Information and Privacy Commissioner,
Ontario, Canada

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

PHIPA DECISION 158

Complaint HA18-3

Open Doors for Lanark Children and Youth

August 20, 2021

Summary: Open Doors for Lanark Children and Youth (Open Doors) received a request under the *Personal Health Information Protection Act* (*PHIPA* or the *Act*) for access to the entirety of the requester's file from family therapy sessions that occurred in the late 1980s and early 1990s. Open Doors conducted two searches for records, and provided the requester with partial records. In particular, Open Doors granted the requester access to her own personal health information in the records, and disclosed to the requester her mother's personal health information pursuant to the discretionary disclosure provision in section 38(4)(c) of the *Act*. The requester filed a complaint with the Office of the Information and Privacy Commissioner of Ontario (the IPC) in order to seek the remaining portions of the records. As part of her complaint, the requester maintained that Open Doors had not conducted a reasonable search for records responsive to her request.

In this decision, the adjudicator finds that Open Doors has conducted a reasonable search for records, as required by sections 53 and 54 of the *Act*. She finds that the records contain the personal health information of the requester, as well as her mother, father, and brother, but that none of the records at issue are "dedicated primarily" to the requester's own personal health information for the purposes of section 52(3). As a result, the requester's right of access under the *Act* is limited to her personal health information that is reasonably severable from the records. Upon review of the records, the adjudicator determines that Open Doors has provided the requester with access to her own reasonably severable personal health information. The adjudicator also finds that Open Doors has disclosed as much of the mother's personal health information as can be reasonably severed from the personal health information of the requester's father and brother. Finally, the adjudicator orders Open Doors to consider the consent obtained from the requester's brother during her review of the complaint, and to exercise its discretion and consider whether to disclose the brother's personal health information to the requester under section 29(a) of the *Act*.

Statutes Considered: *Personal Health Information Protection Act, 2004,* S.O. 2004, c.3, Sched. A, sections, 2, 3(1), 4(1), 18(1), 29(a), 38(4)(c), 52(1), 52(3), 53, and 54; O.Reg 329/04: General, section 24(3).

Decisions Considered: PHIPA Decisions 17 and 96, and Order PO-3718-I.

BACKGROUND:

[1] This decision addresses a novel issue regarding the application of the *Personal Health Information Protection Act* (*PHIPA* or the *Act*) to family therapy records, and individual therapy participants' rights of access to those records. In particular, it addresses the questions of to whom the personal health information in family therapy records relates, and whether family therapy records can be "dedicated primarily to the personal health information" of any one family therapy participant, or to multiple participants at the same time. The answers to these questions determine whether the complainant has a right of access to the family therapy records at issue and, if so, the extent of that right of access under the *Act*.

[2] Having considered the circumstances of this complaint, and the representations I received from interested individuals and organizations, I find that the personal health information of an individual in family therapy records will typically belong to the individual participant to whom it relates, and not to all participants equally. I also find that family therapy records are generally not dedicated primarily to the personal health information of any one family therapy participant. Both of these general propositions are subject to exceptions, which are elaborated on below.

[3] This decision also touches on the disclosure of personal health information in family therapy records based on consent, and a health information custodian's obligation to conduct a reasonable search for records requested under the *Act*.

Summary

[4] A former client of Open Doors for Lanark Children and Youth (Open Doors),[1] a child and youth mental health centre, submitted a request under the *Act* for access to the following records:

> I would like my entire file, including letters to lawyers and anything else you have on me, my mother, father, and/or brother that would help me understand my childhood family dynamics.

[5] Open Doors conducted a search for records responsive to the request, and issued a decision granting partial access to the records that it located. The decision

[1] Formerly Beechgrove Children's Services.

stated the following, in part:

> You are receiving copies of records to which you have been granted access. The information that has been shared with you is personal information and information about your family dynamics. Some information has been withheld because it is information that is personal health information of other people or it is historical information that your parents shared about the reasons for their unresolved conflict. In addition, there are Assessments that appear to have been ordered by Courts. These are reports that [Open Doors is] not permitted to release.

[6] Following receipt of the decision, the requester's representative sent a letter to Open Doors requesting that all the records be released, and providing reasons in support of that request. In particular, the letter stated that the requester was entitled to the court files, as the proceedings and all related processes had been concluded. In addition, the letter stated that the requester is entitled to her mother's personal health information pursuant to section 38(4)(c)[2] of the *Act*, as the mother is now deceased.

[7] Open Doors issued a supplementary decision releasing additional records. Enclosed with the supplementary decision was a Family Clinic Assessment, with "intimate details shared by [the requester's] brother" redacted. Open Doors advised that no further information could be released to the requester and confirmed that she had received "all information contained in the records entrusted to [Open Doors] which pertains directly to her own personal health information." The supplementary decision also stated:

> Further, while we acknowledge that [the requester] is entitled, pursuant to [section] 52(3) of the *Personal Health Information Protection Act*, to records that are not dedicated primarily to personal health information about herself, so long as information about other individuals can reasonably be severed, we confirm that portions of the documents previously forwarded that had been redacted relate specifically to individuals other than [the requester].

[8] Open Doors' supplementary decision explained that it was unable to release any additional information to the requester because its "review of the redacted portions of the documents confirms that the redactions related primarily to other family members and/or contain information about [the requester's] mother and other family members that could not be reasonably severed from the record."

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[2] Section 38(4)(c) states that a health information custodian may disclose personal health information about an individual who is deceased, or is reasonably suspected to be deceased, to the spouse, partner, sibling or child of the individual if the recipients of the information reasonably require the information to make decisions about their own health care or their children's health care.

[9] The requester filed a complaint with the Office of the Information and Privacy Commissioner of Ontario (the IPC) on the basis that she believed additional responsive records exist which had not yet been identified by Open Doors' search efforts.

[10] During the mediation stage of the complaint process, Open Doors completed an additional search and issued a second supplementary decision. As a result, Open Doors provided the requester (now complainant) with additional records, including some that it had previously withheld. The second supplementary decision stated, in part:

> …[Open Doors] has conducted a review of [its] digital files, and additional records have been located with respect to your client. The oversight, as I understand it, had to do with the way the digital files had been conserved. The agency has conducted a thorough verification and is confident that you now have all the records relating to your client in your possession.
>
> You will note that some information has been redacted from the documents. The redactions have been made pursuant to [sections] 51(1)(e)(iii) and 51(2) of the *Personal Health Information Protection Act, 2004*, S.O. 2004, c.3, Sched. A. I can advise that, in our estimation, [section] 38(4) of the *Act* is not relevant to the redactions.

[11] Subsequently, Open Doors clarified that severances were made to the records pursuant to the exemption in section 52(1)(e)(iii) (identification of a confidential source) and in accordance with the severability considerations in section 52(2).

