

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 191

Complaint HA21-00165

Niagara Health System

October 28, 2022

Summary: The complainant submitted a request for access to all records relating to the death of her husband, who was admitted to the hospital during the COVID-19 pandemic. The hospital conducted two searches and granted the complainant access to the roughly 800 pages of records that it located. The complainant challenged the reasonableness of the hospital's search for records. In this decision, the adjudicator finds that the hospital conducted a reasonable search for responsive records in accordance with its obligations under the *Personal Health Information Protection Act, 2004*. She dismisses the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004*, SO 2004, c 3 Sched A, sections 53 and 54.

BACKGROUND:

[1] The complainant submitted a request to the Niagara Health System (the hospital) for access to her deceased husband's (the patient) health records pursuant to the *Personal Health Information Protection Act (PHIPA)*. The complainant specified that she sought access to "All records from admission to date of death" and "All medications given, all notes, all x-rays."

[2] In response to the request, the hospital granted the complainant access to the roughly 800 pages of responsive records that it located. The complainant, through a representative, then filed a complaint about the hospital's decision with the Information and Privacy Commissioner of Ontario (the IPC).

[3] The IPC attempted to mediate the complaint. During the course of mediation, the complainant raised the issue of missing records and advised that she believes that more records should exist related to end of life care and a medication called "heparin." The complainant explained that the patient was in the care of the hospital for a five-week period and that there should be more records than the approximately 800 pages the hospital located. In support of her belief, the complainant noted that she had received roughly 500 pages of records related to a five-day stay the patient previously had at another hospital.

[4] In response to the complainant's concerns about the existence of additional records responsive to her request, the hospital conducted a further search for records. The hospital located additional responsive records. It then issued a letter to the complainant advising her of the outcome of the hospital's further search and granting her access to all of the responsive records. The hospital's letter stated, in part:

I undertook a new search for records based on the above. To do this, I engaged our Information Communications and Technology group to assist me in searching for any additional electronic information in our electronic medical records system. My Release of Information team flagged any records that had not been originally provided to you on [date]. Finally, I followed up specifically with the Clinical Manager of the Intensive Care Unit (ICU) to confirm that there were no records missing from the relevant parts of the chart. In addition, I had the manager assist me in reorganizing the interdisciplinary notes so that it is easier to follow the patient's journey. I wish to note that there were no additional notes found in this category of records, however as a result of the re-organization there are some duplicates.

As a result of the search, we found the following additional records:

1. Electronic Bedside Swallowing Assessment
2. ECG dictated reports
3. Clinical Documentation Master Signature Sheet
4. Belongings-Valuables of Deceased
5. Patient Belongings, Money & Valuables
6. Patient Property
7. Certificate of Death - Form 1
8. Warrant to Bury a Body

9. Coroner's Authority to Seize During an Investigation

I am enclosing copies of the requested records, comprising both the records previously provided to you and the records found through the current search.

[5] The complainant was not satisfied with the hospital's additional search and decision letter. She noted that the hospital did not locate or provide any records regarding the medication heparin, even though she had been advised by the coroner that there was heparin in the patient's system. The complainant also stated she believed that the patient was transferred to palliative care and there could be records from that unit. In response to these additional concerns, the hospital conducted a further search for records, however, it did not locate any further responsive records. The hospital stated that it had provided all responsive records, but the complainant remained dissatisfied and continued to challenge the reasonableness of the hospital's search.

[6] As a mediated resolution of the complaint was not possible, the complaint was moved to the adjudication stage of the complaint process. I conducted a review of the complaint, inviting the parties' representations on the reasonableness of the hospital's search for responsive records. The hospital and the complainant provided representations that I shared in accordance with the IPC's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*.

[7] In this decision, I find that the hospital conducted a reasonable search for records and I dismiss the complaint.

DISCUSSION:

[8] Because the complainant claims that additional records exist beyond those identified by the hospital, the only issue I must decide is whether the hospital conducted a reasonable search for records as required by sections 53 and 54 of *PHIPA*. These sections address the written request that an individual may make to a custodian to exercise a right of access to records, and the obligations on the custodian to make reasonable efforts to identify and locate requested records in responding to the access request. If I am satisfied that the hospital's search was reasonable in the circumstances, I will uphold the hospital's decision. If I am not satisfied, I may order the hospital to conduct further searches.

[9] Previous IPC decisions¹ have found that the principles outlined in IPC orders that address the issue of reasonable search under the *Freedom of Information and Protection of Privacy Act* and its municipal counterpart also apply to *PHIPA*. These decisions establish that *PHIPA* does not require the hospital to prove that further

¹ Including *PHIPA* Decisions 17, 18, 43, 48, 57 and 61.

responsive records do not exist; however, the hospital must provide sufficient evidence to show that it made a reasonable effort to identify and locate responsive records.² To be responsive, a record must be “reasonably related” to the request.³

The parties’ representations

[10] In her representations, which she submitted after receiving the hospital’s representations set out below, the complainant repeats her assertion that additional records should exist. In particular, records documenting the administration of heparin to the patient, and records relating to the patient’s stay in the palliative care unit. The complainant also asserts that more than 800 pages of records should exist in relation to a five-week stay⁴ at the hospital. The complainant’s representations also address her concerns and suspicions about the care that the patient received at the hospital, and question the basis for some of the hospital’s treatment decisions and actions.⁵

[11] In its representations, the hospital describes its search for responsive records. It explains that an Information Release Specialist – an expert in reviewing medical records for release whose job involves responding to access requests – initially responded to the complainant’s request. The specialist conducted a search by extracting records directly from its electronic medical records system, MediTech, and then the Release of Information Office responded to the complainant. It adds that, subsequently, its Director of Health Information Management and Patient Registration – who oversees Information Release Specialists – conducted an additional search for the patient’s records. The director contacted the hospital’s MediTech experts in its Information and Communications Technology Group to ensure that every record related to the patient had been found and copied. The director also worked with the specialist to identify any additional records not provided in the hospital’s first release of records.

