

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 171

Complaint HA21-00006

A public hospital

February 2, 2022

Summary: Under the *Personal Health Information Protection Act, 2004 (PHIPA)*, the complainant made requests to a public hospital for deletions and other changes to her records of personal health information. The complainant alleges that the information she seeks to have removed relates to a doctor's factually incorrect diagnosis of her. The hospital refused the requests, including on the basis the information at issue consists of professional opinions or observations made in good faith, and thus qualifies for the exception at section 55(9)(b) to the duty to correct in section 55(8) of *PHIPA*.

After considering the circumstances of the complaint, the adjudicator exercises her discretion not to conduct a review of the matter under *PHIPA*. Among other reasons, she finds that the hospital has responded adequately to the complaint in the circumstances, and that no useful purpose would be served by reviewing a complaint in which the complainant seeks deletions to her records and other remedies that are not available in *PHIPA*. She dismisses the complaint.

The adjudicator also addresses as a preliminary matter the complainant's allegations that the IPC discriminated against her and failed to accommodate her disability in the IPC complaint process. She finds that in the absence of information from the complainant to support an accommodation request, it is reasonable to proceed with her consideration of the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sch A (as amended), sections 55(1), (8), and (9); 55(10)(a); 55(11) and (12); and 57(3) and (4).

OVERVIEW:

[1] This decision addresses a complaint under the *Personal Health Information Protection Act, 2004 (PHIPA)* to the Information and Privacy Commissioner/Ontario (IPC) about a hospital's refusal to make certain deletions and other changes that the complainant seeks to have made to her records of personal health information. It also addresses the complainant's allegations, made at various stages of the IPC process, that the hospital and the IPC failed to accommodate a disability and discriminated against her. As described in more detail below, the complainant's allegations relate both to the manner in which the IPC processed the current complaint, and to the proceedings in a previous IPC complaint she had made against the same hospital regarding the same matter (the hospital's refusal to make her requested changes to the records under *PHIPA*).

[2] In the discussion that follows, I explain why I find no basis for the complainant's allegations that the IPC failed to accommodate a disability, and/or discriminated against her on the basis of disability. I find that the IPC conducted a reasonable investigation into the complainant's accommodation needs, and that, in the absence of information from the complainant to support an accommodation request, it is reasonable to proceed with my consideration of the complaint.

[3] Then I explain my reasons for declining to conduct a review of the subject-matter of this complaint under *PHIPA*. Among other reasons, I find that the hospital has responded adequately to the complaint in the circumstances, and that no useful purpose would be served by a review, including because the complainant seeks remedies that are not available in *PHIPA*. In the result, I exercise my discretion under sections 57(3) and (4) of *PHIPA* not to review this matter. I dismiss the complaint.

DISCUSSION:

Preliminary Issue: Allegations of failure to accommodate and discrimination on the basis of disability

[4] At various points during the IPC complaint process, the complainant made allegations that the IPC had discriminated against her on the basis of disability. These allegations relate both to the IPC's processing of the current complaint, and to the handling of her previous complaint with the IPC.

[5] I will address her allegations relating to her previous complaint in more detail under the next heading (where I consider whether the current complaint should proceed to a review under *PHIPA*), because they are related to her arguments about why the hospital is required to make her requested corrections to the records.

[6] Under this heading, I will consider the complainant's allegation that the IPC

failed to accommodate her disability-related needs during the processing of the current complaint. As I explain below, I find no basis for this allegation.

[7] On August 13, 2021, after considering the information in the complaint file,¹ I sent the complainant a letter outlining my preliminary assessment of the complaint. In this letter, I set out my understanding of the facts and my reasons for believing the complaint does not warrant a review under *PHIPA*. (I describe these reasons in detail under the next heading.) I invited the complainant to provide me with representations if she disagreed with my preliminary assessment.

[8] In this letter, I also asked the complainant to tell me whether she requires any accommodation in order to participate in the IPC process, and, if so, to provide me with certain information to assist in determining and implementing a reasonable accommodation. I made this request based on my understanding from the file that the complainant had told the mediator that she (the complainant) needed accommodation due to a disability, but that she had not provided any information to the mediator to support the accommodation request.

[9] My letter stated, in part:

Invitation for submissions on my preliminary assessment, and on any accommodation request

Before making my final decision, I invite you to provide written submissions to explain why your complaint should proceed to the review stage of the complaint process. After I have considered your submissions and the circumstances of your complaint, I will provide you with a final written decision.

