

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 270

Complaint HA22-00180

Ontario Medical Association Physician Health Program

January 31, 2025

**Summary:** A doctor requested records from the Ontario Medical Association's Physician Health Program (OMA PHP). She had previously been referred to that program by her hospital employer and participated in its assessment services. The OMA PHP denied access to records of interviews with an identified individual, stating that granting access to this could result in risk of harm to another person. The OMA PHP also denied access to a draft report, on the basis that it was an independent medical evaluation, and therefore not a record of personal health information.

In this decision, the adjudicator finds that the complainant does not have a right of access to the records of the interviews, as these are not primarily dedicated to the complainant's personal health information. She finds that the draft PHP report is a record of the complainant's personal health information that she should be granted access to. The adjudicator also finds that the OMA PHP performed a reasonable search for records responsive to the complainant's request.

**Statutes Considered:** *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sch. A, sections 2, 4(1), 4(4), 52(1), and 52(3).

**Decisions Considered:** PHIPA Decisions 15, 17, 18, 154, and 265.

### BACKGROUND:

[1] The Ontario Medical Association Physician Health Program (the OMA PHP) received a request under the *Personal Health Protection Act, 2004* (PHIPA or the *Act*) from a physician asking for all documents in her Physician Health Program file. The OMA PHP provided the complainant with records. The complainant later repeated her request for a

complete copy of her PHP file, as she stated that, based on her review of the records provided, there are gaps in the file.

[2] The OMA PHP issued a decision denying access to records of two interviews with an affected party, citing section 52(1)(e)(i) (risk of serious bodily harm of another person) of the *Act*. The OMA PHP stated that providing the requested records would give rise to a “serious and immediate risk of harm to the physical and/or psychological well being” of another individual (the affected individual).

[3] The complainant filed a complaint to the Information and Privacy Commissioner of Ontario (the IPC).

[4] The complainant asserted that she had not been provided with the following documents in response to her request:

- Records of two interviews with an identified individual
- Email communications between an independent medical evaluation (IME) assessor for a specified time period prior to the release of the IME report
- Interdisciplinary meeting notes of clinicians in the PHP program
- A draft or final PHP report<sup>1</sup>
- Meeting notes between the complainant, her lawyer and two physicians.

[5] The OMA PHP advised that for the first category, it withheld responsive records pursuant to section 52(1)(e)(i) of the *Act*. For the second and third categories, the OMA PHP advised that it had provided the complainant with the responsive records that it had located.

[6] Regarding the fourth category, the draft or final PHP report, the OMA PHP stated that the report was incomplete, and that incomplete reports are not kept in their electronic records management (EMR) system. The OMA PHP stated that the PHP report is an assessment of an individual’s return to work capabilities and is therefore excluded from the application of *PHIPA*. The OMA PHP also stated that if it were not, it would be exempt under section 52(1)(c) (collected or created primarily for a proceeding) because it has evidentiary value before the College of Physician’s and Surgeons of Ontario (CPSO).

[7] The complainant was not satisfied with the OMA PHP’s access decision regarding the records it had located and believes that additional responsive records exist. As no

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<sup>1</sup> As will be set out below, the OMA PHP describes the PHP report as an independent medical evaluation. For clarity, the IME report and the PHP report are separate documents. The IME report was authored by an outside clinician, and was provided to both the OMA PHP and later, to the complainant. The IME report was provided to the complainant prior to her IPC complaint and does not form part of her access complaint. Accordingly, this decision does not address the complainant’s access rights to the IME report.

further mediation was possible, the file was transferred to the adjudication stage of the complaint process. The adjudicator decided to conduct a review under the *Act* and sought and received representations from both parties.

[8] The file was then transferred to me. I reviewed the representations and determined that I required additional submissions from the OMA PHP, which they provided.

