

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 66

Complaint HA17-66

A Community Health Centre

January 12, 2018

Summary: The complainant complained about the decision of a community health centre in response to a correction request. That decision was to grant all the corrections requested by the complainant. The complainant has not clarified the nature of her complaint, nor provided consent in respect of her personal health information. As the basis for the complaint is unclear, the adjudicator finds that no review is warranted under the *Act*.

Statutes Considered: *Personal Health Information Protection Act, 2004*, ss. 55(8), 57(3), 57(4).

Decision Considered: PHIPA Decision 36.

BACKGROUND:

[1] The complainant made a request to a community health centre for access to her records of personal health information. After receiving access, she requested six corrections to her records. The complainant was dissatisfied with the centre's responses to her requests, and filed a complaint to the Office of the Information and Privacy Commissioner/Ontario (this office, or the IPC) under the *Personal Health Information Protection Act, 2004* (the *Act*).

[2] The IPC opened this complaint file to address the complainant's apparent dissatisfaction with the centre's response to her correction request, which was to grant all six of her requested corrections. After an unsuccessful attempt at mediation, the file was moved to the adjudication stage. I sent the complainant a letter setting out my

preliminary assessment that the complaint does not warrant a review under the *Act*. I invited the complainant to provide written submissions for my consideration before making a final decision on the matter. The complainant chose not to make any submissions.

[3] In this decision, I confirm my preliminary assessment. I decline to conduct a review under the *Act*.

DISCUSSION:

[4] There is no dispute, and I find, that the community health centre is a "health information custodian" under paragraph 4.vii of section 3(1) of the *Act*. In addition, based on the nature and description of the records that are the subject of the complaint, I am satisfied that they are records of the complainant's "personal health information" within the meaning of section 4 of the *Act*, including under paragraphs (a) and/or (b) of the definition at section 4(1).¹

[5] Section 55(8) of the *Act* sets out a right of correction to records of personal health information in some circumstances. This section states:

The health information custodian shall grant a request for a correction under [section 55(1)] if the individual demonstrates, to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information and gives the custodian the information necessary to enable the custodian to correct the record.

[6] The *Act* thus requires that the individual asking for the correction:

- demonstrate, to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information, and
- give the custodian the information necessary to enable the custodian to correct the record.

[7] There is no duty to correct where the individual requesting correction has not met the requirements of section 55(8).

[8] Furthermore, in all cases where a complaint regarding a custodian's refusal to correct records of personal health information is filed with this office, the individual seeking the correction has the onus of establishing that the "record is incomplete or inaccurate for the purposes for which the custodian uses the information" pursuant to

¹ These sections include in the definition of "personal health information" under the *Act* identifying information about an individual that relates to her physical or mental health (paragraph (a)) and to the providing of health care to her (paragraph (b)).

section 55(8).²

[9] This complaint file was opened to address a complaint about the decision of the community health centre (the Custodian) in response to the complainant's October 18, 2015 correction request. The correction request set out six items that the complainant sought to have corrected in the Custodian's records of her visits on two specified dates. In its October 12, 2016 decision (the revised decision), the Custodian agreed to make all six of the corrections set out in her correction request.

[10] The revised decision was made by the Custodian to address issues arising in an earlier complaint filed by the complainant to this office. That earlier complaint concerned the Custodian's original decision on her October 18, 2015 correction request and her request for access. The original decision on her correction request had been to incorporate the requested revisions and comments as an addendum to her records, and to make one amendment to her records. The Custodian also granted access to records. The complainant was dissatisfied with the Custodian's response on both correction and access matters. The IPC opened Complaint HA16-71 to address these issues.

[11] The revised decision addressed both matters raised by Complaint HA16-71.

[12] In a letter dated December 23, 2016, an analyst with the IPC asked the complainant to consider the effect of the revised decision on her correction complaint. If dissatisfied with that decision, the complainant was advised to file a new complaint to this office, specifying what aspects of the revised decision she disagrees with, and the reasons. If, instead, the complainant wished to have new corrections made to her records, she was advised to submit a new request directly to the Custodian.