You advised the mediator that you need accommodation in this complaint due to disability. The IPC is committed to providing reasonable accommodations to people with disabilities so they have equal access to IPC proceedings. If you require an accommodation, please provide me with the following information:

- A statement that you have a disability. You are not required to disclose the specific medical details about the disability, such as the diagnosis, symptoms or treatment. However, you can provide more comprehensive information if you wish to do so in order to assist you in making your request for accommodation.

¹ None of the information I considered is subject to mediation privilege as described in section 57(2)(c) of *PHIPA*.

- A description of the limitations or needs associated with your disability and how they affect your ability to respond to communications from the IPC.
- The type of accommodation(s) that may be helpful to enable you to participate in the IPC process. For example, if you require an extension of an IPC deadline to respond to a particular matter, please indicate how much additional time you need. The IPC is ultimately responsible for determining and offering the accommodation but any information you can provide regarding the types of accommodations that may assist you to access our services will be helpful.

Once I have received this information, I will consider it and work co-operatively with you to determine and implement a reasonable accommodation.

[10] I set a deadline of six weeks from the date of the letter for the complainant to provide her representations on my preliminary assessment, and/or a request for accommodation in order to do so.

[11] Before and after I sent this letter, the complainant made a number of submissions to me, through IPC staff, about the conduct and fairness of the current IPC complaint (Complaint HA21-00006), as well as her previous IPC complaint. Among other assertions, the complainant alleged: that the hospital and the IPC had discriminated against her by closing her previous complaint with the IPC; that the hospital and the IPC are required under human rights legislation to reopen her previous IPC complaint; and that the current complaint should be returned to the mediation stage of the complaint process, because her consent is (or may be) required in order to adjudicate her complaint, and she does not give that consent.

[12] I responded to the complainant through IPC staff. Among other things, I advised the complainant that the decision to conclude mediation is a procedural decision that does not require the parties' consent (section 8.03 of the *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*). I also advised that in deciding whether to conduct a review of the current complaint, I would consider her submissions about the impact that her previous IPC complaint ought to have on the current complaint.

[13] On August 17, 2021, the complainant requested that I "pause" (stay) this complaint for an undefined period of time, to allow her to file an application with the Human Rights Tribunal of Ontario (HRTO) against the IPC over its handling of her previous IPC complaint. She expressed her view that a successful application before the HRTO would result in the reopening of her previous IPC complaint, and in the hospital's being required to make her requested corrections to her health records.

[14] On September 9, 2021, I wrote to the complainant to deny her request for a stay of the current complaint. I noted that her allegations about discrimination in relation to the previous IPC complaint were matters that she had raised in the current complaint, and that I would consider in my adjudication of the complaint. I also noted that the current complaint before the IPC does not prevent her from filing an application to the HRTO based on a claim of discrimination under the *Human Rights Code*.

[15] As a result, I reiterated my request for her representations in response to my August 13, 2021 letter. I also reiterated my request for the information outlined in that letter if she wished to seek an accommodation in the IPC process. I noted that the IPC had requested similar information from her at the mediation stage, but that she had not provided that information to date. In my September 9 letter to her, I set a new six-week deadline (to October 22) for the complainant to provide me with representations on my preliminary assessment of her complaint, and/or a request for accommodation with supporting information.

[16] Because the complainant did not respond by the October 22 deadline, IPC staff contacted her on October 29 to inquire about her overdue representations.

[17] The complainant responded by asserting that her disability prevents her from meeting deadlines, and that, as a result, the IPC is obliged under the *Human Rights Code* not to impose deadlines. In support, she provided excerpts on the duty to accommodate, which appear to have been taken from guidance provided by the HRTO. In particular, she highlighted the following example of a type of accommodation that a service provider could provide in appropriate circumstances: "flexible rules if someone does not comply with a deadline, if the reason is linked to a disability."

[18] On November 2, 2021, I wrote to the complainant to reiterate my request for information to support an accommodation request, if she wished to make one. I stated that I found no basis for her assertion that the IPC is obliged under the *Human Rights Code* not to impose deadlines because of her disability. However, I noted that an extension of a deadline can be a reasonable accommodation in some circumstances. In order to grant this accommodation, I asked her to provide me with the information that I had requested in my previous letters, including, at a minimum, a statement of the limitations or needs associated with her disability, the type of accommodation(s) she seeks, and, if she seeks an extension of a deadline, how much additional time she needs.