[12] Open Doors advised that in response to the complainant's raising the issue of search, it had reviewed thousands of records from the relevant period, and no further records were identified.

[13] The complainant continued to believe that Open Doors should have additional records responsive to her request. In addition, the complainant challenged Open Doors' decision to deny access to records and to withhold portions of the records that were released. Accordingly, the issue of access was added for consideration in this complaint.

[14] A mediated resolution was not achieved and the file was transferred to the adjudication stage of the complaint process, during which an adjudicator may decide to conduct a review under section 57(3) of the *Act*. I decided to conduct a review. In doing so, I invited and received written representations from Open Doors and the complainant on the issues raised by the complaint.

[15] I also invited two affected parties, the complainant's brother and father, to provide written representations addressing the complainant's right of access to the records at issue. In response, the father advised that he did not want to participate in the review. The complainant's brother provided his written consent for the disclosure to the complainant of his personal health information in the responsive records.

[16] As mentioned above, this complaint raises a novel issue regarding the application

of *PHIPA* to family therapy records, and therapy participants' rights of access to those records. Given that this decision may provide direction not only in this specific case, but also guidance more broadly, I decided to also invite nine interested organizations[3] to provide their views on the complainant's right of access to records that were generated through family therapy sessions. I received representations from the following six interested organizations:

1. The College of Physicians and Surgeons of Ontario (CPSO)
2. The College of Psychologists of Ontario (CPO)
3. The College of Registered Psychotherapists of Ontario (CRPO)
4. The Ontario Association of Social Workers (OASW)[4]
5. The Ontario College of Social Workers and Social Service Workers (OCSWSSW)
6. The Ontario Medical Association (OMA)

[17] The parties' non-confidential representations were shared in accordance with section 18 of the IPC's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*.

[18] For the reasons that follow, I make the following findings:

a. The records contain personal health information of the complainant and her family members. Specifically, the complainant's personal health information includes both information relating to her, as well as information that was collected within the context of the therapeutic relationship and that relates to the complainant's family unit as a whole, which I refer to as the family's "communal information." The complainant has a right of access to the records of her personal health information under section 52 of the *Act*.

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[3] The nine organizations that were invited to participate in my review were:
1. The College of Physicians and Surgeons of Ontario
2. The College of Psychologists of Ontario
3. The College of Registered Psychotherapists of Ontario
4. The Ontario Association of Social Workers
5. The Ontario College of Social Workers and Social Service Workers
6. The Ontario Medical Association
7. The Ontario Psychiatric Association
8. The Ontario Psychological Association
9. The Ontario Society of Registered Psychotherapists

[4] The OASW submitted brief representations indicating that they would defer to the position of the OCSWSSW.

b. None of the records at issue is "dedicated primarily" to the complainant's own personal health information for the purposes of section 52(3). As a result, the complainant's right of access under *PHIPA* is limited to her personal health information that is reasonably severable from the records. Upon review of the records, I find that Open Doors has provided the complainant with access to her own reasonably severable personal health information.

c. As a result of the consent obtained from the complainant's brother during my review, Open Doors is now obligated to consider whether the complainant's brother's personal health information should be disclosed to the complainant in accordance with section 29(a) (discretionary disclosure) of the *Act*. I order Open Doors to consider this issue and to provide the complainant with a response explaining why it decided to disclose or not to disclose the brother's personal health information.

d. Open Doors has conducted a reasonable search for records responsive to the complainant's request, in accordance with its obligations under sections 53 and 54 of the *Act.*

RECORDS:

[19] There are 14 records at issue in this complaint, which were generated as a result of the complainant's family's participation in family therapy sessions in the late 1980s and early 1990s. The complainant and her family were referred to family therapy to address difficulties arising from stressors in the family relationship, including the separation of the complainant's parents.

[20] Although all of the records relate to the provision of family therapy services to the complainant's family, the records do not all relate to sessions in which the entire family unit was involved. Some of the records were generated as a result of sessions between the practitioner and one or more of the following individuals: the complainant, her brother, her mother, and/or her father.

[21] The records consist of assessments and progress notes, which detail the reasons for the family's referral to family therapy, the family's history, the practitioner's observations and opinions relating to individuals and the overall family dynamic, and treatment plans and outcomes. Throughout this decision, the records are identified as follows:

Record #	**Description**	**Date**	**Number of pages**
1	Clinical Record - Initial Intake Assessment	July 13	2
2	Clinical Record - Initial Assessment	November 8	5

3	Clinical Record - Reason for Referral / Description of Problems	May 24	3
4	Narrative Progress Notes	May 8	1
5	Clinical Record - Progress Notes	May 8	2
6	Narrative Progress Notes	May 15	1
7	Clinical Record - Progress Notes	June 28	1
8	Clinical Record - Progress Notes	July 3	2
9	Clinical Record - Progress Notes	July 5	1
10	Clinical Record - Progress Notes	July 25	1
11	Clinical Record - Progress Notes	July 25 - August 2	1
12	Clinical Record - Progress Notes	July 30	1
13	Clinical Record - Progress Notes	August 1	1
14	Narrative Progress Notes	August 14	1

PRELIMINARY ISSUE:

Open Doors is a "health information custodian"

[22] *PHIPA* applies to the handling of personal health information by health information custodians. The terms "personal health information" and "health information custodian" are both defined in *PHIPA*.

[23] Section 3(1) of *PHIPA* lists a number of persons and organizations that qualify as "health information custodians." It states, in part:

> In [*PHIPA*],
>
> "health information custodian", subject to subsections (3) to (11),[5] means a person or organization described in one of the following paragraphs who has custody or control of personal health information as a result of or in

[5] These subsections are not reproduced here as they are of no relevance in this complaint.

> connection with performing the person's or organization's powers or duties or the work described in the paragraph, if any:
>
> 4. A person who operates one of the following facilities, programs or services:
>
> vii. A centre, program or service for community health or mental health whose primary purpose is the provision of health care.

[24] Section 2 of *PHIPA* defines the term "health care" to include "any observation, examination, assessment, care, service or procedure that is done for a health-related purpose" and that is carried out or provided to diagnose, treat or maintain an individual's physical or mental condition, or to prevent disease or injury or to promote health.

[25] By way of affidavit evidence, Open Doors explains that it was incorporated in 1996 upon the dissolution of a former agency called Beechgrove Children's Services (the former agency). The Administrative Coordinator who provided affidavit evidence on behalf of Open Doors attests that the requested records would have been created at a particular regional office of the former agency, which had its headquarters in Kingston, Ontario.

[26] There is no dispute between the parties, and I find, that Open Doors (or its predecessor) is a health information custodian within the meaning of section 3(1) of *PHIPA*.

ISSUES:

A. Access under *PHIPA*: What is the extent of the complainant's right of access to the records at issue, if any?

   A1. Do the records generated through family therapy contain personal health information and, if so, to whom does the personal health information belong?

