

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 81

Complaint HA18-7

Mackenzie Health

January 15, 2019

Summary: An individual submitted a request to Mackenzie Health (the hospital) for correction of a discharge summary prepared by a physician at the hospital. The hospital denied the correction request, citing sections 55(8) and 55(9)(b) of the *Personal Health Information Protection Act, 2004*. The individual filed a complaint to this office. Upon review of the complaint, the adjudicator upholds the hospital's decision. The complainant has not established that the record at issue is incomplete or inaccurate for the purposes for which the hospital uses the information; therefore, no duty to correct the record exists under section 55(8) of the *Act*. No order is issued.

Statutes Considered: *Personal Health Information Protection Act, 2004*, sections 55(1), 55(8), and 55(9).

Decisions Considered: PHIPA Decision 36.

BACKGROUND:

[1] This complaint arose in relation to a correction request that Mackenzie Health (the hospital) received under the *Personal Health Information Protection Act, 2004* (*PHIPA* or the *Act*). The request pertained to one entry in the records of personal health information of the requester, and stated the following, in part:

This should say that I am going home into the care of my parents because I live in [their] house.

[2] The hospital issued a decision responding to the correction request. This decision stated, in part:

Your request and your records of [personal health information] have been reviewed by [a named physician], the documenting physician of [personal health information] that you are requesting amendment/correction.

After careful review, Health Information Services has been informed that your request has been denied as per sections 55(8) and 55(9)(b) of the *Act*. You are therefore advised that your request for Correction to [personal health information] for the records [...] has been denied as per the same sections.

[3] In response to the decision, the requester submitted a complaint to this office, thereby becoming the complainant.

[4] During the mediation stage of the complaint process, the complainant explained that it was his understanding that the doctors told his parents that he could only be released from hospital if he was discharged into his parents' care. Accordingly, he requests that the following be added to the record after the statement, "He is returning home today:"

to care of parents, is living in [their] house [until] further notice from doctors. Due to meds.

[5] The hospital explained that the physician who authored the record does not view the information in the record as inaccurate, because the instructions given to the complainant were not as the complainant recalls. Accordingly, the hospital maintained its position and confirmed that it is relying upon the provisions in section 55 of the *Act* to deny the complainant's correction request. The complainant was not satisfied with the decision and asked that his complaint proceed to adjudication.

[6] As no further mediation was possible, the complaint was transferred to the review stage of the complaint process under section 57(3) of the *Act*. I began my review by inviting and receiving the representations of the hospital on the facts and issues set out in a Notice of Review. The hospital provided representations, which were shared with the complainant in their entirety.¹ Although invited to do so, the complainant did not provide representations for my consideration.

[7] For the reasons that follow, I find that the complainant has not established that the record is incomplete or inaccurate for the purposes for which the hospital uses the information. Accordingly, I find that there is no duty for the hospital to correct the record under section 55(8) of the *Act*. I uphold the hospital's decision not to make the

¹ Pursuant to this office's sharing procedures, as set out in *Practice Direction Number 3* of the IPC's *Code of Procedure for Complaints under PHIPA*.

requested correction.

RECORD:

[8] The record at issue consists of a hospital discharge summary for the complainant and the requested correction relates to the first page of the record.

DISCUSSION:

[9] There is no dispute that the hospital is a "health information custodian" under section 3(1) of *PHIPA* and that the record at issue is the complainant's personal health information under section 4(1) of *PHIPA*.

[10] The sole issue in this complaint is whether the hospital has a duty to correct the complainant's record of personal health information in accordance with his request.

Does the hospital have a duty to make the requested correction under section 55 of *PHIPA*?

[11] The purposes of the *Act* are set out in section 1 and include the right, at paragraph (c):

to provide individuals with a right to require the correction or amendment of personal health information about themselves, subject to limited and specific exceptions set out in [the *Act*];

[12] Section 55(1) of the *Act* permits an individual who has received access to their personal health information to request that a custodian correct a record "if the individual believes that the record is inaccurate or incomplete for the purposes for which the custodian has collected, uses or has used the information . . ."

[13] Section 55(8) of *PHIPA* sets out a custodian's duty to correct records of personal health information in some circumstances. This section requires the individual asking for correction to satisfy the following two conditions:

1. the individual must 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
2. the individual must also give the custodian the information necessary to enable the custodian to correct the record.

[14] If a duty to correct a record is established under section 55(8), the question becomes whether any of the exceptions in section 55(9) apply. Under section 55(9), the

custodian is not required to correct a record of personal health information if it consists of a professional opinion or observation that a custodian has made in good faith about the individual, or if the record was not originally created by the custodian and the custodian does not have sufficient knowledge, expertise, and authority to correct the record.