[19] In this letter, I fixed a final deadline of November 23, 2021 for receipt of her representations on my preliminary assessment of her complaint, and/or a request for accommodation, with the requested supporting information. In the letter (as in my previous letters), I advised the complainant that if I did not hear from her by this deadline, a decision would be issued in the absence of her representations.

[20] In response, the complainant sent several emails. She again asserted that under

the *Human Rights Code*, any attempts to enforce a deadline amount to reprisals against her for being physically disabled, and are against the law. She stated that I had failed to accommodate her disability and that this failure would be reported to the HRTO at the earliest opportunity.

[21] In another email, she also asserted, to my knowledge for first time, that she was making these submissions "blind," because she had not been able to read any of the IPC communications that she had received from the mediator or at the adjudication stage.

[22] In another email, the complainant stated the following about my request for information to support her accommodation request:

One more thing: if the Adjudicator is requesting medical documentation to support the accommodation request, please advise the Adjudicator that my PHIPA Rights to correct my falsified medical records - which are fully on record and proven as being misleading to all medical practitioners who view them and/or who are even made aware of a potential issue regarding them by the fact of their presence having necessitated that I place a "lock" on my file preventing viewing access to all subsequent medical practitioners in order to prevent misleading them as to the nature of my medical history and care needs, but the presence of which instantly causes them to become suspicious towards me and reluctant to perform objective medical evaluation - need to be enforced by the Adjudicator before I can hope to access the sort of appropriate accurate and objective unbiased medical evaluation which could lead to providing that medical documentation.

[23] Through IPC staff, I again asked the complainant to provide me with the following information to support her accommodation request:

- A statement of the limitations or needs associated with the complainant's disability, and how they affect her ability to respond to communications from the IPC; and
- A statement of the type of accommodation(s) that may be helpful to enable her to participate in the IPC process.

[24] I note that at no point did I require the complainant to provide me with medical documentation to support her accommodation request. In my letters of September 9, August 13 and November 2, I asked the complainant to provide a statement that she has a disability. I advised that she is not required to disclose the specific medical details about her disability (such as the diagnosis, symptoms or treatment), although I noted she was free to do so if she wished in order to assist her in making her request for accommodation.

[25] Also, in response to the complainant's statement that she had not been able to read communications from the IPC, I asked her to let me know if the format of the letters I had sent her presented a difficulty for her, so that we could discuss the possibility of resending this information in a more appropriate format. The complainant did not respond to this request.

[26] On November 23, 2021, the complainant sent a ten-page document, attached to an email that said: "Also submitting blind." This document consists of five pages of submissions followed by five pages of supporting documentation. This submission does not contain a request for accommodation, such as a request for an extension of time, nor any of the other information I asked her to provide in support of an accommodation request. Instead, this document sets out the complainant's arguments and evidence in support of the correction request she made to the hospital, and I will consider them under the next heading (in deciding whether this complaint warrants a review under *PHIPA*).

[27] The complainant sent similar materials to me on January 16, 2022, attached to an email describing the materials as documentation in support of her primary medical diagnosis. In this email, she stated: "I am also submitting this blind as I have not yet been able to even check whether or not you have observed my Rights and your obligations under the Code to date." Again, she did not make an accommodation request, or provide any of the other information I had asked her to provide in support of an accommodation request.

[28] I have considered all the materials submitted by the complainant during this complaint process, including the materials submitted with her emails of November 23, 2021 and January 16, 2022. I have decided to proceed with my consideration of the complaint, for the following reasons.

[29] Despite multiple opportunities, the complainant has not provided the information needed to support an accommodation request. For example, based on my understanding that the complainant seeks an extended deadline in order to make submissions, I asked her to indicate, among other things, how much additional time she requires. As another example, based on the complainant's statement that she has "not been able to read any of the reports from mediators or communications from the Adjudicator," I asked her to advise whether she would like this information to be sent to her in another format. The complainant has not responded to these particular requests, despite their having been contained in emails to which she responded (on other matters).

[30] I have also considered the complainant's assertion, repeated in several emails, that I "already have full documentation of this disability on my past record to date with the IPC process. You have been fully notified at all times." This appears to be a reference to the many pages of health records that the complainant has submitted, through the course of the previous IPC complaint and this complaint, to challenge the

hospital's refusal of her correction request. Like her November 23 and January 16 submissions, I will consider this evidence under the next heading, in evaluating whether there is a basis to proceed with her complaint about the hospital's decision. However, on the question of accommodation, the complainant's health records do not, by themselves, indicate or establish what type of accommodation the complainant may need because of a disability. By themselves, they do not support an accommodation request.

