

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 252

Complaint HA21-00051

A doctor

June 28, 2024

Summary: The complainant asserted that a doctor had not conducted a reasonable search for his medical records. The complainant relied on an affidavit of documents from an existing court proceeding between himself and the doctor to identify the allegedly missing records and to argue that they should exist.

In this decision, the adjudicator concludes that the existing court proceeding between the complainant and the doctor could more appropriately and completely address the complaint, since it concerns the affidavit of documents. The adjudicator concludes there are no reasonable grounds to conduct a review of the complaint and she exercises her discretion not to proceed with a review.

Statutes Considered: *Personal Health Information Protection Act, 2004*, SO 2004, c 3 Sched A, sections 57(3) and 57(4)(b).

Orders and Investigation Reports Considered: PHIPA Decisions 80, 176 and 203.

OVERVIEW:

[1] This decision determines that a review of the complaint is not warranted because the complaint could be more appropriately dealt with, completely, in an existing court proceeding between the parties.

[2] The complainant submitted a request to a doctor for access to his medical records. At the time of his request, the complainant had ongoing court proceedings and a

complaint with the College of Physicians and Surgeons of Ontario (CPSO) against the doctor.

The complaint

[3] The complainant was not satisfied with the doctor's response to his access request and filed a complaint about it with the Information and Privacy Commissioner of Ontario (the IPC). The complainant asserted that the doctor had additional records about him.

[4] When the complainant filed his complaint in 2021, he told the IPC that he was involved in ongoing court proceedings and a complaint to the CPSO and indicated that he understood those court and CPSO proceedings were distinct from the IPC complaint process. He also stated he wished to file a complaint with the IPC in order to pursue his rights under the *Personal Health Information Protection Act, 2004* (the *Act*).

[5] The IPC attempted mediation of the complaint. During mediation, the complainant stated that the records to which he believes he was not given access are the records described in paragraphs 1 to 1.16 under "Schedule A – addendum" to a January 2021 Affidavit of Documents.

[6] In response to the complainant's identification of the records, the doctor's representative provided a letter dated December 14, 2021, advising that three additional responsive records had been located and provided to the complainant.

[7] In the December 14th letter, the representative also advised that it is the doctor's final position that a reasonable search had been conducted for the responsive records, and that the complainant had not discharged his burden of providing a reasonable basis to conclude that additional records exist. After receiving the December 14th letter and the three additional records, the complainant continued to challenge the reasonableness of the doctor's search for responsive records.

[8] A mediated resolution was not possible. The complaint was moved to the adjudication stage of the complaint process in which an adjudicator may conduct a review. I decided to conduct a review. I invited representations from the doctor and the complainant. In response to my Notice of Review, the doctor stated that he relied on his prior submission in this complaint and had nothing to add. I then sent my Notice of Review and a copy of the doctor's response and prior submission to the complainant.

[9] The complainant provided representations, including documents he asserts support his position that additional records exist. In his representations, the complainant addresses records from the January 2021 Affidavit of Documents from his court proceeding against the doctor. He addresses the court proceeding and his other proceedings against the doctor. His representations are mostly allegations about the doctor's conduct and the conduct of the doctor's lawyer in the court proceeding.

Preliminary assessment not to conduct a review

[10] After considering the complainant's representations, I formed a preliminary assessment that the complaint could be more appropriately dealt with in the complainant's court proceeding against the doctor and, therefore, there were no reasonable grounds to review the subject-matter of the complaint under sections 57(3) and (4)(b) of the *Act*, set out below.

[11] I sent a letter to the complainant advising him of my preliminary assessment that the complaint review should not proceed, and I explained my authority under sections 57(3) and (4)(b) of the *Act* to exercise my discretion not to conduct a review.

[12] In my letter, I noted that all the records the complainant asserts should exist are records that he alleges are missing from the January 2021 Affidavit of Documents filed in his court proceeding against the doctor. I also noted that his representations to me focus on allegations and issues that appear to be before the court in that proceeding. I explained to the complainant that the allegations he has included in his representations about the doctor's conduct and the doctor's lawyer's conduct are not issues before me in this complaint, and they are outside of my jurisdiction under the *Act*.

[13] I advised the complainant of my preliminary assessment that, in the circumstances, it appears that his complaint about records he alleges are missing from the January 2021 Affidavit of Documents could be more appropriately dealt with, completely, through his court proceeding rather than through an IPC complaint; and, accordingly, there appear to be no reasonable grounds to review the subject-matter of his complaint.

[14] In addition to sharing my preliminary assessment that the review should be discontinued, I referred the complainant to previous IPC decisions that addressed section 57(4)(b) of the *Act*: PHIPA Decision 80, in which a review was not conducted because the CPSO and the Health Professions Appeal and Review Board had appropriately dealt with the subject-matter of the complaint; PHIPA Decision 176, in which a review was not conducted because the CPSO had appropriately dealt with the subject-matter of the complaint; and, PHIPA Decision 203, in which a complaint review was discontinued because a CPSO proceeding had appropriately dealt with the subject-matter of the complaint.

[15] I invited the complainant to provide representations in response to my preliminary assessment if he disagreed with it. The complainant did not provide representations.

The complaint review under the *Act* should not proceed

[16] Sections 57(3) and (4)(b) of the *Act* set out the IPC's authority to review or not to review a complaint. They state:

(3) If the Commissioner does not take an action described in clause (1) (b) or (c) or if the Commissioner takes an action described in one of those clauses but no settlement is effected within the time period specified, the Commissioner may review the subject-matter of a complaint made under this Act if satisfied that there are reasonable grounds to do so.

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

(b) the complaint has been or could be more appropriately dealt with, initially or completely, by means of a procedure, other than a complaint under this Act[.]

[17] I exercise my discretion not to review the subject-matter of this complaint. The complainant provides no representations in response to my preliminary assessment that his complaint could be more appropriately dealt with, completely, by the court in the proceeding between the parties. That court proceeding already concerns the January 2021 Affidavit of Documents, which forms the basis for the complainant's assertion that additional records exist. The complainant's entire complaint is that he has not been granted access to records that he claims exist according to the January 2021 Affidavit of Documents. Because the January 2021 Affidavit of Documents forms part of the existing court proceeding between the complainant and the doctor, that court proceeding is the best process to address the complainant's concerns about records he alleges he has not received in the course of that proceeding. As a result, I conclude that the complaint could be more appropriately dealt with, completely, by means of the court proceeding and there are no reasonable grounds for me to continue to conduct a review under sections 57(3) and (4)(b) of the *Act*.

NO REVIEW:

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

Original signed by: _____
Stella Ball
Adjudicator

_____ June 28, 2024