   A2. Are the records "dedicated primarily to personal health information about the individual requesting access," within the meaning of section 52(3) of the *Act*? If they are not, has the complainant been granted access to her reasonably severable personal health information in the records?

B. Disclosure under *PHIPA*: Do discretionary disclosure provisions of the *Act* apply in these circumstances?

   B1. Discretionary disclosure of deceased individual's personal health information under section 38(4)(c)

B2. Disclosure based on consent under section 29(a): What is the impact of the complainant's brother's consent?

C. Did Open Doors conduct a reasonable search for the requested records, as required by sections 53 and 54 of the *Act*?

DISCUSSION:

[27] Access and disclosure are two distinct concepts under *PHIPA*. The right of access to personal health information is addressed in Part V of *PHIPA*, while several sections in Part IV address the disclosure of personal health information. I will begin by addressing the complainant's access rights.

Issue A: Access under *PHIPA*: What is the extent of the complainant's right of access to the records at issue, if any?

A1. Do the records generated through family therapy contain personal health information and, if so, to whom does the personal health information belong?

[28] Section 52 of *PHIPA* grants an individual a right of access to a record of his or her own personal health information that is in the custody or under the control of a health information custodian, subject to limited exceptions and exclusions. Therefore, in order to decide whether the complainant has a right of access governed by section 52, I must first decide whether the records contain the complainant's own personal health information.

[29] The term "personal health information" is defined in section 4(1) of *PHIPA* as including identifying information about an individual in oral or recorded form that relates to:

- the individual's physical or mental health, including information that consists of the health history of the individual's family;[6] and
- the provision of health care to the individual, including the identification of a person as a provider of health care to the individual.[7]

[30] In this case, the complainant seeks access to her "entire file." The parties agree that the records located in response to the request contain personal health information relating to the mental health and provision of health care (i.e. counselling services) to the complainant and her family. Accordingly, there is no dispute that the records at issue are records of "personal health information" for the purposes of the *Act*.

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[6] Paragraph (a) of the definition of "personal health information" under section 4(1) of the *Act*.
[7] Paragraph (b) of the definition of "personal health information" under section 4(1) of the *Act.*

[31] What remains to be determined, however, is to whom, exactly, that personal health information relates.

[32] The complainant, affected parties, and Open Doors were invited to provide representations addressing the issue of to whom the personal information in the records relates. I also invited the interested organizations to provide general submissions regarding the nature and classification of personal health information in records generated through family therapy. For example, I asked the organizations to comment on whether one individual's personal health information could include information about the individual's other family members and, if not, how the distinction is to be made between each participant's personal health information. The complainant and Open Doors were given an opportunity to respond to the organizations' positions.

Representations

Open Doors' representations

[33] Open Doors maintains that the records contain the personal health information of the complainant, her brother, mother, and father. Open Doors did not elaborate on how it drew lines or distinguished between the individual participants' personal health information.

The complainant's representations

[34] The complainant provided me with written representations as well as supporting documentation, which she explained had been provided to Open Doors at earlier stages of her request and complaint process. She requested that her representations remain confidential, but consented to a summary being shared with the other parties and referred to in this decision.

[35] The complainant takes the position that, given her family history, her "story involves other people's stories." She maintains that any dysfunction in a family relates to the family unit as a whole, and can only be seen in the totality of the family unit.

[36] A letter from the complainant's former legal representative notes that section 4(1)(a) of the *Act* defines "personal health information" as including "information that consists of the health history of the individual's family." The representative maintains that the purpose of this section is to enable individuals to access information about their family health history that could affect their own health, thereby allowing them to make informed decisions about their own health care.

Interested organizations' representations

[37] A number of the interested organizations[8] submit that the personal health information of one family therapy participant does not constitute the personal health information of the other participants.

[38] In support of this position, the CRPO maintains that this proposed interpretation respects the confidentiality of personal health information, promotes individuals' autonomy over access to their personal health information, and prevents the misuse of "joint therapy" records. The CRPO submits that when custodians respond to access requests relating to family therapy records, they will need to distinguish between information relating to the individual requesting access, information relating to general themes or the family relationship itself, and information relating solely to other individuals. The CRPO suggests that while information relating to the former two categories would, or could, be the requester's personal health information, information relating solely to other individuals would not.

[39] In further support of this position, the OCSWSSW submits that there is no bright line rule in *PHIPA* to delineate the boundaries of each participant's personal health information in records generated through family therapy. However, it notes that the purpose of the access provisions in *PHIPA* has generally been seen as creating a right of access to one's own personal health information. It maintains that the approach under *PHIPA* evolved from the common law right of access to the information in one's own patient records, established by the Supreme Court of Canada in *McInerney v MacDonald*.[9] The OCSWSSW submits that viewing all of the information discussed during family therapy as part of each and every participant's personal health information would greatly broaden this right of access and could have detrimental effects, such as undermining participants' trust and willingness to participate candidly in family therapy sessions.

[40] The OMA maintains that, in general, records from family therapy contain the personal health information of multiple parties, and information about one participant should not be "released" to another participant without consent. In situations where the family therapy is exclusively for the benefit of one participant, then the OMA suggests that the records would be considered that participant's personal health information alone. In such cases, the OMA says that the other participants would "have no right to access the records of the individual exclusively benefitting from the therapy."

[41] The CPO submits that even in the context of family therapy, an individual's personal health information may have been collected with an expectation that it would remain confidential from other participants.

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[8] The CRPO, OCSWSSW, and OMA.
[9] [1992] 2 SCR 138.

[42] The CPSO presents an alternate interpretation, in which it maintains that an individual's personal health information may, but does not necessarily, include information about their family members. The CPSO suggests that the interconnectedness of the personal health information shared in family therapy sessions is the main determinant of whether that personal health information belongs to all participants or individual participants.

[43] In support of its position, the CPSO submits that the general expectation would be that any personal health information collected, used, or disclosed during family therapy sessions is the personal health information of all participants. However, the CPSO says that this presumption can be rebutted where, for example, a record relates to a family therapy session focused on one individual, in which case the personal health information in the record would be that individual's alone. Similarly, the organization maintains that the presumption can be rebutted where portions of a record contain recorded observations or assessments of one individual, in which case those portions would constitute the personal health information of that individual alone.

[44] Overall, the organizations agree that whose personal health information is in family therapy records is a determination that must be made on a case-by-case basis. In addition, the CRPO and OMA stress the importance of a documented informed consent process at the outset of family therapy, which they maintain can help to establish participants' expectations regarding whose personal health information can be accessed by whom.

Reply representations

[45] Both the complainant and Open Doors were invited to respond to the interested organizations' submissions. Open Doors chose not to do so.