[31] I note that the HRTO, which addresses applications brought under the *Human Rights Code*, has stated that its "consistent approach is to require clear and specific current medical documentation to support requests for accommodation."² This accords with the Ontario Human Rights Commission's statements on the duty to accommodate in its *Policy on ableism and discrimination based on disability*.³ The policy recognizes that the duty to accommodate is a multi-party, collaborative process. All responsible parties are expected to work co-operatively to develop accommodation solutions; this may include complying with reasonable requests for information necessary to show and/or meet accommodation needs, or taking part in developing accommodation solutions.

[32] Where an individual who is a party to a proceeding before the IPC requests an accommodation on the basis of disability, the IPC may request and collect sufficient information to enable the IPC to accommodate the individual. While the IPC has the responsibility to determine and implement reasonable accommodation, the accommodation process is a shared responsibility. Everyone involved should co-operatively engage in the process, share information, and consider potential accommodation solutions.

[33] In this case, I am satisfied that I have fulfilled my duty to conduct a reasonable investigation into the complainant's accommodation needs. Requiring the complainant to provide information to support an accommodation request does not amount to discrimination.⁴ The complainant has not provided the information I need in order to make a decision regarding an appropriate accommodation. In these circumstances, it is reasonable for me to proceed with my adjudication of the complaint, and I find no basis for the complainant's allegations of discrimination on the basis of disability or reprisal contrary to the *Human Rights Code* in my doing so.

[34] Given all the above, I will proceed with my consideration of the complaint.

² See *Fagan v. Toronto Transit Commission*, 2017 HRTO 1226 (CanLII) at paragraph 8. See also *Garisto v. Aphria Inc.*, 2020 HRTO 751 (CanLII).

³ Available online here: <http://www.ohrc.on.ca/en/policy-ableism-and-discrimination-based-disability/8-duty-accommodate>.

⁴ The IPC made similar statements in PHIPA Decision 146. See especially paragraphs 18 and 20.

Should the complaint proceed to a review under *PHIPA*?

[35] Because the complainant's IPC complaints discussed in this decision concern the right in *PHIPA* to request correction to records of one's personal health information, it is helpful to begin by setting out the relevant statutory provisions.

[36] Section 55(1) of *PHIPA* sets out the right of an individual to request a correction to records of her personal health information:⁵

If a health information custodian has granted an individual access to a record of his or her personal health information and 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, the individual may request in writing that the custodian correct the record.

[37] Section 55(8) sets out a duty on the part of a health information custodian to grant a request for correction where certain conditions are met. However, section 55(9) provides an exception to the duty to correct in some circumstances:

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

(9) Despite subsection (8), a health information custodian is not required to correct a record of personal health information if,

(a) it consists of a record that was not originally created by the custodian and the custodian does not have sufficient knowledge, expertise and authority to correct the record; or

(b) it consists of a professional opinion or observation that a custodian has made in good faith about the individual.

[38] Section 55(10)(a) sets out the procedure by which a health information custodian who has granted a request for correction must fulfil that request:

Upon granting a request for a correction under subsection (1), the health information custodian shall ... make the requested correction by,

(i) recording the correct information in the record and,

⁵ There is no dispute in this complaint that the person who operates the hospital is a "health information custodian," and that the records the complainant seeks to have corrected are records of her "personal health information," as those terms are defined in sections 3(1) and 4 of *PHIPA*. The hospital does not dispute the complainant's right to request correction to her records under section 55(1) of *PHIPA*.

(A) striking out the incorrect information in a manner that does not obliterate the record, or

(B) if that is not possible, labelling the information as incorrect, severing the incorrect information from the record, storing it separately from the record and maintaining a link in the record that enables a person to trace the incorrect information, or

(ii) if it is not possible to record the correct information in the record, ensuring that there is a practical system in place to inform a person who accesses the record that the information in the record is incorrect and to direct the person to the correct information[.]

[39] In this context, the complainant made requests to the hospital in 2017 and in 2020 for certain changes to records of her personal health information. I will first discuss the complainant's 2020 correction request and the resulting hospital decision, which is the decision giving rise to the current complaint.

BACKGROUND

The 2020 correction request and the hospital's 2021 decision

[40] In December 2020, the complainant wrote to the hospital to request that it make changes to her records of personal health information, consistent with a previous request she had made to the hospital, in 2017. As described in more detail below, the complainant's 2017 request concerned certain information relating to an encounter she had with a named doctor in 2013. She has described that information as the doctor's false claims about her, including about her mental capacity, and other information in the records arising from those claims.