[9] For the following reasons, I find that the interviews with an identified individual are not records that are dedicated primarily to the complainant's personal health information, and that the complainant does not have a right of access to these interview records under section 52(1) of the *Act*. I also find that the draft PHP report does not meet the criteria for the exception to personal health information set out in section 4(4) of the *Act* as claimed by the OMA PHP, and that the draft PHP report is a record of the complainant's personal health information that she has a right to access under section 52(1) of the *Act*. Finally, I also find that the OMA PHP conducted a reasonable search for records responsive to the complainant's request.

## **RECORDS:**

[10] The records at issue in this complaint are notes from two interviews with an identified individual and a draft PHP report.

## **PRELIMINARY ISSUE:**

### **Is the OMA PHP a health information custodian under the *Act*?**

[11] There is no dispute between the parties that the OMA PHP is a "health information custodian" within the meaning of section 3(1) of the *Act*. Both parties agreed on that point in their representations. However, I determined that I required further representations from the OMA PHP on this point.

[12] The OMA PHP's website<sup>2</sup> indicates that it provides different categories of services to its members, including education; support and referral; assessment; and monitoring and advocacy. I asked that the OMA PHP provide me with supplemental representations addressing their position that they are a health information custodian pursuant to section 3(1)4(vii) of the *Act*, which encompasses "[a] centre, program or service for community health or mental health whose primary purpose is the provision of health care."<sup>3</sup> I asked

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<sup>2</sup> <https://php.oma.org/what-we-do/>

<sup>3</sup> Section 3(1)4(vii) of the *Act* states:

In this Act, "health information custodian", subject to subsection (3) to (11), 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 connection with performing the person's or organization's powers or duties or the work described in the paragraph, if any:

the OMA PHP to address whether it provides health care, and if so, whether the provision of that health care was the OMA PHP's primary purpose.

[13] The OMA PHP acknowledges that they are a "sui generis" health care service, unlike any other in Ontario. However, they submit that they are a health information custodian, as they provide health care, as defined in section 2(1) of the *Act*.<sup>4</sup>

[14] The OMA PHP states that the clinical staff it employs are all health care practitioners. These include social workers, psychologists, physicians, nurses, and occupational therapists. Clinical staff are responsible for the intake of OMA PHP clients. In that process, the OMA PHP states that these coordinators use clinical skills to assess and advise callers, including providing initial case screening and triage.

[15] Regarding its support and referral functions, the OMA PHP states that these are carried out by clinical staff, including health care practitioners. The OMA PHP also states that referral is only part of their jobs, which also include assessment and monitoring services.

[16] The OMA PHP describes its monitoring function as "first and foremost a clinical service provided to an individual physician or learner to assist in the maintenance of their health in the context of recovery from a mental health or substance use disorder." This may involve collecting clinical information, providing clinical opinions, and reviewing urine, hair, blood, or other toxicological tests.

[17] Overall, the OMA PHP states that its employees provide services "to maintain an individual's mental condition, ... to promote health, and in the case of clients already diagnosed, to prevent disease in the form of recurrence, all of which it states fall under the definition of "health care."

[18] The OMA PHP states that it does not just provide health care services, but that its primary purpose is to provide health care, stating:

While the PHP also refers [clients] to outside treating clinicians, the assessment and monitoring functions of the PHP are provided by health care practitioners, utilizing their professional skills to deliver health care as

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[...]

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.

<sup>4</sup> Section 2(1) states, in part,:

"health care" means any observation, examination, assessment, care, service or procedure that is done for a health-related purpose and that,

(a) is carried out or provided to diagnose, treat or maintain an individual's physical or mental condition, [or]

(b) is carried out or provided to prevent disease or injury or to promote health,

its primary purpose. In other words, the primary purpose of the PHP is to assess, coordinate treatment for, and monitor its client base.

[19] Having regard to the information above, I agree with the OMA PHP's position and find that the OMA PHP is a health information custodian pursuant to section 3(1)4(vii) of the *Act*.

## **ISSUES:**

- A. Does the complainant have a right of access to the interview notes or the draft PHP report under *PHIPA*?
  - A.1. Are the interview notes or the draft PHP report records of "personal health information" as that term is defined in section 4 of *PHIPA*?
  - A.1. Are the interview notes or the draft PHP report "dedicated primarily to personal health information about" the complainant within the meaning of section 52(3) of *PHIPA*? If either record is not, can the complainant's personal health information be severed from the record for the purpose of providing access?
- B. Did the health information custodian conduct a reasonable search for responsive records?

