

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 65

Complaint HA16-37

London Health Sciences Centre

January 9, 2018

Summary: The complainant made a request under the *Act* for records relating to her late mother's 2014 admittance at the London Health Sciences Centre (the custodian). The custodian located records responsive to the request and granted the complainant complete access to them. The complainant requested a review on the basis that additional records should exist. In this decision, the adjudicator upholds the custodian's search and dismisses the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004*, section 53.

BACKGROUND:

[1] The complainant submitted a request to the London Health Sciences Centre (the custodian) under the *Personal Health Information Protection Act* (the *Act* or *PHIPA*) for access to her late mother's medical records. I will refer to the complainant's mother as the deceased in this decision. Specifically, the complainant stated that she seeks access to "all radiology reports and notes – all nurses' notes – all attending doctors' notes." The complainant later clarified her request to be for the entire file for the deceased's June 6-8, 2014 emergency visit. The complainant is the Estate Trustee of the deceased's estate.

[2] The custodian granted the complainant complete access to the responsive records. After reviewing the records, the complainant advised the custodian that she believed additional responsive records should exist. The custodian replied that it

disclosed all of the responsive records to the complainant.

[3] The complainant filed a complaint regarding the custodian's decision.

[4] During mediation, the custodian agreed to conduct another search for responsive records and provided the mediator with details of the searches it conducted, including the types of files it searched, the locations searched and the names, job titles and experience of the staff who conducted the searches.

[5] The custodian located additional progress notes relating to the deceased's June 2014 admittance. The custodian explained that these records were not previously located due to human error and technical challenges with its electronic health records management system. The custodian disclosed these additional records to the complainant.

[6] After reviewing the additional records, the complainant confirmed that she believes additional responsive records exist and provided the mediator with a detailed list of the types of notes or records she believes are missing from those she received from the custodian. The mediator shared this list with the custodian and the custodian provided the complainant with a detailed response, addressing each type of note or record the complainant believes ought to exist.

[7] A mediated resolution could not be reached and the complaint was transferred to the adjudication stage of the complaint process where an adjudicator may conduct a review. I decided to conduct a review of this complaint and sought and received representations from the custodian and the complainant. The parties' representations were shared with each other in accordance with this office's practice.

[8] For the reasons that follow, I uphold the custodian's search for responsive records and find that its efforts to locate records containing the information sought by the complainant were reasonable. Accordingly, I dismiss the complaint.

DISCUSSION:

[9] The sole issue to be decided in this complaint is whether the custodian conducted a reasonable search for records responsive to the request. The complainant takes the position that additional records relating to the deceased's June 2014 admittance ought to have been located by the custodian in its search for records.

[10] In light of the complainant's position, I requested that the custodian provide me with an affidavit sworn by the individual who conducted or coordinated the searches, outlining the steps they took to locate the responsive records. The custodian provided two affidavits sworn by the Manager of Health Information Management (the manager) and the Release of Information Specialist (the specialist).

[11] The manager confirms that she was directly involved in the searches conducted in response to the complainant's request. The manager states that she is also aware of the searches conducted by other custodian staff members and made the appropriate inquiries with regard to information that is not within her direct knowledge. The manager states the complainant has made five requests for information relating to her mother's June 2014 admittance. The manager summarized the complainant's five requests, the resulting communications between the complainant and the custodian, and the records disclosed to the complainant.

[12] During the complaint process with the IPC, the manager states the custodian discovered that it inadvertently failed to disclose progress notes to the complainant. The custodian states that these notes relate to the deceased's August 2 to December 22, 2013 visit. The manager confirms the custodian disclosed these records to the complainant in August 2016.

[13] The manager states that she and two other individuals conducted the searches for the records responsive to the complainant's request. The manager states the other two individuals were the Coordinator, Health Information Management, and the specialist. The manager states the custodian searched the paper and electronic records for responsive records to each of the complainant's requests. The manager states that all of the deceased's charts are locked in a filing cabinet at the Release of Information Office in the Health Information Management department.

[14] Additionally, the manager states that the coordinator and the specialist met with the Manager and the Clinical Educator of the University Hospital Emergency Department to verify that all records were provided to the complainant in response to her requests. The manager states that the Health Information Management staff also contacted the Site Chief of the Emergency Department to discuss its record-keeping practices.