[46] The complainant maintains that when the mental health of one family member is compromised because of the actions of another family member, it is likely that other members of the family are also affected. In her view, it is "absurd" to say that one family member's mental health information does not relate to other members of the family unit, when family trauma is "by nature relational."

[47] The complainant also submits that the rationale offered by the organizations in support of their position is flawed, because it assumes that all family therapy participants are participating in good faith. In addition, she maintains that the rebuttable presumption advanced by one organization is also flawed because it treats "symptoms as one person's possession."

Analysis and finding

[48] As noted above, the right of access in *PHIPA* applies to records of "personal health information" of the individual requesting access. In the context of this complaint, the parties agree that the records contain personal health information as that term is defined in sections 4(1)(a) and (b) of the *Act*. The questions that remain in the context

of this complaint are (i) to whom that personal health information relates, and (ii) whether, in the context of the family therapy records at issue, the personal health information of the complainant includes the personal health information of the other therapy participants.

[49] For the following reasons, I find that there is a presumption that the personal health information of each family therapy participant is theirs alone, and does not constitute the personal health information of the other therapy participants. However, this presumption is subject to certain nuances, which I describe in more detail in paragraphs 52-53, below.

[50] In my view, the interested organizations cited a number of compelling considerations that support this interpretation of the scope of personal health information in family therapy records. Most notably, a few of the organizations' representations underscored the consequences that would result from finding that each family therapy participant's information in family therapy records belongs to all family therapy participants, such that every participant would have an equal right of access to the information under section 52. I accept that this interpretation could result in undesirable outcomes, such as a perceived loss of control over what participants view as their own information shared during the course of family therapy. I also accept that this diminished sense of control could result in participants' being less likely to participate, or to participate candidly, in family therapy.

[51] In contrast, I am persuaded that treating each participant's personal health information as their own best respects the confidentiality of that information; fosters trust between family therapy participants and custodians; promotes participant autonomy over access to their own personal health information; and promotes candid discussion and unguarded participation in family therapy sessions.

[52] While I am satisfied that the personal health information of one participant will not generally be considered the personal health information of all participants, I find that family therapy records may contain "communal" or "shared" information of the family unit (communal information) that can form part of each participant's personal health information. This communal information consists of information collected within the context of the therapeutic relationship that relates to the family unit as a whole, rather than to any one participant in particular. As this information can be considered the personal health information of each family therapy participant, each participant will have an independent right of access to it under the *Act*.[10]

[53] Identifying a family's communal information in records generated by family

[10] In addition, I leave open the possibility for another adjudicator to find that in certain situations, the personal health information of one family therapy participant may include the personal health information of another participant. However, I am not making any findings in this regard, as that type of information is not in the records before me.

therapy must be done on a case-by-case and record-by-record basis. Where the distinction is ambiguous, it may be appropriate to defer to a custodian's judgment on this issue. Therefore, I will not attempt to provide a comprehensive list all of the types of information that would be considered communal information. However, I am satisfied that in the context of family therapy records, information relating to family health history,[11] information relating to the overall family relationship or dynamic, and general themes that arise in the course of family therapy are all examples of communal information that would generally be regarded as the personal health information of each of the family therapy participants. In such cases, each of the participants will have an independent right of access to this information under section 52 of the *Act*, regardless of who provided the information during therapy.[12]

[54] Applying these principles to the case at hand, I find that all of the records at issue contain the complainant's personal health information. Some of the records contain the practitioner's observations of the complainant's well-being and recommendations for future care, while others cite the complainant's "case book number," which identifies her as a recipient of the family therapy services provided by the practitioner that created the record. These types of information are "personal health information" as defined in sections 4(1)(a) and (b) of *PHIPA*.

[55] Other records before me contain information that was collected within the context of the therapeutic relationship and that relates to the complainant's family unit as a whole, such as: the practitioner's notes regarding the reasons for the family's referral to family therapy; information about the family's history, structure, relationship, and cultural background; the practitioner's opinions regarding why certain issues were manifesting themselves in the family; an outline of the family's "treatment plan"; recommendations for the family's course of therapy; and the practitioner's opinions or observations regarding the family's progress and the impact of therapy. In the context of this complaint, I am satisfied that this information pertains to the overall family dynamic, or general themes that were revealed during the course of family therapy, and constitutes the type of communal information that I describe above. Accordingly, I find that this type of information is also the complainant's personal health information, such that she has a right of access to it under the *Act*.[13]

[56] I am also satisfied, and I find, that all of the records contain the personal health information of the complainant's brother, mother, and/or father. In other words, none of the records contain the complainant's personal health information alone; rather, they all contain the complainant's personal health information and the personal health

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[11] See section 4(1)(a) of the *Act*.

[12] As will be seen below, each participant's right of access to communal information is under section 52(3) of the *Act*.

[13] For clarity, my finding means that the communal information is also the personal health information of the complainant's brother, mother, and father, such that each of those individuals also has an independent right of access to that information (under section 52(3) of the *Act*, as discussed below).

information of some or all of her family members. Some of the records contain communal information, which I found above is the personal health information of each family therapy participant. Other records contain personal health information of the complainant's brother, mother, or father (or some combination of them) that is not communal information, and that is distinct from, and not included in, the complainant's personal health information.

[57] To conclude, I find that all of the records at issue contain the complainant's personal health information, and she therefore has a right of access to all of the records under section 52 of the *Act*, subject to my findings on section 52(3) under Issue A2.

A2: Are the records "dedicated primarily to personal health information about the individual requesting access," within the meaning of section 52(3) of the Act? If they are not, has the complainant been granted access to her reasonably severable personal health information in the records?

[58] Above I found that all of the records at issue contain the complainant's personal health information, such that she has a right of access to the records under section 52 of the *Act*. The extent of the complainant's right of access must still be determined.

[59] Section 52(1) grants individuals a right of access to records containing their personal health information. This right of access is limited, however, by section 52(3), which provides that an individual will only have a right of access to an entire record if the record is "dedicated primarily" to their personal health information. In particular, section 52(3) states:

> Despite subsection (1), if a record is not a record dedicated primarily to personal health information about the individual requesting access, the individual has a right of access only to the portion of personal health information about the individual in the record that can reasonably be severed from the record for the purpose of providing access.

[60] Accordingly, subject to any applicable exemptions, the complainant's right of access under *PHIPA* applies either to a whole record (under section 52(1)), or only to certain portions of a record of personal health information (under section 52(3)). If a record is dedicated primarily to the personal health information of the complainant, then she will have a right of access to the entire record, even if it incidentally contains information about other matters or other individuals. If, on the other hand, the record is not dedicated primarily to the personal health information of the complainant, then her right of access under *PHIPA* only applies to her personal health information that can reasonably be severed from the record.

[61] Section 24(3) of Ontario Regulation 329/04 may also be relevant in the context of family therapy records. This section states that the access provisions in Part V of the *Act* do not "apply to entitle a person to a right of access to information about the person that is contained in a record that is dedicated primarily to the personal health information of another person."