[41] In relation to the 2020 request, the complainant later sent the hospital additional details about the corrections she seeks to have made to her records. This included the following direction:

All documents created by, associated with, stemming from, containing reference to, and/or having been unduly influence[d] by to the point that they are unrecognizable as reflections of my medical situation and medical history, an encounter in 2013, are to be fully removed from all further association with my name and medical file in accordance with my *PHIPA* rights[.]

[42] The complainant's submissions to the hospital in support of her 2020 correction request also included the following information:

- There is a consent directive ("lock box") on what the complainant has identified as incorrect information in her records of personal health information, and she does not consent to the hospital's accessing this information under any circumstances, including for the purposes of responding to her correction request.
- She previously (in the context of her 2017 request and the IPC complaint arising from that request) denied consent for the "original author of the incorrect information" (meaning the named doctor) to view her records for the purpose of her correction request.
- She does not consent to having anyone involved in the correction request process view her complete original records, on the basis that doing so will create bias against her.
- She does not consent to having any of the following people made aware of or involved in any part of the correction request process: the doctor; anyone who knows the doctor personally or professionally; any associate or colleague of the doctor's; and any other person involved in "authoring the incorrect information during the time period [the doctor] controlled" the file.
- She requests that no one associated with the field of psychiatry be involved in the correction request process.
- She does not consent to the involvement in the correction request process of anyone "responsible for carrying [the doctor's] false claims over into their own notes," even if not a direct associate of the doctor's.
- She is not requesting that incorrect information and pages be struck out or crossed out (which, as I discuss above and below, is the manner of correction contemplated by section 55(10) of *PHIPA*). Instead, she requests that incorrect information and pages be "fully redacted and fully removed from all association with the file." She believes that striking out incorrect information but allowing it to remain visible, or otherwise associated with her file, would continue to bias all who view it.
- She requests that the correction be carried out anonymously, by which she means that the person who removes incorrect pages and information from her records should not know her name.
- She asserts that a 2017 diagnosis she received of a particular disease makes medically impossible the information that the doctor added to her records stemming from the 2013 encounter.

[43] In January 2021, the hospital issued a decision denying the complainant's 2020 correction request. The hospital stated that it understood the complainant's 2020

request to be the same as her 2017 request: namely, to have fully removed from her health records the information authored by the doctor relating to their 2013 encounter.

[44] In its January 2021 decision, the hospital noted that the complainant had denied consent to the hospital's accessing her health records for any purpose, including for the purposes of responding to her correction request. The hospital stated that, as a result, it maintains its earlier decision (from February 2018) to deny the same request she had made in 2017. Consistent with that earlier decision, the hospital took the position that the complainant had not demonstrated to the satisfaction of the hospital that the record is incomplete or inaccurate, referring to the requirements of section 55(8) of *PHIPA*.

[45] The hospital also relied on section 55(9)(b) of *PHIPA*, which is set out above and which provides that a custodian is not required to correct a record of personal health information if it consists of a professional opinion or observation that was made in good faith. The hospital stated that in 2018, in response to the complainant's 2017 correction request, three individuals (the named doctor, the Head of Psychiatry, and the Chief of Staff) each assessed her request for correction, and that each concluded that the records are accurate and complete (for the purposes for which the hospital uses the information), and also reflect a professional opinion or observation made in good faith.

[46] In its January 2021 decision, the hospital also reiterated its statement (made in its February 2018 decision) that despite its denial of the correction request, the complainant could submit a concise statement of disagreement, setting out her requested corrections, which the hospital would attach to her electronic health record.

The January 2021 complaint to the IPC (the current complaint)

[47] In January 2021, the complainant filed the current complaint with the IPC about the hospital's 2021 decision (Complaint HA21-00006). The complainant stated that she wanted "to see all incorrect information stemming from the 2013 encounter fully and completely redacted and removed" from her health records, and to have notice of the correction given to everyone who "may have been misinformed" by that information or who "participated in falsifying the records." She also requested an apology from the hospital for the hardship caused to her.

[48] In the IPC complaint form, she did not consent to the IPC's "looking at or asking for" the personal health information needed to process her complaint.⁶ She noted her concern that viewing this information could bias the person deciding her complaint.

