individual's consent under this Act and the collection, use or disclosure, as the case may be, to the best of the custodian's knowledge, is necessary for a lawful purpose; or
- b. the collection, use or disclosure, as the case may be, is permitted or required by this Act.

- for monitoring health care payments (section 46),
- for analysis of the health system (section 47),
- from a health data institute to the Minister of Health with the Commissioner's approval (section 48), and
- outside of Ontario (section 50).

[49] *PHIPA* clarifies that health information custodians considering sections of *PHIPA* that permit disclosure without consent are not *required* to disclose the information, unless another law requires it.¹⁶ Rather, the disclosure provisions set out exceptions for when health information custodians *may* disclose personal health information without violating their privacy obligations under *PHIPA*. At the same time, *PHIPA* explicitly recognizes that health information custodians may be subject to disclosure requirements outside of *PHIPA*.¹⁷ In those cases, *PHIPA* itself does not require disclosure – that requirement comes from other sources of law.

[50] The IPC cannot order disclosure of personal health information under the discretionary disclosure provisions in *PHIPA*, but can review a health information custodian's exercise of discretion not to disclose information under those provisions.¹⁸

[51] In this case, there is no evidence that consent to disclose has been provided by any individual to whom any personal health information relates. Additionally, there is no evidence before me to suggest that any of the provisions in *PHIPA* that permit disclosure without consent might be relevant in the present case.

[52] There is also no evidence before me to suggest that the ministry is required by law to disclose the information requested by the appellant to the hospitals that he identified in his request.

[53] I find that in the circumstances here, *PHIPA* does not permit the ministry to disclose the requested information, either to the appellant or to the hospitals named in the request. There is therefore also no exercise of discretion to review.

Appellant's other arguments

[54] I have considered the appellant's argument that because the hospitals to which he asks that the information be sent operate within the same "system" as the ministry

¹⁶ Section 6(3) of *PHIPA* states:

A provision of this Act that permits a health information custodian to disclose personal health information about an individual without the consent of the individual,

- a. does not require the custodian to disclose it unless required to do so by law;
- b. does not relieve the custodian from a legal requirement to disclose the information; and
- c. does not prevent the custodian from obtaining the individual's consent from the disclosure.

¹⁷ Ontario, Ministry of Health and Long-Term Care, *Personal Health Information Protection Act, 2004: An Overview for Health Information Custodians* (August 2004), at page 20; *PHIPA* Decision 96.

¹⁸ *PHIPA* Decisions 96 and 128.

they are allowed to receive the information without it being “qualified as a disclosure of personal information” in contravention of *FIPPA* or “classified as a privacy breach.” In particular, I have considered the appellant’s submission that disclosure of the requested information by the ministry to the hospitals is permitted under *PHIPA* as it forms part of the “natural flow of information” necessary to provide health care services to Ontarians.

[55] In this case, the appellant is not requesting that the ministry provide information directly to the hospitals for the purpose of providing health care services to Ontarians. Rather, the appellant is requesting that the ministry provide the hospitals with information for the purpose of responding to his access request.

[56] More generally, although the appellant appears to assume that personal information or personal health information can be shared freely between the ministry and hospitals or other medical facilities, this is not the case. As health information custodians under *PHIPA*, the ministry and each hospital must comply with *PHIPA* when providing access to or disclosure of personal health information. For the reasons set out above, I find that in the circumstances, *PHIPA* does not permit or require the ministry to disclose the type of information requested by the appellant to HHS or SJHH, and the appellant’s submissions do not persuade me to conclude otherwise.

[57] The appellant submits that the ministry’s Statement of Information Practices (the statement), which describes its treatment of personal health information governed by *PHIPA*¹⁹ suggests that the ministry can share the requested information with the hospitals. The statement contains, among other things, statements about how the ministry collects, uses, and discloses personal health information, how individuals can access and correct records of their own personal health information, and practices and safeguards that the ministry maintains with respect to personal health information. The appellant has highlighted portions of the statement that indicate that the ministry can disclose personal health information for various purposes, including: planning and managing the health system, facilitating the provision of health care, and analyzing data to inform health sector planning and management.

[58] Having reviewed the statement, I do not accept that it supports the appellant’s position that either *FIPPA* or *PHIPA* permits the appellant to request that personal health information be shared directly between the ministry and hospitals.

[59] The appellant rejects my view, expressed in my preliminary assessment letter, that because Part II of *FIPPA* does not contemplate the disclosure of information to a party not requesting access to it, I cannot order the ministry to provide the requested information to the hospitals in accordance with his request. He submits that he does not accept this as a basis for me to exercise my discretion not to conduct an inquiry because the ministry did not take this position in its decision letter responding to his request. However, the fact that the ministry did not make such a statement when it responded to the appellant’s request is not determinative. I must apply the statutes

¹⁹ The appellant enclosed this statement with his representations. It is also publicly available on the ministry’s website.

that govern the IPC. As previously mentioned, Part II of *FIPPA*, which governs access to records in the custody of or under the control of an institution, does not contain any provisions that contemplate that information be disclosed to a party not requesting access. The appellant's representations in this respect do not persuade me that my interpretation of the right of access in Part II of *FIPPA* is incorrect.

[60] Finally, I disagree with the appellant's position that refusing to conduct an inquiry will create a "dangerous precedent" permitting institutions to decline to process access requests where the responsive information must be gathered from, and moved between, different parts or departments of that institution. The scenario described by the appellant is not the same as the one before me here. The two hospitals to which the appellant wants the ministry to provide the requested information are not part of the ministry; they are separate institutions under *FIPPA* and separate health information custodians under *PHIPA*. The hospitals act independently from the ministry in responding to requests for information under both *FIPPA* and *PHIPA*.

Conclusion

[61] For the reasons set out above, the appellant has not persuaded me that I should conduct an inquiry under *FIPPA* or a review under *PHIPA*. In my view, the appellant does not have a right under either of those two Acts to request that the ministry provide the requested information to the two named hospitals; neither of those Acts permit me to order the ministry to do so. As I cannot order the ministry to grant the appellant's request, neither an appeal under *FIPPA* nor a complaint under *PHIPA* has a reasonable prospect of success.

[62] Accordingly, I exercise my discretion under section 52(1) of *FIPPA* not to conduct an inquiry into this appeal.

[63] Similarly, if matter had come to the IPC as a complaint under *PHIPA*, I would exercise my discretion under sections 57(3) and (4) of *PHIPA* not to conduct a review.

[64] I dismiss the appellant's appeal.

ORDER:

Under section 52(1) of *FIPPA*, I decline to conduct an inquiry into the ministry's decision issued in response to the appellant's request and I dismiss the appeal.

Original Signed by: _____

Catherine Corban
Adjudicator

March 25, 2022 _____