[62] PHIPA Decision 17 set out the IPC's approach to the interpretation of section 52(3) of *PHIPA*. In order to determine whether a record is "dedicated primarily" to the personal health information of a requester within the meaning of section 52(3), the IPC takes into consideration various factors, including:

- the quantity of personal health information of the requester in the record;
- whether there is personal health information of individuals other than the requester in the record;
- the purpose of the personal health information in the record;
- the reason for creation of the record;
- whether the personal health information of the requester is central to the purpose for which the record exists; and
- whether the record would exist "but for" the personal health information of the requester in it.[14]

[63] This list is not exhaustive.

[64] All of the parties were invited to provide representations addressing whether the records at issue are dedicated primarily to the complainant, or to any other individual who participated in the therapy sessions. The parties were also asked to address whether family therapy records could be dedicated primarily to the personal health information of more than one individual for the purpose of section 52(3) and, if so, whether each individual could independently exercise of a right of access to the whole record under section 52(1).

Representations

Open Doors' representations

[65] Open Doors submits that the records contain a combination of information about interactions between the former agency and "the complainant's sibling group, the complainant's entire family unit, and the complainant alone." Open Doors advises that it provided the complainant with access to records regardless of whether they were created during individual or group therapy, but that some records were severed "in good faith" and "with as few redactions as possible" prior to granting access.

[14] PHIPA Decision 17, para 95.

The complainant's representations[15]

[66] The complainant explains that she is currently seeking an impartial understanding of her childhood to help her understand her current mental health. She submits that denying her access to portions of the family's therapeutic records in order to protect her family members' privacy undermines her right to understand the circumstances contributing to her current state of health. She says that being granted access to the records may be of therapeutic value, as having a better understanding of her family's story could contribute to her healing.

[67] Letters from two of the complainant's health care providers indicate that the complainant may benefit from obtaining access to the records in their entirety, including information relating to her family's dynamics and physical and mental health histories.

Interested organizations' representations

[68] The CRPO maintains that there is a rebuttable presumption that records generated through family therapy are not dedicated primarily to any particular participant, as this reflects the view that family therapy is provided to the unit as a whole. The CRPO submits that this approach best respects the confidentiality of personal health information, promotes client autonomy over access to their information, and prevents the misuse of joint therapy records.

[69] According to the CRPO, there are various circumstances in which this presumption can be rebutted, such as:

- when a family therapy session is clearly focused on one participant, in which case the participation of other participants would not prevent a finding that records generated from that session are dedicated primarily to the participant in question; or

- where the personal health information in question is contained in a "sub-file" relating only to one participant.

[70] The OCSWSSW maintains that records created through family therapy are not dedicated primarily to the personal health information of any one participant. According to the OCSWSSW, a practitioner typically takes on all of the family members as clients, and it would be impractical to create a separate therapeutic record for each individual participant as discussions involving all participants "cannot be neatly segregated."

[71] The OCSWSSW also submits that a family therapy record cannot be dedicated primarily to the personal health information of more than one individual. In support of

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[15] Again, this is part of the non-confidential summary of the complainant's position that she has consented to including in this decision.

this position, the OCSWSSW maintains that the word "primarily" suggests that a record is dedicated to one person, and necessarily excludes the option for a record to focus on multiple individuals to the same extent. According to the OCSWSSW, it would be "highly problematic" if family therapy records could be treated as dedicated primarily to more than one individual, as it would allow each client to access the entire record without the consent of the other clients involved. In the OCSWSSW's view, this would undermine the confidentiality of individual's personal health information, which is problematic because individual clients do not waive the right to keep their personal health information confidential simply by entering into joint therapeutic relationships.

[72] The OCSWSSW notes that while section 1 of *PHIPA* recognizes access to one's own personal health information, and the protection of personal health information, as twin objectives, section 52(3) recognizes that in certain circumstances, an individual's right to privacy "trumps" another individual's right to access a full record. The OCSWSSW further submits that in some cases, the personal health information in family records will be "so inextricably intertwined" that it would not be reasonable for a custodian to sever the record for the purpose of providing access.

[73] The OMA submits that records generated through family therapy may be unique in the sense that they may be dedicated primarily not to one participant or another, but to the entire family group. According to the OMA, absent consent, family therapy records should not be released in their entirety to any one participant. Rather, each participant should only be entitled to the portions relating specifically to their own personal health information. The OMA maintains that if family therapy records are released to any participant without the other participants' consent, "the entire value and benefit of family therapy may be undermined" because participants may not be honest or forthcoming during therapy.

[74] The CPO explains that it advises its members to consider what information may be accessible to "the family" and if there are portions that may need to be severed in the event that an individual participant requests access. According to the CPO, practitioners who keep these considerations in mind when creating a file may be better able to provide access to appropriate information, while severing the information to which a requester does not have a right of access.

[75] The CPSO submits that "the presumption of the medical profession would be that express consent is required for disclosure of family therapy records outside of the sessions." Absent consent to share the entirety of the records, the CPSO maintains that a practitioner would typically take the "most prudent course of action," by severing the records to the extent possible and only releasing the portions relating to the requester. In the CPSO's view, if section 52(3) is interpreted "without factoring in consent," there would be a "ripple effect" on the willingness of participants to engage in family therapy, and on the ways in which practitioners conduct and document family therapy.

[76] The CPSO also maintains that whether a record is dedicated primarily to the personal health information of any one participant depends on the interconnectedness of the information, and the focus of the therapy session. If, for example, the

participants engaged in a "course of therapy focussed on all participants and the [personal health information] of one participant has a bearing on or is interconnected with the [personal health information] of another," then the CPSO maintains that the personal health information belongs to all participants, and cannot be dedicated primarily to any one participant in particular. In contrast, if some sessions were conducted with only a subset of the participants, then the CPSO maintains that the records from those sessions "could not be said to be dedicated primarily to the whole group or to those individuals who did not participate." Finally, if there were family therapy sessions focussed on participants "separately, albeit at the same session," then the CPSO maintains that any record from that session "would not be dedicated primarily to all participants [but to] the individual it focusses on."

[77] All of the organizations agree that reasonable expectations regarding the confidentiality of personal health information collected, used, or disclosed in relation to family therapy should be established at the outset of the therapeutic relationship, through the consent process. The organizations also agree that the prudent course is to require express consent prior to releasing personal health information of one participant to another participant, and to sever records so as to only release the personal health information of the requester where express consent from the other participants is not available.[16]

The complainant's reply representations

[78] In response to the organizations' submissions, the complainant maintains that some of the documents were dedicated primarily to more than one individual. She says that while the organizations may believe they should not be, what the organizations believe, and what is stated in the records, is not the same.