[49] She also characterized the current complaint as a continuation of a previous complaint she had filed with the IPC in 2017, regarding the hospital's February 2018

⁶ This language, contained in the IPC *PHIPA* Access/Correction Complaint Form that the complainant completed in January 2021, is a reference to the powers of the Commissioner under section 60 of *PHIPA* to inspect a record of, require evidence of, or inquire into personal health information as reasonably necessary for the purpose of processing a complaint.

decision denying the correction request she had made in 2017.

[50] She asserted that after the mediation stage of that previous complaint (the 2017 complaint), the hospital was prepared to proceed with making her requested corrections. She alleged, however, that the 2017 complaint had been improperly closed before the hospital made those corrections, because her need for accommodations for a medical condition (which she described as the need for an extended time period in which to respond) was not adequately met. She indicated that she filed the current complaint in order to reopen the 2017 complaint and to have her requested corrections made to her records.

Mediation of the January 2021 complaint

[51] During the mediation stage of the current complaint, the complainant confirmed that she would like to have certain information removed from her health records, and that she did not wish to attach a statement of disagreement. She also stated that she did not want her correction request to be addressed by the hospital's privacy officer, who had responded both to her 2020 correction request and to her earlier request in 2017.

[52] During mediation, the hospital maintained its refusal of the complainant's correction request based on sections 55(8) (record not incomplete or inaccurate) and 55(9)(b) (professional opinion or observation made in good faith) of *PHIPA*.

[53] The complainant made a number of email submissions in response. I summarize the relevant portions of the complainant's submissions as follows:

- A complaint that the hospital allowed the doctor to take part in its consideration of her 2017 correction request, despite her "consent directive" that he not be involved in, aware of, or have access to her file or her correction request.
- An allegation that the hospital violated her consent directive with its decision on her 2020 correction request.
- An assertion that the hospital has not provided evidence for its decision that the information at issue in the records is accurate, complete, and reflects a professional opinion or observation made in good faith.
- An assertion that the complainant has repeatedly demonstrated to the hospital that the information at issue is factually and medically inaccurate.

Related to this, the complainant provided evidence about her medical history and the nature of a viral infection, in support of her assertion that the doctor's particular diagnosis of her is illogical and cannot be medically substantiated, and is thus not a medical opinion made by a competent doctor acting in good faith.

On this basis, she asserts a right to have her requested changes made to her records under *PHIPA*.

[54] With respect to the complainant's allegations regarding a breach of a consent directive, above, I observe that these allegations are the subject of a separate privacy complaint with the IPC. However, I recognize that the complainant asserts that the alleged breach is relevant to the current complaint, and I have considered her submissions to this effect.

The previous IPC complaint (the 2017 complaint)

[55] Because the complainant raised the matter in the current complaint, I also considered her evidence about her previous complaint with the IPC (the 2017 complaint). Specifically, I considered the proceedings in the 2017 complaint to the extent the complainant raised them and relies on them in the current complaint.

[56] As noted above, the 2017 complaint to the IPC concerned the complainant's 2017 correction request to the hospital, which the hospital denied in a 2018 decision. The complainant states that the 2017 complaint led to a "successful mediation" in which the hospital agreed to make her requested corrections. The hospital denies this occurred.

[57] In support of her claim, complainant provided a document titled "compilation of [2017 IPC complaint] emails regarding cor." This document is a compilation of emails between the complainant and the mediator in the 2017 complaint, in which the complainant and the mediator clarify the specific corrections that the complainant seeks to have made to her records.

[58] The last email in the document is dated May 7, 2019. In this email, the mediator advises the complainant that she (the mediator) had communicated the complainant's requested corrections to the hospital, and that the hospital had advised that it would need to access the complainant's records in order to make a determination on the correction request. The complainant underlined the following portions of this sentence in the mediator's May 7, 2019 email to her:

Do you provide consent for the hospital to access your entire record in order to identify the relevant documentation to review and subsequently make requests for correction of the record from the authors of the documents?

[59] This document does not contain any further communications from the mediator or from the hospital.

[60] The 2017 complaint was closed by the IPC in September 2019, after the IPC received no response from the complainant to the May 7, 2019 email cited above, or to a number of other emails and letters addressed to the complainant between May and

September 2019.

[61] During the processing of the current complaint (File HA21-00006), the complainant alleged that the IPC improperly closed her 2017 complaint, in violation of the *Human Rights Code*, as a result of a failure to accommodate a disability. She alleged that the closure of the complaint was a reprisal by the IPC and the hospital. She asserted a right under the *Code* to have her 2017 complaint reopened at the point of the "successful mediation," where, in her view, the hospital had been prepared to make her requested corrections.