[13] In a letter to the IPC dated January 17, 2017, the complainant complained about outstanding inaccuracies in her records of personal health information. As a result, this file, Complaint HA17-66, was opened to address her complaint regarding the Custodian's revised decision on her correction request. (As the complainant's letter did not raise any issues concerning access to her records, Complaint HA16-71 was closed.)

[14] Complaint HA17-66 was moved directly to the mediation stage of the complaint process. During mediation, the mediator asked the complainant for her consent to obtain from the Custodian copies of her records of personal health information at issue in the complaint. He also asked the complainant to identify her specific concerns about the Custodian's revised decision on her correction request, as her letter did not provide these details. The mediator made these requests in a number of emails to the complainant. The mediator also informed the complainant that without her consent to obtain the records, it may not be possible to process the complaint and that the matter may be closed.

[15] The complainant did not provide either her consent or further details regarding

² PHIPA Decision 36.

her correction complaint. The file was moved to the adjudication stage for a decision by the adjudicator.

[16] In arriving at my preliminary assessment in this matter, I considered, among other things, an unsolicited ten-page fax submission from the complainant sent to this office shortly after the close of mediation. In my letter to the complainant, I observed that her submission included copies of her January 17, 2017 complaint letter to the IPC and the Custodian's revised decision (both of which were already contained in the file) and other materials, but that these do not assist in clarifying her complaint.

[17] The complainant did not respond to my invitation for submissions on my preliminary assessment.

[18] Sections 57(3) and (4) of the *Act* set out this office's authority to review or not to review a complaint. These sections state, in part:

(3) If the Commissioner does not take an action described in clause (1) (b) or (c) [which relate to attempts at settlement] 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 [...]

[19] I conclude that there are no reasonable grounds to review this matter under the *Act*.

[20] In her letter of complaint to this office, the complainant asserts that the Custodian's records "still contain typos and subtle inaccuracies," but she does not specify what these inaccuracies are, or how they relate to the Custodian's revised decision to grant all the corrections itemized in her October 18, 2015 correction request. I observe that in that request to the Custodian, the complainant states that she has identified some typographical errors in the records, but chooses not to raise them. Given this, it is unclear what portions of her correction request were not addressed by the Custodian's revised decision.

[21] It is possible that the complaint is instead about the Custodian's refusal in respect of some other correction request made by the complainant. If that is the case, the complainant has not made this clear. She has not referred to or provided a copy of another correction request, or another decision by the Custodian that could be the subject of her complaint.

[22] In either case, despite repeated requests by this office, the complainant has not provided the basic information required to support a complaint about the Custodian's

refusal to correct records of her personal health information. It is not evident from the information before me that there has even been a refusal to correct.

[23] As the complainant has also refused to provide her consent regarding her personal health information,³ I do not have a copy of the records at issue before me. Where a complainant does not provide this consent, the IPC will consider whether it can fairly and adequately address the complaint, and, where the IPC determines that it cannot do so, may decide to close the complaint.⁴ It is my view that I cannot fairly and adequately address this complaint in these circumstances. It is also my view that this is not a proper case to dispense with consent under section 60(13) of the *Act*. Among other reasons, the nature of the complaint is unclear, and I have no evidence of a public interest in carrying out the review that justifies dispensing with consent.

[24] I conclude that the lack of clarity about the nature of the complaint is a proper reason not to review the subject-matter of the complaint under section 57(4) of the *Act*. I decline to conduct a review under the *Act*.

NO REVIEW:

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

Original signed by: _____
Jenny Ryu
Adjudicator

_____ January 12, 2018

³ A person wishing to make a correction complaint to this office should include, in her written notice of complaint, a statement of whether she consents to the IPC's inspecting a record of, requiring evidence of, or inquiring into, her personal health information as reasonably necessary for the purpose of processing the complaint: IPC *Code of Procedure for Matters under the Personal Health Information Act, 2004* (*Code*), section 4.01(f).

⁴ *Code*, section 4.02(a).