[79] The complainant objects to the organizations' suggestion that it would undermine participants' willingness to participate candidly if family therapy records were treated as dedicated primarily to multiple individuals. She says that this position assumes that all participants were willing to participate in the first place, which is not necessarily the case, such as in court-ordered family therapy sessions.

[80] She also takes issue with the organizations' submissions about the consent process. She submits that the organizations' position assumes that all individuals are capable of giving consent, which is not necessarily the case when young children are involved in family therapy.

Analysis and findings

[81] Considering the parties' representations and the nature of family therapy

[16] Disclosure with consent is a matter that I also address under Issue B2 below.

records, including those at issue in this complaint, I find that a family therapy record cannot be dedicated primarily to the personal health information of more than one individual, and will not typically be dedicated primarily to the personal health information of any one of the family therapy participants.

[82] As support for my first finding, I refer to former Assistant Commissioner Sherry Liang's finding in Order PO-3718-I regarding the effect of Ontario Regulation 329/04 section 24(3): "the regulation under PHIPA specifically excludes a right of access to information that is contained in a record that is dedicated primarily to the personal health information of another person."[17] In my view, it would negate, or at least undermine, the Legislature's intended effect of the Regulation to find that a record can be dedicated primarily to more than one individual's personal health information.

[83] The interested organizations' policy arguments provide further support for my first finding. Most notably, if a record from family therapy is capable of being dedicated primarily to the personal health information of more than one individual, then each of those individuals would have an independent right of access to the entire record under section 52(1) without the consent or knowledge of the other participants whose personal health information appears in the record. I accept that this could undermine the confidentiality of personal health information shared during family therapy sessions, and lead participants to be less honest or forthcoming during therapy.

[84] Therefore, with these considerations in mind, I find that a record from family therapy sessions cannot be "dedicated primarily to the personal health information" of more than one individual for the purposes of section 52(3) of the *Act*. As with my previous findings on the scope of personal health information in family therapy records, I am satisfied that this interpretation of section 52(3) of *PHIPA* for family therapy records best respects the confidentiality of family therapy participants' personal health information; fosters trust between participants and custodians; promotes participant autonomy over access to their own personal health information; and promotes candid discussion and unguarded participation in family therapy sessions.

[85] I turn now to the issue of whether family therapy records can be dedicated primarily to the personal health information of any one participant receiving family therapy. Many of the parties involved in my review made submissions alluding or directly referring to the joint nature of family therapy, and the fact that *all* participants are receiving services from the practitioner providing family therapy services. I have also considered the complainant's submissions regarding the "relational" nature of family trauma, and her view that any dysfunction in a family relates to the family unit as a whole. With these considerations in mind, I find that records from family therapy sessions will not typically be dedicated primarily to the personal health information of any one participant for the purposes of section 52(3). This finding is subject to a few

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[17] Order PO-3718-I, para 40.

exceptions, which I describe below.

[86] A determination of whether a record from family therapy is dedicated primarily to the personal health information of one particular participant must be made on a case-by-case and record-by-record basis. Once again, I will not attempt to list all of the circumstances in which a record may be found to be dedicated primarily to one participant's personal health information. However, I agree with the CRPO that the following situations may produce records that are dedicated primarily to the personal health information of one participant engaged in family therapy:

- when a family therapy session is clearly focused on one participant;
- where the personal health information in question is contained in a "sub-file" of the family therapy records, and that sub-file relates to one participant alone.

[87] Accordingly, I find that a family therapy participant's right of access will generally be governed by section 52(3) of *PHIPA*, and will be limited to their reasonably severable personal health information[18] in records generated during family therapy sessions.[19] However, where the conditions are such that a record can be found to be dedicated primarily to the personal health information of one family therapy participant, that individual will have a right of access to the entirety of the record under section 52(1). In such cases, it would appear that the other family therapy participants would be precluded from obtaining access to their own personal health information (including communal information) from that record pursuant to the exclusion from the right of access in section 24(3) of Ontario Regulation 329/04.[20]

[88] I recognize that one potential objection to this approach arises from the possibility that no participants will have a right of access to a family therapy record in the event that: (a) the record is not dedicated primarily to the personal health information of any one participant; and (b) the personal health information of the participants is intermingled in such a way that severance is not reasonably possible. I note that since every participant has an independent right of access to communal information, the scenario where no one has a right of access to a family therapy record might be rare. In any event, in my view, the best answer to this objection is the organizations' collective view that expectations around the confidentiality of the information from family therapy sessions should be established at the outset of the therapeutic relationship, through consent.[21] Even if no participants have a right of

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[18] This includes communal information.
[19] Note: In circumstances where a family therapy participant does not have a right of access to information in family therapy records, a custodian may be able to disclose the record, or portions thereof, based on the consent provisions of the *Act*, or in circumstances where the *Act* permits disclosure without consent. Disclosure under the *Act* is address in further detail under Issue B.
[20] See Order PO-3718-I, paragraph 40, and PHIPA Decision 107, footnote 3.
[21] See paragraph 77.

access to the personal health information in family therapy records for the reasons described above, it is still open to the participants to consent to the disclosure of their personal health information to the other participants under section 29(a) of *PHIPA*, which I discuss in more detail under Issue B.[22]

[89] I will now apply these principles, together with the IPC's approach to the interpretation of section 52(3) of *PHIPA*,[23] to the case before me.

[90] With regard to the content of the 14 records at issue, I find that some of the records contain a considerable amount of the complainant's personal health information, while others contain relatively small amounts. I have also previously found that none of the records contain the complainant's personal health information alone; rather, they all contain the complainant's personal health information in addition to the personal health information of some or all of her family members.

[91] I note that for some of the records at issue, the inclusion of the family's communal information in the complainant's personal health information greatly increases the amount of information that qualifies as the complainant's personal health information under the *Act*. However, PHIPA Decision 17 and other IPC decisions expressly establish that the section 52(3) analysis is a qualitative, rather than quantitative exercise. Therefore, the sheer quantity of information to which an individual has a right of access in a record is not, on its own, determinative of the issue of whether a record is dedicated primarily to the personal health information of the requester.

[92] Based on my review, I am satisfied that all of the records were created within the context of the family therapy services that were provided to the complainant's family by Open Doors' predecessor. I find that the complainant's personal health information cannot be characterized as being "central to the purpose for which the records exist," as contemplated by the factors set out in PHIPA Decision 17. In addition, the evidence before me does not establish that any of the records at issue arose from sessions focused on the complainant, nor do they exist within a "sub-file" of the family's therapy records relating only to the complainant.

[93] Accordingly, I find that none of the 14 records at issue is dedicated primarily to the complainant's personal health information. As a result, the complainant's right of access under section 52(3) of *PHIPA* is limited to her reasonably severable personal health information within the records.

