

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 55

Complaint HA16-102-2

September 29, 2017

Summary: The complainant sought access to his minor daughter's records of personal health information from a chiropractor who saw his daughter on one occasion. After receiving the chiropractor's response and copies of the requested records, the complainant challenged the reasonableness of the chiropractor's search for responsive records. No review of the complaint is warranted in accordance with sections 57(3) and 57(4)(a) as there are no reasonable grounds for a review and the chiropractor has responded adequately to the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004*, sections 53(2), 57(3) and 57(4)(a).

Decisions Considered: PHIPA Decisions 18, 43 and 48.

BACKGROUND:

[1] The complainant filed a complaint with the Office of the Information and Privacy Commissioner of Ontario (IPC) under the *Personal Health Information Protection Act, 2004 (PHIPA)* regarding his request for access under *PHIPA* to his minor daughter's records of personal health information. The basis for the complaint was the complainant's belief that additional records of personal health information should exist beyond those disclosed to him by the chiropractor to whom he made his access request.

[2] The IPC attempted mediation of the complaint. A mediated resolution was not possible and the complaint was moved to the adjudication stage of the IPC's process for *PHIPA* complaints. After reading the complaint file, I sent the complainant a letter

advising him of my preliminary view that his complaint does not warrant a review pursuant to sections 57(3) and 57(4)(a) of *PHIPA* because there are no reasonable grounds to review the subject-matter of his complaint and because the chiropractor has responded adequately to his complaint. In my letter, I invited the complainant to provide written submissions to explain why his complaint should proceed to a review under *PHIPA* in the event that he disagreed with my preliminary view. The complainant did not provide any written submissions within the extended period of time that I gave him to do so.

[3] In the circumstances, I find that the complaint does not warrant a review under *PHIPA* in accordance with sections 57(3) and 57(4)(a) because there are no reasonable grounds for a review and the chiropractor has responded adequately to the complaint.

DISCUSSION:

[4] There is no dispute and I find that the chiropractor is a "health information custodian" under paragraph 4.i. of section 3(1) of *PHIPA* and the records to which the complainant seeks access are "personal health information" under section 4(1)(a) of *PHIPA*.

[5] On August 8, 2016, the complainant made a request under *PHIPA* to the chiropractor for access to the personal health information of his daughter and son. The complainant shares joint custody of his children with his former spouse. On October 7, 2016, the chiropractor issued a decision advising the complainant that she only provided treatment to his daughter and disclosing to him his daughter's records in their entirety. These records included the intake paperwork filled out for the complainant's daughter by his former spouse, a copy of the computerized scans that the chiropractor performed (static EMG and Thermography), a history/examination form, and a description of the one adjustment the chiropractor performed on the complainant's daughter on November 26, 2015.

[6] The complainant then filed this complaint with the IPC questioning the chiropractor's search for records and insisting that additional records exist, specifically: a consent for treatment, a copy of a report that he asserts the chiropractor provided to his former spouse, and notes of telephone calls that he has had with the chiropractor.

[7] During mediation of the complaint, and as noted in the Mediator's Report provided to the complainant, the chiropractor confirmed in writing that she only saw the complainant's daughter once and that she has disclosed the complainant's daughter's complete file to him. She also advised that the complainant's former spouse attended her office for a "report of findings" appointment, however, there are no records from this appointment as it was a "verbal explanation" of the scan results and a "recommendation for care." The chiropractor added that she verbally explains all scan results to patients "due to the complexity and advanced technology" and she does not

provide “written scan reports” to any of her patients. Despite the chiropractor’s response and confirmation that no other records exist, the complainant asked that his complaint proceed to adjudication so that the reasonableness of the chiropractor’s search for responsive records could be reviewed.

[8] The IPC has recently addressed the issue of whether a custodian conducted a reasonable search for records under *PHIPA* in PHIPA Decisions 18, 43 and 48, which adopted and applied reasonable search principles the IPC has established under the *Freedom of Information and Protection of Privacy Act*, and the *Municipal Freedom of Information and Protection of Privacy Act*. PHIPA Decisions 18, 43 and 48 have found that:

- The custodian must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.
- A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.
- Although a requester will rarely be in a position to indicate precisely which records the custodian has not identified, the requester must still provide a reasonable basis for concluding that such records exist.

Analysis and finding

[9] The circumstances of this complaint make it unnecessary for me to conduct a review of the reasonableness of the chiropractor’s search for records. The complainant’s access request for his daughter’s personal health information contained sufficient detail to enable the chiropractor to identify and locate the responsive records with reasonable effort as required by section 53(2) of *PHIPA*. Because the chiropractor saw the complainant’s daughter only once as a patient in her office, it was easy for her to conduct a reasonable search and locate the requested records. The number of records disclosed to the complainant by the chiropractor appears to be consistent with the fact that the complainant’s daughter had a single appointment with the chiropractor. The chiropractor also responded to the complainant’s assertion that a written report of findings exists by categorically denying it, and confirming that she had a final appointment with the complainant’s former spouse to explain the results and her recommendations verbally, which is her normal practice. The complainant provides no reasonable basis for me to conclude that additional records exist.

[10] Having reviewed and considered the complaint and the chiropractor’s response, I find that the chiropractor responded adequately to the complaint, and that there is no reasonable basis to believe that additional responsive records exist.

[11] Sections 57(3) and 57(4)(a) set out my authority to decline to review a complaint as follows:

(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,

(a) the person about which the complaint is made has responded adequately to the complaint.

[12] In accordance with my authority under sections 57(3) and 57(4)(a) of *PHIPA*, and for the reasons set out above, I decline to review this complaint because there are no reasonable grounds to commence a review of the subject-matter of the complaint and the chiropractor adequately responded to the complaint. I issue this decision in satisfaction of the notice requirement in section 57(5) of *PHIPA*.

NO REVIEW:

For the foregoing reasons, no review of this matter will be conducted under PART VI of the *Act*.

Original Signed By: _____
Stella Ball
Adjudicator

_____ September 29, 2017