## **DISCUSSION:**

**Issue A: Does the complainant have a right of access to the interview notes or the draft PHP report under *PHIPA*?**

***Issue A.1: Are the interview notes or the draft PHP report records of "personal health information" as that term is defined in section 4 of PHIPA?***

[20] A requester's right of access to records under *PHIPA* is limited to records of the requester's own personal health information.<sup>5</sup> Section 4(1) defines the term "personal health information":

In this Act, "personal health information", subject to subsections (3) and (4), means identifying information about an individual in oral or recorded form, if the information,

- (a) relates to the physical or mental health of the individual, including information that consists of the health history of the individual's family,

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<sup>5</sup> Or the personal health information of the individual on whose behalf the requester acts as a substitute decision maker.

(b) relates to the providing of health care to the individual, including the identification of a person as a provider of health care to the individual...

[21] Section 4(2) defines "identifying information," referred to in section 4(1), as "information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual."

[22] Section 4(3) addresses identifying information that is not considered personal health information, but which is contained in a record of personal health information:

Personal health information includes identifying information that is not personal health information described in subsection (1) but that is contained in a record that contains personal health information described in that subsection.

[23] Section 4(4) sets out an exception to the definition of personal health information, stating:

Personal health information does not include identifying information contained in a record that is in the custody or under the control of a health information custodian if,

(a) the identifying information contained in the record relates primarily to one or more employees or other agents of the custodian; and

(b) the record is maintained primarily for a purpose other than the provision of health care or assistance in providing health care to the employees or other agents.

[24] In PHIPA Decision 17, the IPC adopted a broad interpretation of the phrase "personal health information."<sup>6</sup> The IPC has applied this broad interpretation in subsequent orders and decisions.<sup>7</sup>

### *Representations of the parties*

[25] The OMA PHP states that the interview notes contain the complainant's personal health information, as they are included in her OMA PHP record, which contains "details about [the complainant's] behaviour that contributed to her assessment and diagnosis." The OMA PHP states that the draft PHP report does not contain the complainant's personal health information, for the following reasons:

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<sup>6</sup> See paragraphs 65 to 68 of PHIPA Decision 17.

<sup>7</sup> PHIPA Decisions 52 and 82, and Order MO-3531.

...this is an Independent Medical Examination ("IME") report performed at the request of the hospital and therefore outside the definition of "health care" under PHIPA. This is consistent with PHIPA Decision 154, paragraph 26. The OMA submits these do not form part of the Complainant's health record.

[26] The OMA PHP expanded upon this distinction, stating as follows:

A draft report/notes is not in the file, as PHP has always deemed these reports to be Independent Medical Exams/Assessments ("IMEs"). They are requested by a third party (an employer or the College of Physicians and Surgeons of Ontario ("CPSO")), and the physician preparing them is not a treating physician.

[Draft reports] have always been treated differently than the remainder of the contents of the file, which we acknowledge is Personal Health Information.

[27] The complainant agrees with the OMA PHP that the interview notes contain her personal health information. Regarding the draft PHP report, the complainant states that this report contains recorded information relating to her physical and mental health and information about her family's medical history, which is her personal health information pursuant to the section 4(1) definition.

[28] The complainant also disputes that the section 4(4) exception applies to the draft PHP report, for two reasons. First, she states that the OMA PHP's mandate is as a physician health program, so the purpose of the draft PHP report was therefore for the provision of health care. Second, she states that her employer sought the report for the purpose of her successful reintegration into its workforce, which she states is itself healthcare.

### ***Analysis and findings***

[29] The interview notes include the complainant's name and refer to her behaviour and return to work plan. Given the broad interpretation that the IPC has adopted regarding the definition of personal health information, I find that the interview notes contain the complainant's personal health information as defined in section 4(1) of the *Act*.