Representations received in November 2021 and January 2022, in the current complaint

[62] As noted above, in response to my final deadline in the current complaint, the complainant submitted a ten-page document by email on November 23, 2021. This document consists of five pages of submissions followed by five pages of supporting evidence, including records of the complainant's personal health information.

[63] On January 16, 2022, the complainant sent additional unsolicited submissions that she described as medical test results that support her primary medical diagnosis. This evidence is offered in support of her assertion that the doctor's claims about her (contained in the records at issue), "though they never had any substance to begin with, and have also been demonstrated to be malicious and defamatory, have also been medically disproven."

[64] These submissions contain similar arguments and evidence to that provided by the complainant during the mediation stage of this complaint, which I have summarized above. In general, the complainant asserts that the doctor named in her correction request made a factually, logically, and medically incorrect diagnosis of her from their 2013 encounter, and that such a diagnosis cannot qualify as a medical opinion. These are arguments in support of her view that the hospital is required to make her requested corrections under section 55(8) of *PHIPA*, and cannot rely on the exception from this duty, at section 55(9)(b), for "a professional opinion or observation that a custodian has made in good faith about the individual."

FINDINGS AND ANALYSIS

[65] After considering all the above, I conclude that there are no reasonable grounds to review the subject-matter of this complaint, and I exercise my discretion under *PHIPA* not to conduct a review. This authority is set out in sections 57(3) of (4) of *PHIPA*, which state:

- (3) If the Commissioner does not take an action described in clause (1) (b) or (c) [which relate to attempts at settlement], or if the Commissioner takes an action described in one of those clauses but no settlement is

effected within the time period specified, the Commissioner may review the subject-matter of a complaint made under this Act if satisfied that there are reasonable grounds to do so.

(4) The Commissioner may decide not to review the subject-matter of the complaint for whatever reason the Commissioner considers proper, including if satisfied that,

(a) the person about which the complaint is made has responded adequately to the complaint[.]

[66] My decision is based on my view that: the hospital has responded adequately to the complaint in the circumstances; I cannot fairly and adequately address the complaint in the circumstances; and no useful purpose would be served even if I were to conduct a review of this complaint.

[67] My reasons are as follows.

The hospital has responded adequately to the complaint in the circumstances

[68] It is my view that the hospital has responded adequately to the complaint in the circumstances.

[69] As the hospital notes in its January 2021 decision refusing the complainant's 2020 request (and her same request made in 2017), the complainant has refused consent for the hospital to access her health records for any purpose, including in order to respond to her correction request. The complainant has also placed other restrictions on the hospital's ability to address her correction request, including by specifying a wide range of people who cannot be involved in this process. This includes the hospital's privacy officer, the original author of the information at issue (the doctor), and anyone who knows or is associated with the doctor or with the field of psychiatry.

[70] I understand that the complainant imposed these restrictions because of her belief that anyone who sees the information at issue or who has the associations she identified will be biased against her and unable to fairly consider her request. I also understand it is the complainant's view that the doctor did not act in good faith when he authored the information at issue, and that he should not have been made aware of or involved in responding to her 2017 correction request.

[71] I will not address here her allegations that the hospital breached her consent directive by allowing the doctor to take part in its consideration of her 2017 request, which is the subject of a separate complaint to the IPC. I note that, in general, it would not be unreasonable to expect a custodian to consult with the author of the information at issue in a correction request in order to determine whether the request should be granted. I also note that the custodian has explained that the doctor was one of three individuals who considered her 2017 request, and that each of these individuals

concluded that the records are accurate, complete, and reflect a professional opinion or observation made in good faith. The hospital has explained that this was the basis for the decision made by the hospital (and not made by the doctor alone) to refuse her 2017 correction request.

[72] Aside from the matter of the doctor's involvement in the correction request, which is addressed in the separate complaint, I am not satisfied there is a reasonable basis for believing that the other individuals identified by the complainant would be unable to act fairly and impartially in addressing her correction request. It is also my view that the restrictions the complainant placed on the hospital, including most significantly her refusal of consent for the hospital to access her records to respond to the request, prevented the hospital from further addressing her correction request. If the complainant withholds her consent to the hospital's use of her records for this purpose, the result is that the hospital is unable to revisit its February 2018 decision on her 2017 request for the same corrections. In these circumstances, I find reasonable the hospital's January 2021 decision (maintaining its February 2018 decision) to deny her correction requests.

