

Information and Privacy Commissioner,  
Ontario, Canada



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

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## PHIPA DECISION 139

Complaint HA18-00208

[Service Coordination Support]

January 27, 2021

**Summary:** Service Coordination for People with Developmental Disabilities (now called Service Coordination Support, or SCS) received a request for access to records under the *Personal Health Information Protection Act (PHIPA)* relating to the complainant's son. SCS located responsive records and granted partial access to them. The complainant filed a complaint with the IPC. In a prior decision, PHIPA Decision 134, the IPC had held that the same organization against which the complaint was made is not a health information custodian under *PHIPA*. In this decision, the adjudicator finds that no review of the complaint is warranted in accordance with sections 57(3) and 57(4)(a) of *PHIPA* because there are no reasonable grounds for a review, given that it was already decided in PHIPA Decision 134 that SCS is not health information custodian.

**Statutes Considered:** *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, sections 52, 57(3), 57(4)(a), and 57(5).

**Decisions Considered:** PHIPA Decision 134.

### BACKGROUND:

[1] This complaint under the *Personal Health Information Protection Act* involves an issue that the Office of the Information and Privacy Commissioner of Ontario (the IPC, or this office) has already decided, in PHIPA Decision 134. The complaint addressed in

that decision, and in this one, came about as a result of Service Coordination for People with Developmental Disabilities (now called Service Coordination Support, or SCS) receiving a request for access to records concerning the complainant's son,<sup>1</sup> under the *Personal Health Information Protection Act (PHIPA)*. In both cases, SCS issued a decision and provided partial access to the requested records to the requester.<sup>2</sup>

[2] After receiving records in response to the request that is the subject of the present complaint (HA18-00208), the requester, now the complainant, filed a complaint with the IPC regarding SCS' decision.

[3] Several issues remained in dispute at the end of mediation when the complaint was moved to the adjudication stage of the complaint process, including the issue of whether SCS is a health information custodian, as defined under section 3(1) of *PHIPA*.

[4] This office put complaint HA18-00208 on hold until the resolution of the complaint that was the subject of PHIPA Decision 134 (complaint HA17-89), which was farther along in the complaint process, because both complaints involved the same preliminary issue: whether SCS is a health information custodian within the meaning of *PHIPA*. This issue is a preliminary issue because if SCS is not a health information custodian, then the access provisions of *PHIPA* would not apply to it and the reasonableness of SCS' search for records could not be decided under *PHIPA*.

[5] For the reasons set out in PHIPA Decision 134, I found that SCS is not a health information custodian as defined in *PHIPA*.

[6] In light of PHIPA Decision 134, I advised the complainant of my preliminary view that no review of this complaint (HA18-00208) is warranted, because the issue of whether SCS is a health information custodian has already been decided. I invited her to provide me with representations if she disagreed with this view. She did not do so.

[7] For the reasons that follow, I find that no review of this complaint is warranted.

## **DISCUSSION:**

[8] The only issue to be decided is whether I should conduct a review of complaint HA18-00208, in light of PHIPA Decision 134.

[9] As the adjudicator of this complaint, I have the authority under sections 57(3) and (4) of *PHIPA* to decide whether or not to conduct a review.

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<sup>1</sup> She did so in the place of her son, under section 66 of *PHIPA*.

<sup>2</sup> She was provided with records on the basis that she is her son's substitute decision-maker.

[10] Sections 57(3) and (4) 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[.]

[11] Section 52 of *PHIPA* provides that 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*.

[12] In my view, this complaint does not warrant a review pursuant to sections 57(3) and 57(4) of *PHIPA* because it involves the same parties and the same issue that I decided in PHIPA Decision 134, namely, whether SCS is a health information custodian. My decision on that issue has not been subject to reconsideration or judicial review, and therefore, it stands.

[13] Since SCS is not a health information custodian for the reasons set out in PHIPA Decision 134, the access provisions of *PHIPA* cannot apply to it. On that basis, I find that there are no reasonable grounds to review any other issues in this complaint.

[14] For these reasons, I decline to conduct a review of this complaint under *PHIPA*. I issue this decision in satisfaction of the notice requirement in section 57(5) of *PHIPA*.<sup>3</sup>

**NO REVIEW:**

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

Original Signed By: \_\_\_\_\_

Marian Sami  
Adjudicator

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January 27, 2021

<sup>3</sup> Section 57(5) of *PHIPA* says: "Upon deciding not to review the subject-matter of a complaint, the Commissioner shall give notice of the decision to the complainant and shall specify in the notice the reason for the decision."