[30] I also find that the draft PHP report contains personal health information of the identifiable individual, as it includes the name of the individual and information relating to her mental health.

[31] The draft PHP report identifies the complainant and includes information relating to the physical and mental health of the complainant, as well as the health history of her family. This includes symptoms, diagnoses, and plans for treatment. The draft PHP report

therefore includes information that falls under the definition of personal health information as set out in section 4(1) of the *Act*.

[32] The OMA PHP's position is that the draft PHP report does not contain the complainant's personal health information, as it falls within the exception set out in section 4(4). To satisfy that exemption, two conditions must be met. First, the identifying information in the record must relate primarily to one or more employees or other agents of the custodian. Second, the record must be "maintained primarily for a purpose other than the provision of health care or assistance in providing health care to the employees or other agents."

[33] The arguments of both the custodian and the complainant focus on the latter part of this test, the reason that the records are maintained. However, the records in this case fail to meet the first part of the test – namely, that they must relate to employees or other agents of the custodian.

[34] Section 2 of the *Act* provides the following definition of an agent:

"agent", in relation to a health information custodian, means a person that, with the authorization of the custodian, acts for or on behalf of the custodian in respect of personal health information for the purposes of the custodian, and not the agent's own purposes, whether or not the agent has the authority to bind the custodian, whether or not the agent is employed by the custodian and whether or not the agent is being remunerated;

[35] Neither party has claimed, and there is nothing in the evidence before me to indicate, that the complainant was either an agent or an employee of the custodian in this case. Absent that relationship, the exception in section 4(4) of the *Act* cannot apply.

[36] The custodian cited PHIPA Decision 154 as authority for an Independent Medical Evaluation falling outside of the definition of health care. That matter involved records in a hospital employee's occupational health services file. The adjudicator found that the records contained identifying information about the requester in her capacity as an employee at the hospital and were maintained primarily for employment purposes, not for health care purposes. However, the same circumstances do not apply to the case at hand, as the complainant in this case is neither an agent nor an employee of the OMA PHP.

[37] Beyond the specific exception in section 4(4) of the *Act*, the custodian also argues that the OMA PHP has always treated reports they regard as IMEs separately from other contents of their clients' files. They state that they do so because assessment services are generally requested by a third party (usually the CPSO, sometimes an employer) and are not prepared by a physician who is treating that client.

[38] There have been previous decisions of this office in which adjudicators have found that complainants do not have rights to access and/or correct records that contain



information relating to an individual's physical or mental health, if the body holding those records was not involved in providing health care to the individual. Custody and access reports prepared pursuant to section 30 of the *Children's Law Reform Act* were found to not be subject to rights of access or correction in PHIPA Decisions 15 and 265. However, neither of those decisions turned on whether the reports were records of personal health information. Rather, they turned on whether the custodians were health information custodians pursuant to the *Act*.

[39] Section 52(1) of the *Act* states that "an individual has a right of access to a record of personal health information about the individual that is in the custody or under the control of a health information custodian".<sup>8</sup> [emphasis added] The custodians in *PHIPA* Decisions 15 and 265 were found not to be health information custodians, and so the requesters in those cases had no right to access the reports at issue, as these access rights can only be exercised via requests to health information custodians.

[40] In this case, the OMA PHP has been definitive and clear that it is a health information custodian pursuant to section 3(1)4(vii) of the *Act*, and I have found that is the case. Based on the definition of "personal health information" set out in section 4(1)(a) of the *Act*, the draft PHP report contains the complainant's personal health information, as it includes information relating to her physical and mental health, as well as information regarding her familial health history. I have already found that the exception at section 4(4) of the *Act* does not apply to the records in this case, as the complainant is not an agent or an employee of the OMA PHP. The OMA PHP's position that it was not providing her with health care as part of the assessment process may well be the case but is not relevant to the question of whether the draft PHP report contains personal health information. Information in the draft PHP report satisfies the definition of "personal health information" as set out in section 4(1) of the *Act* and does not meet the requirements for the exception to that definition. Accordingly, I find that the draft PHP report contains the personal health information of the complainant as defined in section 4(1) of the *Act*.