[94] Based on my review of the records, I am satisfied, and I find, that Open Doors has provided the complainant with her reasonably severable personal health

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[22] In addition, this decision does not consider, or foreclose, the possibility of family therapy participants submitting a joint access request under the *Act*.
[23] As established in PHIPA Decision 17.

information in the records. As described under Issue A1, this includes information that is about the complainant alone, such as the practitioner's observations of the complainant's well-being, recommendations for her future care, and references to the complainant by name or case book number. It also includes the communal information regarding the complainant's family unit that I have described above, such as: the reasons for the family's referral to family therapy; information about the family's history, structure, relationship, and cultural background; the practitioner's opinions regarding why certain issues were manifesting themselves in the family; an outline of the family's "treatment plan"; recommendations for the family's course of therapy; and the practitioner's opinions or observations regarding the family's progress and the impact of therapy.

Issue B: Disclosure under *PHIPA*: Do discretionary disclosure provisions of the *Act* apply in these circumstances?

B1. Discretionary disclosure of deceased individual's personal health information under section 38(4)(c)

[95] There are certain circumstances under which a health information custodian may disclose[24] personal health information without being in contravention of *PHIPA*. This *discretion* to disclose personal health information is distinct from an individual's right of access to personal health information under section 52.

[96] Section 38(4)(c) of the *Act* sets out one of the circumstances in which a health information custodian may disclose personal health information of an individual without the individual's consent. This section reads:

> A health information custodian may disclose personal health information about an individual who is deceased, or is reasonably suspected to be deceased,
>
> > (c) to the spouse, partner, sibling or child of the individual if the recipients of the information reasonably require the information to make decisions about their own health care or their children's health care.

[97] In the circumstances of this complaint, the complainant's mother is now deceased. Much of the complainant's representations focused on her need to obtain information relating to her mother, in order to help inform decisions about her own mental health.

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[24] The term "disclose" is defined at section 2 of *PHIPA* to mean, in relation to personal health information in the custody or under the control of a health information custodian or a person, "to make the information available or to release it to another health information custodian or to another person, but does not include to use the information, and "disclosure" has a corresponding meaning."

[98] In its representations, Open Doors explains that following its supplementary decisions, none of the information that remains withheld pertains to the complainant's mother. As a result, Open Doors maintains that section 38(4)(c) is not relevant with respect to the severances made to the records at issue in this complaint.

[99] Upon review of the records, I note that some of the complainant's mother's personal health information does remain in the withheld portions of the records; however, in those withheld portions, the mother's personal health information is inextricably intertwined with the complainant's brother's and/or father's personal health information, such that it cannot reasonably be severed for the purposes of disclosure under section 38(4)(c). The complainant's right of access to this information, if any, and Open Doors' discretion to disclose some of this information based on the complainant's brother's consent are addressed under Issues A2 and B2 of this decision, respectively.

[100] Where the complainant's mother's personal health information appears on its own, or is at least reasonably severable from the personal health information of the complainant's father and brother, I am satisfied that Open Doors has disclosed that information to the complainant.

B2. Disclosure based on consent under section 29(a): What is the impact of the complainant's brother's consent?

[101] During the course of my review, I notified the complainant's brother of the complaint by sending him a Notice of Review setting out the facts and issues, summarizing the positions taken by the complainant and Open Doors, and inviting him to provide representations on the complainant's right of access to the records at issue.

[102] The brother did not provide representations for my consideration. However, in response to the Notice of Review, the brother provided consent to the disclosure of his personal health information to the complainant. This consent was communicated to the IPC by both the brother's legal representative and the brother himself. In the complainant's sur-reply representations, the complainant also mentions that she has spoken to her brother, and he consents to her "receiving 'his parts' of the files."

[103] As mentioned above, access and disclosure are two distinct concepts under *PHIPA*. I have already determined the extent of the complainant's right of access under Part V. I will now consider the effect of the brother's consent on Open Doors' ability to disclose personal health information to which the complainant does not have a right of access.

[104] *PHIPA* requires that disclosures of personal health information occur with consent, except in specified circumstances. Section 29 of *PHIPA* states:

> A health information custodian shall not collect, use or disclose personal health information about an individual unless,

> a. it has the individual's consent under this Act and the collection, use or disclosure, as the case may be, to the best of the custodian's knowledge, is necessary for a lawful purpose; or
>
> b. the collection, use or disclosure, as the case may be, is permitted or required by this Act.

[105] Under section 29(a), a health information custodian may disclose personal health information with consent where the disclosure, "to the best of the custodian's knowledge, is necessary for a lawful purpose."

[106] In light of the consent provided by the complainant's brother, I find that Open Doors must now turn its mind to whether the conditions for disclosure with consent under section 29(a) are satisfied in this case. Therefore, I will return the matter to Open Doors to consider whether to disclose the brother's personal health information in the records to the complainant, on the basis of consent. To inform Open Doors' decision on this matter, I will provide Open Doors with a copy of the Notice of Review that I sent to the complainant's brother, as well as the email correspondence between the brother, his legal representative, and IPC staff regarding the brother's consent.

[107] In deciding whether the conditions for disclosure under section 29(a) are met, Open Doors will need to determine whether it is satisfied that the written record of consent obtained during the course of my review meets the requirements in section 18 of the *Act*, including the following:

1. If this Act or any other Act requires the consent of an individual for the collection, use or disclosure of personal health information by a health information custodian, the consent,
    a. must be a consent of the individual;
    b. must be knowledgeable;
    c. must relate to the information; and
    d. must not be obtained through deception or coercion.

[108] Open Doors must also consider whether, to the best of its knowledge, the disclosure is "necessary for a lawful purpose" within the meaning of section 29(a). As noted by Adjudicator Jenny Ryu in PHIPA Decision 96, that phrase is not defined in *PHIPA*; however, a plain reading indicates that, at a minimum, Open Doors must not be aware that the requested disclosure is for a purpose *contrary* to law.

[109] If Open Doors determines that these conditions for disclosure are not met, then section 29(a) does not give it permission to disclose the brother's personal health information to the complainant.

[110] If Open Doors determines that the conditions for disclosure under section 29(a)

are met, then it must go on to exercise its discretion under that section. In PHIPA Decision 96, Adjudicator Ryu found that this requires the custodian to decide whether or not, and how much personal health information, to disclose. Open Doors must also demonstrate that it exercised its discretion under section 29(a) in a proper manner, and did not make its decision in bad faith or for an improper purpose. One way for Open Doors to do this is by providing reasons for its decision.

[111] In addition, where the complainant's brother and mother's personal health information is intermingled such that it cannot be severed (as described in paragraph 99), Open Doors should consider whether to disclose the mother and brother's personal health information together, pursuant to Open Doors' discretion to disclose personal health information under sections 29(a) and 38(4)(c), discussed above.

Issue C: Did Open Doors conduct a reasonable search for the requested records, as required by sections 53 and 54 of the *Act*?