[15] The manager states that the relevant members of the Emergency Department reviewed the documentation contained in the record and confirmed that all documentation relating to the June 2014 admittance is contained in the paper and electronic record. The manager affirms that she provided the complete record to the complainant. The manager further believes there are no records relating to the June 2014 admittance that were destroyed or are otherwise missing from the record. The manager submits that based on the investigation and search outlined above, the custodian conducted a reasonable search for responsive records.

[16] The specialist also swore an affidavit confirming the information contained in the manager's affidavit. The specialist submits the custodian conducted a reasonable search for responsive records.

[17] In response, the complainant submits she should have received notes prepared by an identified doctor (Physician A). The complainant submits that her mother's Personal Claim History with OHIP identifies this doctor as the individual who requested

a consult to General Surgery. In addition, the complainant submits there is a missing summary note or reassessment from a second identified doctor (Physician B).

[18] I invited the custodian to submit representations in response to the complainant's submissions. The custodian confirms that Physician A was not the attending physician for the deceased's June 2014 admittance and was not involved in the deceased's care. The custodian states that Physician B was the attending physician for the deceased's emergency visit in June 2014. The custodian submits it is unaware of any billing information that would list Physician A as the referring physician and directs the complainant to contact its billing office. With regard to Physician B's notes, the custodian confirms that the complainant received all of the responsive records and refers to the specific portions of the records disclosed that contain the information the complainant submits is missing. The custodian confirms that Physician B did not conduct any additional reassessments.

[19] In her further reply representations, the complainant takes issue with how the emergency physician and nurses treated her mother during the June 6, 2014 admittance. The complainant also raises a number of concerns with the manner in which the hospital staff documented her mother's treatment. Finally, in both sets of her representations, the complainant alleges that the Health Information Management staff treated her poorly in response to her request and this complaint. I confirm that these issues are not relevant to the issue of whether the custodian conducted a reasonable search for records responsive to her request. Therefore, I will not comment on them in my analysis of the custodian's search below.

[20] Where a complainant claims that additional responsive records exist beyond those identified by a health information custodian, the issue to be decided is whether the custodian conducted a reasonable search for records as required by sections 53 and 54 of *PHIPA*. A reasonable search under *PHIPA* 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.¹ To be responsive, a record must be *reasonably related* to the request.² If the custodian does not provide sufficient evidence to demonstrate it made a reasonable effort to identify and locate all of the responsive records within its custody or control, I have the authority to order a further search.³

[21] *PHIPA* does not require the custodian to prove with absolute certainty that further records do not exist. However, the custodian is required to provide sufficient evidence to demonstrate it made a reasonable effort to identify and locate responsive records.⁴

¹ See *PHIPA* Decisions 17, 18, 43, 48 and 57. See also Orders M-909, PO-2469 and PO-2592.

² Orders PO-2554.

³ Order MO-2185.

⁴ Orders P-624 and PO-2559.

[22] In the circumstances of this complaint, I find that the custodian provided sufficient evidence to demonstrate that it made a reasonable effort to identify all responsive records within its custody and control, including any records relating to the deceased's admittance to the emergency department in June 2014. Based on all the information before me, particularly the two affidavits provided by the custodian, I am satisfied that the search for records, coordinated by the Manager of Health Information Management, was reasonable in its scope. Upon review of the description of the complainant's various requests and the searches conducted, I accept that experienced employees, who were knowledgeable in the subject matter and who would have been most likely to hold records that the complainant wanted to obtain through her request, conducted the searches. In addition, I accept that the custodian consulted experienced employees in the Emergency Department who were knowledgeable about the incident that is the subject of the request.

[23] Past IPC decisions on the issue of search establish that although a requester will rarely be in a position to indicate precisely which records the custodian has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁵ In this complaint, I find that the complainant did not provide a reasonable basis for me to conclude that additional records relating to her mother's June 2014 admittance exist, but have not yet been located. I reviewed the parties' representations and find that the custodian addressed the complainant's remaining search issues in a reasonable manner. For example, the complainant identified additional notes and information that ought to exist in her representations. The custodian addressed these outstanding items in its reply representations and I find the complainant did not provide me with further evidence to demonstrate there is a reasonable basis for her belief that additional responsive records exist.

[24] Overall, I am satisfied that the custodian discharged its onus and demonstrated that it conducted a reasonable search for responsive records in compliance with its obligations under *PHIPA*. On that basis, I uphold the custodian's search as reasonable and dismiss the complaint.

NO ORDER:

For the foregoing reasons, no order is issued.

Original signed by _____
Justine Wai
Adjudicator

January 9, 2018

⁵ Order MO-2246. See also *PHIPA* Decisions 17, 18 and 57.