***Issue A.2: Are the interview notes or the draft PHP report "dedicated primarily to personal health information about" the complainant within the meaning of section 52(3) of PHIPA? If either record is not, can the complainant's personal health information be severed from the record for the purpose of providing access?***

[41] Under the *Act*, the extent of an individual's right of access to a record of their personal health information under *PHIPA* depends on whether the record is "dedicated primarily" to that information.

[42] This is because, subject to any applicable exemptions, the right of access in the *Act* applies either to the whole record, or only to certain portions of it. Specifically, while

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<sup>8</sup> This right is subject to certain conditions set out in sections 52(1)(a)-(f) of the *Act*.

section 52(1) of the *Act* grants a right of access to the entire record, section 52(3) limits access where the record is not “dedicated primarily” to the individual’s personal health information. Section 52(3) of the *Act* states:

Despite subsection (1) [setting out exemptions from the right of access in the *Act*], 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.

[43] PHIPA Decision 17 set out the IPC’s approach to the interpretation of section 52(3).<sup>9</sup> In order to determine whether a record is “dedicated primarily” to the personal health information of the individual within the meaning of section 52(3), this office 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.

[44] This list is not exhaustive.

[45] Finally, personal health information in the records that would, if released, comprise only disconnected or meaningless snippets is not reasonably severable within the meaning of section 52(3). Such snippets are not required to be released.<sup>10</sup>

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<sup>9</sup> See paragraphs 85-115 of that decision.

<sup>10</sup> The concept of the reasonable severability of records has been judicially considered and applied by this office to find that information that would, if released, comprise only disconnected or meaningless snippets is not reasonably severable, and is not required to be released. The IPC has applied this approach in interpreting severance provisions in *FIPPA* and *MFIPPA* (see Orders PO-1735, PO-1663 and many others), and in *PHIPA* (PHIPA Decision 17, PHIPA Decision 27, PHIPA Decision 33, PHIPA Decision 73). See PHIPA Decision 17, footnote 74 for more details.

*Representations of the parties*

[46] The custodian states that all components of the complainant's OMA PHP records would not exist "but for" the personal health information of the requester in it, so submits that they are therefore dedicated primarily to personal health information. However, the OMA PHP submits that the draft PHP report does not form part of this health record, because it is an IME.

[47] The complainant agrees with the OMA PHP's stance that the interview notes, as they form part of the complainant's PHP records, are dedicated primarily to her personal health information. The complainant disagrees with the OMA PHP's position on the draft PHP report. She states that the draft PHP report only contains the complainant's personal health information, that it was created to conduct an assessment of her mental health, and that her personal health information is therefore central to the purpose for which the record exists.

[48] The complainant also states that if this office finds that the entirety of the draft PHP report should not be disclosed to her, the portions that contain her personal health information should be.

*Analysis and findings – interview notes*

[49] The interview notes describe the complainant's behaviour and how a witness experienced this behaviour. They include information flowing from the witness's experiences with the complainant, but which did not directly involve the complainant, as well as references to the witness's own personal health information.

[50] While the interviews were created due to matters relating to the complainant's mental health, they contain little of the complainant's personal health information. The complainant's personal health information is limited to the inclusion of her name and the circumstances of her possible return to work, which implies an associated accommodation. The focus of the interview is on the witness's description of the complainant's behaviour, and how this behaviour affected the witness.

[51] The OMA PHP takes the position that the interview notes would not exist but for the personal health information of the complainant in it. However, this is only one of the factors to be considered. The interview notes contain the personal health information of both the witness and the complainant, but ultimately contain little of either. The records were created as part of an evaluation necessary to a return-to-work process, to determine the effect that the complainant's behaviour had on the witness. The interview notes are clearly the witness providing her account of her experiences and have little to do with the complainant's personal health information. Considering all of these factors, I find that the interview notes are not dedicated primarily to the personal health information of the complainant.