[112] Where a requester claims that additional records exist beyond those identified by a custodian, the issue to be decided is whether the custodian has conducted a reasonable search for records as required by sections 53 and 54 of *PHIPA*. If I am satisfied that the search carried out was reasonable in the circumstances, the custodian's decision will be upheld. If I am not satisfied, I may order further searches.

[113] This office has extensively canvassed the issue of reasonable search in orders issued under the *Freedom of Information and Protection of Privacy Act* (*FIPPA*) and its municipal counterpart, the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*). It has also addressed the issue of reasonable search under *PHIPA*.[25] The reasonable search principles outlined in past orders and decisions under *FIPPA*, *MFIPPA*, and *PHIPA* are instructive to the review of this issue in the matter before me.

[114] Although a requester will rarely be in a position to indicate precisely which records the custodian has not identified, the complainant still must provide a reasonable basis for concluding that such records exist.[26]

[115] *PHIPA* does not require Open Doors to prove with absolute certainty that further records do not exist. However, it must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[27] To be responsive, a record must be "reasonably related" to the request.[28]

[116] 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

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[25] PHIPA Decision 18.
[26] Order MO-2246.
[27] Orders P-624; PO-2559.
[28] Order PO-2554.

are reasonably related to the request.[29] A further search will be ordered if Open Doors does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[30]

Representations

Open Doors' representations

[117] Open Doors provided affidavit evidence sworn by an Administrative Coordinator (the coordinator) who has been employed by Open Doors since 2014. The coordinator explains that the requested records would have been created by a particular regional office of the former agency. The coordinator also explains that while Open Doors staff have no knowledge of records being forwarded from that regional office to other locations, they also have no confirmation that this did not occur.

[118] The coordinator attests that as far as she is aware, Open Doors has never destroyed any clinical records in its possession, regardless of whether they were created by Open Doors' clinicians or those of the former agency. However, she explains that there is no inventory list that can be used to identify or organize files from the former agency. In addition to the issue posed by there being no inventory list, the coordinator explains that the records from the former agency have been archived in a manner that makes it very difficult to search. In particular, each page of each archived clinical file was recorded as an image on a set of 41 CDs. Therefore, in order to search these records, each image must be opened individually.

[119] The coordinator attests that Open Doors' initial search for records was carried out by her predecessor. She attests to speaking to her predecessor, who advised that she was able to locate what she believed to be the complainant's file on CD #1. According to the coordinator, the complainant was granted access to portions of the records on CD #1 in November 2017.

[120] The coordinator attests to completing the subsequent search herself after the complainant provided additional information in support of her request. At that time, the coordinator searched through all 41 CDs, looking at one image at a time. As a result of this search, the coordinator located several additional records, which were provided to the complainant in March 2018. Having personally reviewed all 41 CDs, the coordinator attests that she is "satisfied that there are no further records in the possession of [Open Doors] relating to the complainant or to her family."

[121] The coordinator notes that within the records, there is a "melding of the sibling group, the entire family unit, and the complainant alone." She explains that this information is all contained in the complainant's file.

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[29] Orders M-909; PO-2469; PO-2592.
[30] Order MO-2185.

[122] In its representations, Open Doors maintains that it has responded liberally to the complainant's request, "in the sense that all records about the complainant (whether individual, sibling group, or family unit) have been disclosed, with some redaction." It further submits that it has no knowledge of additional records, and that it has not destroyed any records. For these reasons, Open Doors submits that it has conducted a reasonable search for records, as required by the *Act*.

[123] The complainant's submissions do not address this issue.

Analysis and findings

[124] In filing her complaint with the IPC, the complainant maintained that additional responsive records exist beyond those identified by Open Doors, thereby raising the issue of whether Open Doors had conducted a reasonable search as required by sections 53 and 54 of the *Act*.

[125] As noted in its representations, Open Doors conducted another search for responsive records after the complainant filed her complaint with the IPC. As a result of that search, Open Doors located and provided the complainant with additional responsive records. Upon receipt of the additional records, the complainant continued to maintain that a reasonable search had not been conducted, although she did not provide evidence in support of this position in the representations provided during my review.

[126] The reasonable search requirements under the *Act* do not require Open Doors to establish with absolute certainty that additional records do not exist. However, it must demonstrate that an experienced employee has made a reasonable effort to identify and locate records that are reasonably related to the complainant's request.[31] Based on the evidence before me, and for the reasons that follow, I find that Open Doors has done so.

[127] I accept that the coordinator who conducted Open Doors' second search is familiar with the types of records that could be found on the CDs containing records from the former agency, and that she is aware of how to identify records relating to the complainant and her family. I also accept that the coordinator understood Open Doors' responsibility to conduct a thorough search and to provide the complainant the records responsive to her request, in accordance with the access and disclosure provisions of the *Act*. On this basis, I am satisfied, and I find, that Open Doors' search was conducted by an experienced employee who is knowledgeable in the subject matter of the request.

[128] The coordinator attests that during the second search for records, she personally

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[31] PHIPA Decisions 17 and 18.

searched every image file on the 41 CDs containing records from the former agency. On this basis, I find that Open Doors expended a reasonable effort to locate records that are reasonably related to the complainant's request.[32]

[129] I am also satisfied that the complainant's request was clear and unequivocal, and that Open Doors understood that she was seeking all files relating to her and her family that would help her understand her childhood family dynamics. I note that Open Doors provided the complainant with a variety of records, and that those remaining at issue consist of assessments and progress notes. I also note that some of the records that Open Doors identified as responsive to the request pertain to sessions involving the complainant's family members, such as her brother, or her brother and father, and not involving the complainant herself. The evidence before me indicates that Open Doors did not unilaterally or inadvertently narrow the scope of the complainant's request, and I find that it has not done so. I am satisfied Open Doors broadly interpreted the complainant's request when conducting its search.

[130] Finally, given the absence of submissions on this issue, I find that the complainant has not provided a reasonable basis for concluding that additional records exist that have not yet been identified by Open Doors. I find, therefore, that Open Doors conducted a reasonable search for records in compliance with its obligations under the *Act*.

ORDER:

1. For the foregoing reasons, and pursuant to section 61(1) of the *Act*, I order Open Doors to consider the consent provided by the complainant's brother regarding the disclosure of his personal health information to the complainant under section 29(a) of the *Act*. Open Doors must provide the complainant with a response explaining why it decided to disclose or not to disclose the information. In doing so, Open Doors should be guided by the principles outlined in this decision.

2. I order Open Doors to provide the complainant with its decision and reasons by **September 20, 2021**. To confirm compliance with this order, I direct Open Doors to provide me with a copy of its decision and reasons at the same time.

Original Signed by: August 20, 2021

Jaime Cardy
Adjudicator

[32] Orders M-909; PO-2469; PO-2592.