[12] The hospital notes that any paper records related to the patient, such as ICU or Emergency Department paper charts, were scanned into MediTech by the time the complainant submitted her access request. The hospital adds that, because the patient was admitted to the ICU for his entire stay, the director, who conducted the additional search, followed up specifically with the Clinical Manager of the ICU to confirm that there were no records missing from the relevant parts of the chart and that there were no paper records for the patient remaining in the unit. The hospital states that as a result of its additional search, it found the additional records that it provided to the complainant during the mediation stage.⁶

² Orders P-624 and PO-2559; PHIPA Decision 18.

³ Order PO-2554; PHIPA Decision 18.

⁴ In her representations, the complainant states that the patient’s stay was seven weeks long. However, the original complaint says five weeks.

⁵ As I advised the complainant during my review, I have no jurisdiction to address any of her concerns about the quality of care the patient received from the hospital.

⁶ These additional records are described in paragraph 4, above.

[13] The hospital also addresses the complainant's assertions about the records that should exist. Regarding the assertion that records documenting the administration of heparin should exist, the hospital agrees with the complainant. It notes that the use of enoxaparin – a low molecular weight heparin – is documented in the patient's medication administration record.⁷ The hospital explains that enoxaparin is heparin, and it confirms that it has provided all of the heparin-related records to the complainant. In its representations, the hospital refers the complainant to an online reference for information on enoxaparin.⁸

[14] Regarding the complainant's assertion that records relating to the patient's stay in the palliative care unit should exist, the hospital explains that it does not have a palliative care unit; although the patient appears to have received supportive care, he had been admitted to the ICU where he remained an ICU patient. The hospital adds, however, that because it was over capacity during the concurrent COVID wave, it moved the patient to a COVID flex unit called PARR (post-anesthesia recovery room) for 12 days, before returning him to the ICU.

[15] Finally, the hospital calls the complainant's assertion that more than 800 pages of records should exist relating to the patient's five-week stay "a logical fallacy." It states that while there could possibly be a general correlation between hospital visit length and the number of records, it does not automatically follow that a visit of a given length should result in a corresponding number of pages. The hospital explains that many different factors contribute to the size of a patient chart, including, the number and nature of any interventions, variation in the method of documentation among care providers, and variations in the length and number of reports. The hospital suggests that, since the patient was transferred from another hospital, the complainant may be basing her expectation on what she received from that hospital; however, it submits that it is not reasonable to generalize a chart page count from this one other data point.

Analysis and findings

[16] Having reviewed the complete representations provided by the parties and all of the materials in the complaint file, I am satisfied that the hospital conducted a reasonable search for responsive records. The hospital's explanation of the steps it took in response to the request, including having two employees with expertise in responding to access requests and granting access to medical records, conduct two separate searches that yielded approximately 800 pages of responsive records, is sufficient evidence that it expended a reasonable effort to locate records which are reasonably related to the request.⁹ The hospital's evidence shows that it searched for all of the patient's records in its MediTech system and it confirmed that no additional paper

⁷ The hospital's representations say "medical administration record," which appears to be an inadvertent error.

⁸ <https://www.fda.gov/drugs/postmarket-drug-safety-information-patients-and-providers/generic-enoxaparin-questions-and-answers>

⁹ Orders M-909; PO-2469; PO-2592.

records existed outside of the MediTech system, in the ICU or Emergency Department.

[17] The hospital also directly addresses the complainant's three specific concerns and assertions about records she believes should exist. First, it agrees that heparin-related records exist and it refers the complainant to the medication administration record entries about enoxaparin. Second, it explains that it does not have a palliative care unit but it did have PARR, a COVID flex unit where the patient stayed for 12 days. Third, it maintains that the number of pages of records generated during a hospital stay depends on a number of factors, and the complainant's experience (of receiving 500 pages relating to the patient's five-day stay at another hospital) does not provide a reasonable basis to generalize and assert that the hospital should have more than 800 pages of responsive records.

[18] I find the hospital's explanations about the complainant's concerns to be reasonable and clear. While the complainant repeats her position and arguments in her representations, she does not provide a reasonable basis to cast doubt on the responses provided by the hospital. The complainant was able to raise her concerns about the hospital's search for records and her concerns have been addressed by the hospital. As a result, there is no reasonable basis for me to conclude that additional records exist. Accordingly, I find that the hospital has met its obligations under *PHIPA* to conduct a reasonable search.

ORDER:

1. For the foregoing reasons, I dismiss the complaint and issue no order.

Original Signed By: _____

Stella Ball
Adjudicator

October 28, 2022 _____