[52] Therefore, for the interview notes, the complainant has a right of access under

section 52(3) of the *Act* only to her personal health information that can reasonably be severed from the interview notes. As noted above, the only portions of the interview notes that include the complainant's personal health information are her name and references of her possible return to work. The personal health information in these records would, if released, comprise only disconnected or meaningless snippets. Therefore, I find that this information is not reasonably severable within the meaning of section 52(3) and that the complainant has no right of access to this information under the *Act*.

[53] In its access decision, the OMA PHP withheld the entirety of the interview notes, pursuant to section 52(1)(e) of the *Act*. As I have already found that these interview notes are not dedicated primarily to the personal health information of the complainant, and that these notes do not contain any severable personal health information of the complainant that may be disclosed to her, it is not necessary for me to address the application of section 52(1)(e) to these records.

*Analysis and findings – draft PHP report*

[54] The draft PHP report contains a significant amount of the complainant's personal health information, including both diagnoses and recommendations for treatment. It does not contain the personal health information of any other individuals.

[55] The complainant's personal health information is included in the draft PHP report for the purpose of the OMA PHP evaluating the conditions, if any, under which the complainant may return to work. The report was created as part of the assessment process initiated by her employer. Given the evaluative nature of the record, the record would not exist but for the personal health information of the complainant within it. Without this personal health information, the OMA PHP would not be able to make recommendations regarding the complainant's potential return to work, which is the reason that the OMA PHP process was initiated, and the report was created. Based on the factors as set out in PHIPA Decision 17, the draft PHP report would appear to be a record primarily dedicated to the personal health information of the complainant.

[56] The custodian's position is that the draft PHP report does not form part of the complainant's medical record, due to its nature as an independent medical evaluation. There is nothing in the *Act* that specifically prevents an IME from being a record dedicated primarily to the personal health information of the individual being evaluated. As noted, there have been previous IPC decisions in which the patient was found to have no right of access to an IME or a comparable document. However, these have occurred in cases where the section 4(4) exception applied, such that the record was not a record of personal health information, or in which the provider at issue was not a health information custodian, such that the requester could not exercise a right of access against that provider.

[57] As set out above, the section 4(4) exemption does not apply to the present

situation, and the OMA PHP has taken the position, and I have found, that they are a health information custodian under the *Act*. On its own, the fact that the draft PHP report is an IME does not affect the evaluation whether the draft PHP report is a record dedicated primarily to the personal health information of the complainant. Accordingly, based on the factors set out in PHIPA Decision 17, I find that the draft PHP report is a record dedicated primarily to the personal health information of the complainant.

[58] The OMA PHP initially asserted in its representations that section 52(1)(c) of the *Act* applied to the draft PHP report in its entirety, but subsequently withdrew that claim.<sup>11</sup> As the OMA PHP has not claimed that the draft PHP report is subject to any other exemptions to that right of access, I find that the complainant has a right of access to the entire report.

**Issue B: Did the health information custodian conduct a reasonable search for responsive records?**

[59] The remaining issue in this complaint is whether the OMA PHP conducted a reasonable search for records. In the circumstances of this complaint, I am satisfied that the OMA PHP did.

[60] 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.

[61] The IPC 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*.<sup>12</sup>

[62] In PHIPA Decision 18, the adjudicator concluded that the principles established in reasonable search orders under *FIPPA* and *MFIPPA* are relevant in determining whether a custodian has conducted a reasonable search under *PHIPA*.<sup>13</sup> I adopt and apply this approach for the purposes of this complaint. In addition to what is set out in PHIPA Decision 18, the principles outlined in IPC orders addressing reasonable search under *FIPPA* and *MFIPPA* are instructive to the review of this issue under *PHIPA*.

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<sup>11</sup> The OMA PHP's reason for claiming the application of section 52(1)(c) was that the draft PHP report would have evidentiary value before the CPSO and that "a substantial proportion of physicians engaged with the PHP are engaged in a proceeding before the CPSO where the report may become significant." The OMA PHP acknowledged that in this case, it did not have conclusive information regarding whether the CPSO was involved. The OMA PHP later withdrew the claim after the complainant provided evidence that she was not the subject of CPSO proceedings.