[73] I am also satisfied that the hospital has responded adequately to the current complaint before the IPC about the hospital's January 2021 decision. The hospital participated in the earlier stages of this complaint, but the restrictions described above limited its ability to address the complainant's concerns through the IPC's complaint process. The hospital has advised the complainant of her rights under sections 55(11) and (12) of *PHIPA* to prepare and to have attached to her records a statement of disagreement, but the complainant has stated she does not wish to exercise that right. As I explain in more detail below, the remedy she seeks (namely, to have the information at issue fully removed from any association with her records) is not available under *PHIPA*. In these circumstances, it was reasonable for the hospital to ask that the complaint proceed to the adjudication stage for a determination, which includes a determination of whether there ought to be a review of the complaint under *PHIPA*.

[74] For these reasons, I decline to conduct a review under section 57(4)(a) of *PHIPA*.

I cannot fairly and adequately address the complaint in the circumstances

No useful purpose would be served through a review

[75] I also decline to conduct a review on the basis that I cannot fairly and adequately address the complaint in the circumstances, and that no useful purpose would be served even if I were to conduct a review of the complaint. In my view, these are proper reasons not to conduct a review.

[76] In addition to the restrictions the complainant has imposed on the hospital's

ability to access her records for the purpose of addressing her correction request, she has also declined consent to the IPC's looking at or asking for her records in order to process this complaint.

[77] The complainant is not required to consent to the IPC's obtaining her records of personal health information for the purposes of this complaint. However, where a complainant does not provide this consent, the IPC will consider whether it can fairly and adequately address the complaint, and, where the IPC determines that it cannot do so, may decide to close the complaint.⁷

[78] In these circumstances, I conclude that I am unable to fairly and adequately address the complaint about the hospital's refusal of the complainant's correction requests. Without being able to see the information and records at issue, I cannot adjudicate the issue of whether the hospital properly refused to grant the requests on the claimed grounds under *PHIPA*. It is also my view that this is not a proper case to dispense with consent under section 60(13) of *PHIPA*. Among other reasons, even if the IPC were to obtain the complainant's records without consent, the restrictions she has imposed on the hospital's access would prevent the hospital from properly participating in a review as the respondent. There is also no evidence of a public interest in carrying out the review that justifies dispensing with consent.

[79] Furthermore, I find there would be no useful purpose served if I were to conduct a review in spite of all the above.

[80] Section 55(10)(a) of *PHIPA*, reproduced above, makes clear that a correction to records of personal health information is made by identifying the incorrect information and recording the correct information, while maintaining the incorrect information, either in the record itself or by link to the record. Thus, even if I were to conduct a review and find that the information at issue does not consist of a professional opinion or observation made in good faith, and that the hospital has a duty to correct the records, the remedy would be an order directing the hospital to make corrections in accordance with the procedure in section 55(10)(a).

[81] This, however, is not the remedy the complainant seeks. She has stated that she does not wish for the information at issue be struck out or crossed out, but rather for it be "fully redacted and fully removed from all association with" her records. This is not a remedy that is available under section 55(10). There is no authority in *PHIPA* for me to grant the remedy she seeks.

[82] The complainant has also stated that she does not wish to exercise her right under section 55(12) of *PHIPA* to attach a statement of disagreement to her records.

[83] Finally, I find there is no evidence for the complainant's assertion that the

⁷ *IPC Code of Procedure for Matters under the Personal Health Information Act, 2004*, section 4.02(a). See also *PHIPA Decision 66*, in which the IPC declined to conduct a review on this basis.

hospital previously agreed to make her requested corrections. The hospital denies that it granted the complainant's 2017 correction request during the 2017 complaint process, and the document the complainant provided in support of her claim does not indicate that it did. In any event, even if the hospital had granted the correction request at that time (which it denies), any corrections would have been in accordance with section 55(10)(a), as described above, and not in the manner the complainant seeks.

[84] I also find no evidence to support the complainant's assertion that the IPC failed to accommodate a disability and improperly closed her 2017 complaint despite a request for accommodation. I see no evidence that the complainant requested and was refused such an accommodation at any time during that previous complaint process.

[85] For all the reasons given above, I conclude that this complaint should not proceed to the review stage. I dismiss the complaint.

NO REVIEW:

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

Original signed by: _____
Jenny Ryu
Adjudicator

February 2, 2022 _____