[15] Read together, sections 55(8) and 55(9) set out the criteria pursuant to which an individual is entitled to a correction of a record of his or her own personal health information. The purpose of section 55 of the *Act* is to impose a duty on health information custodians to correct a record of an individual's personal health information where the record is inaccurate or incomplete for the purposes for which the custodian uses the information, subject to the limited and specific exceptions set out in section 55(9) of the *Act*.

[16] Based on my findings under section 55(8), it is not necessary to review the section 55(9) exceptions in this decision.

Representations

[17] With respect to the requirements of section 55(8), the hospital submits that although the complainant has requested that the contents of his discharge summary be amended to reflect what the complainant understood his parents to be told, he has not provided sufficient evidence to establish that the record is inaccurate or incomplete for the purpose for which it is used by the hospital. Accordingly, the hospital maintains that there is no duty to correct the record at issue.

[18] The remainder of the hospital's representations address the exception set out in section 55(9)(b). In short, the hospital maintains that the information sought to be corrected is an accurate reflection of a professional opinion or observation of the physician who created the record, and that the opinion or observation was made in good faith.

[19] As stated, the complainant did not provide representations. However, in the correction request submitted to the hospital, the complainant indicates that his reason for making the request is because the "[Workplace Safety and Insurance Board (WSIB)] is not paying escort or guardian fees." Further, in his complaint to this office, the complainant states, "I need my discharge summary report to be amended. WSIB needs to pay for certain benefits and stopped due to incomplete report."

Analysis and findings

[20] 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 whether the "record is incomplete or inaccurate for the purposes for which the custodian uses the information" under section 55(8). On the basis of the information before me, I find that the complainant has not satisfied the

requirements of section 55(8).

[21] PHIPA Decision 36 sets out the approach to section 55(8) of *PHIPA*. At paragraphs 25 and 26, Adjudicator James states:

There is no question that the accuracy of records containing personal health information is essential to the effective provision of health care. However, the correction provisions of *PHIPA* are limited by the requirement that the individual requesting 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.” The accuracy of the information that is requested to be corrected is therefore connected to the purposes for which the information is used.

In interpreting these provisions of the *PHIPA*, I find it helpful to have regard to section 11(1) which requires health information custodians that use PHI [personal health information] about an individual to take “reasonable steps to ensure that the information is accurate, complete and up-to-date as is necessary for the purposes for which it uses the information.” The duty to use accurate information under section 11(1) can be viewed as the corollary to the duty to correct inaccurate information under section 55(8). In both, the purpose for which the information is used is key to understanding the scope of the duty.

[22] Adjudicator James concluded that not all personal health information contained in records held by a health information custodian needs to be accurate in every respect. She also held that where the health information custodian is not relying on the information for a purpose relevant to the accuracy of the information, it is not required to correct the information. Therefore, if a request is made to correct inconsequential bits of information that have no impact on the purposes for which the custodian uses the information, and the custodian is not relying on the information for a purpose relevant to the accuracy of the information, then the custodian is not required to correct the information.²

[23] The approach in PHIPA Decision 36 has been adopted in subsequent decisions,³ and I adopt it in deciding this complaint.

[24] The relevant facts of this complaint include that a physician prepared the record at issue, a discharge summary, on the day that the complainant was released from care at the hospital. The record describes the reasons for the complainant’s admission to the hospital, the treatment that he received while at the hospital, his medications at the time of discharge, the plan of care going forward, and any required follow-up.

² PHIPA Decisions 36, 39 and 40.

³ See PHIPA Decisions 41, 59, and 67, for example.

[25] The complainant has requested a specific amendment to the record for the purpose of obtaining WSIB coverage for benefits that he believes the WSIB stopped providing as a result of the record being "incomplete" in some way.

[26] The complainant's correction request appears to be intended to augment the record to align with his recollection of events for purposes related to how the WSIB uses the information in the record. However, I accept the hospital's submission that the complainant has not provided sufficient evidence to demonstrate that the record is incorrect or inaccurate for purposes for which it is used *by the hospital*. In keeping with the reasoning expressed in PHIPA Decision 36, if a request is made to correct information that has no impact on the purpose for which the custodian uses the information, and the custodian is not relying on the information for a purpose relevant to its accuracy, then the custodian is not required to make the requested correction. Since the complainant has not established that the information he seeks to have corrected is incomplete or inaccurate for the purposes for which the hospital uses it, I find that the hospital has no duty to grant the requested correction under section 55(8) of the *Act*.

[27] Having found that the complainant has not established the existence of a duty to correct a record under section 55(8) of the *Act*, it is not necessary for me to determine whether the exception in section 55(9)(b) applies in the circumstances of this complaint.

[28] The complainant should note that he has the right under section 55(11) of the *Act* to submit a concise statement of disagreement setting out the correction that has not been made, which the hospital would be required to attach to the record.

ORDER:

For the foregoing reasons, no order is issued.

Original Signed by: _____
Jaime Cardy
Adjudicator

_____ January 15, 2019