

Information and Privacy Commissioner,  
Ontario, Canada



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

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## PHIPA DECISION 225

Complaint HA21-00053

Dr. Robin Deans

September 14, 2023

**Summary:** The complainant made a request to the custodian for records relating to his visits with two doctors at the custodian's office. The custodian disclosed the complainant's health records to him. The complainant challenged the reasonableness of the custodian's search, claiming additional responsive records ought to exist. In this decision, the adjudicator finds the custodian conducted a reasonable search for records responsive to the complainant's request and dismisses the complaint.

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

### BACKGROUND:

[1] This decision addresses a complaint about the reasonableness of a health information custodian's search for records responsive to a complainant's request. In this decision, I find the custodian conducted a reasonable search in accordance with its obligations under the *Personal Health Information Protection Act, 2004 (PHIPA)*.

[2] The complainant contacted the office of Dr. Robin Deans (the custodian) and verbally requested access to all records relating to his visits with two other doctors (Dr. G and Dr. M). In response, the custodian sent the complainant some of his records on December 18, 2020. On February 15, 2021, the complainant sent a letter, addressed to Dr. G, to the custodian claiming he did not receive all the records responsive to his request.

[3] On March 9, 2021, the custodian states it sent the complainant a package containing all of his electronic medical records. However, the complainant sent the custodian a further letter stating he did not receive a complete copy of his medical records. The complainant stated he did not receive diagnostic imaging records. The custodian advised it provided the diagnostic imaging records to the complainant on March 25, 2021 via secure email.

[4] The complainant filed an access complaint with the Office of the Information and Privacy Commissioner of Ontario (the IPC) regarding this matter. The complainant takes the position that additional responsive records ought to exist.

[5] During mediation, the complainant claimed additional responsive records ought to exist, specifically, diagnostic testing results. The complainant states he underwent diagnostic testing at the custodian's office on December 1, 2020, but did not receive any results. In response, the custodian advised that no testing took place on that date. Rather, the custodian states its staff only took a measurement of the complainant's right eye on December 1, 2020. The custodian takes the position that this measurement is not *testing*. The complainant disagreed with the custodian's assessment and continues to seek records relating to his visits at the custodian's office.

[6] No further mediation was possible and this complaint was transferred to the adjudication stage of the complaint process, in which an adjudicator may decide to conduct a review under the *Act*. The adjudicator originally assigned to the complaint decided to conduct a review of the complaint. She began the review by inviting representations from the custodian on the issues set out in a Notice of Review. The custodian submitted representations. The adjudicator then invited the complainant to submit representations in response to the Notice of Review and the custodian's representations. The complainant submitted representations.

[7] The complaint was then transferred to me to complete the review and issue a decision. I reviewed the file and the parties' representations and decided I did not need to hear from the parties further before issuing my decision. In this decision, I find the custodian conducted a reasonable search for records responsive to the complainant's request and dismiss the complaint.

## **DISCUSSION:**

### **Did the custodian conduct a reasonable search for records?**

[8] The only issue before me is whether the custodian conducted a reasonable search for records responsive to the complainant's request. In the circumstances of this complaint, I am satisfied the custodian did.

[9] Where a requester (in this case, the complainant) claims that additional records exist beyond those identified by the 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*. These sections address the written request an individual may make to a custodian to exercise a right of access to records, and the obligations on the custodian in responding to the access request. These sections of *PHIPA* require the custodian to make a reasonable effort to locate and identify the requested records. If I am satisfied 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.

[10] In *PHIPA* Decisions 17, 18, and later decisions,<sup>1</sup> the IPC applied the principles outlined in orders addressing the issue of reasonable search under the *Freedom of Information and Protection of Privacy Act* and its municipal counterpart. These decisions establish that *PHIPA* does not require the custodian to prove with absolute certainty that further records do not exist. However, the custodian must provide sufficient evidence to show it made a reasonable effort to identify and locate responsive records.<sup>2</sup> To be responsive, a record must be *reasonably related* to the request.<sup>3</sup>

[11] Although a requester will rarely be in a position to indicate precisely which records the custodian has not identified, the requester (in this case, the complainant) still must provide a reasonable basis for concluding that such records exist.<sup>4</sup>

[12] The custodian maintains it provided the complainant with all the records reasonably related to his request. The custodian states while it is unfortunate the complainant is not satisfied with the disclosure, no further records exist. The custodian submits it carried out a reasonable search for records. In fact, the custodian notes the search was a "routine task as the records were not particularly voluminous and did not cover a large swath of time... There was nothing complex about the request, the search or the production of the requested records." The custodian also submits it employs experienced and knowledgeable staff who respond to record requests in the ordinary course of their day-to-day responsibilities. The custodian submits its staff conducted a reasonable and successful search to locate the records relating to the complainant's request.

[13] The custodian affirms the complainant did not receive diagnostic testing on December 1, 2020, despite his claim. The custodian states its staff only measured the complainant's eye; it did not do any imaging or diagnostic testing. Accordingly, there are no records relating to imaging or diagnostic testing from December 1, 2020 for the complainant.

[14] The custodian's representations were shared with the complainant and the complainant was provided with an opportunity to respond to the custodian's representations on search. In his representations, the complainant raises a number of

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<sup>1</sup> See, for example, *PHIPA* Decisions 43, 48, 52 and 57.

<sup>2</sup> Orders P-624 and PO-2559; *PHIPA* Decision 18.

<sup>3</sup> Order PO-2554; *PHIPA* Decision 18.

<sup>4</sup> Order MO-2246; *PHIPA* Decision 18.

issues of concern to him. The complainant continues to take the position that "diagnostics" were taken on December 1, 2020. The complainant also takes issue with his diagnosis and the treatment he received at the clinic and his interactions with the staff and doctors at the custodian's office since his visits. I cannot comment on these issues; the sole issue before me is whether the custodian conducted a reasonable search for responsive records. In addition, the complainant alleges the custodian deliberately purged or withheld records from disclosure. However, he did not provide any evidence to demonstrate the basis for his allegations. In the absence of any evidence or specific representations, I will not consider whether the custodian has withheld or destroyed documents in this decision.

[15] Based on my review, I am satisfied the custodian conducted a reasonable search for records in response to the complainant's request. I am satisfied employees knowledgeable in the subject matter of the request expended a reasonable effort to locate the complainant's health records. The custodian submits and I accept that its staff is familiar with these types of requests and regularly conducts searches for patient health records. With regard to the records from December 1, 2020, I am satisfied the custodian conducted a reasonable search for records, regardless of whether the treatment the complainant received was "diagnostic" in nature. The custodian states it did not create imaging or diagnostic records on December 1, 2020; as such, I am satisfied no additional records from that date ought to exist. In these circumstances, I am satisfied the custodian met its obligations under *PHIPA* to conduct a reasonable search. The fact that it did not locate the specific records as described by the complainant is not a reasonable basis for concluding that additional records exist.

[16] Furthermore, I find the complainant did not provide a reasonable basis for his belief that additional responsive records exist. It is clear the complainant is dissatisfied with the treatment he received at the custodian's office. The complainant also made a number of allegations regarding the behaviour of various doctors and staff, all of which are outside the scope of this complaint. Therefore, upon review of the complainant's representations, I find he has not established a reasonable basis for me to conclude the custodian has not conducted a reasonable search for responsive records.

**ORDER:**

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

Original Signed by: \_\_\_\_\_  
Justine Wai  
Adjudicator

September 14, 2023 \_\_\_\_\_