<sup>12</sup> See for example PHIPA Decisions 18, 43, 48, 52, 57, 61, and 89.

<sup>13</sup> PHIPA Decision 89.

[63] 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 that it has made a reasonable effort to identify and locate responsive records.<sup>14</sup> To be responsive, a record must be "reasonably related" to the request.<sup>15</sup>

[64] 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 are reasonably related to the request.<sup>16</sup>

[65] A further search will be ordered if the custodian 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.<sup>17</sup>

[66] Although a requester will rarely be in a position to indicate precisely which records the custodian has not identified, the requester still must provide a reasonable basis for concluding that such records exist.<sup>18</sup>

### ***Representations of the parties***

[67] The complainant takes the position that the OMA PHP should have located additional records responsive to her request, including email communications, meeting notes, and a final PHP report. The complainant provided specific examples of records that she states the OMA PHP should have located but did not.

[68] The complainant states that the IME assessor emailed her on the day he completed his report and stated that he would send this report to the OMA PHP when the complainant paid the amount due on the applicable invoice. The complainant states that she paid this amount that same day but did not receive the IME Assessment report until almost six weeks later. The complainant states that there must have been some communication between the IME assessor and the OMA PHP during that time, as well as afterward, given that the IME assessor provided an addendum three months after he completed the initial report.

[69] The complainant states that the OMA PHP should also have located interdisciplinary notes as part of her records. The complainant notes that the OMA PHP has communicated to her that each case is discussed and decided upon by the OMA PHP team; she submits that there must be notes of these discussions. The complainant states that not taking notes on meetings where clients' cases are discussed "does not make

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<sup>14</sup> Orders P-624 and PO-2559.

<sup>15</sup> Order PO-2554.

<sup>16</sup> Orders M-909, PO-2469, and PO-2592.

<sup>17</sup> Order MO-2185.

<sup>18</sup> Order MO-2246.

sense and is inconsistent with the record keeping requirements for health professionals.”

[70] The complainant also submits that the OMA PHP should have a final version of the PHP report, as well as notes relating to the draft report.

[71] The OMA PHP states that it “has devoted many hours to carrying out the requests of [the complainant] and firmly submits that it has not only reasonably but rather exhaustively and comprehensively carried out all record access requests.”

[72] The OMA PHP states that all of its records are kept on an electronic record system called Spectrum. The OMA PHP states that this system was chosen in part because “it is a comprehensive system that can easily store and retrieve different types of records such as emails, notes, and test results.” The OMA PHP states that “any and all documents, emails, and records relevant to the individual’s diagnosis, treatment or monitoring plan or assessment are automatically input into Spectrum,” noting that if a record is not in Spectrum, it does not exist.

[73] The OMA PHP provides a timeline of its search efforts and responses to the complainant, both before and after this complaint was filed. Regarding the interdisciplinary notes, the OMA PHP states that no notes are taken during case discussion meetings. The OMA PHP provided the complainant with what it calls “case discussion notes” but it describes these notes as administrative in nature, stating that these only indicate that a case was discussed in a situation comparable to hospital rounds. Referring to these case discussions, the OMA PHP states “[no] notes are taken at these meetings; they do not exist.” [emphasis in original]

[74] The OMA PHP disputes the complainant’s assertion that interdisciplinary notes should exist, stating that this appears to be based on an incorrect assumption that the OMA PHP is required to keep certain types of notes and details comparable to what is required of a treating physician.

[75] The OMA PHP states that all emails between itself and the IME assessor were uploaded to Spectrum, noting that emails regarding a participant are always automatically transferred to this EMR system.

[76] The OMA PHP also addressed the complainant’s statement that it had not provided notes of meetings held with the complainant and her legal counsel. The OMA PHP Director reviewed his calendar and found that such a meeting had been planned with the complainant. However, this meeting was cancelled after the complainant communicated to the OMA PHP that she was unwilling to meet with them any longer. The Director stated that he reviewed both his calendar and Spectrum, finding that no meetings were held on two of the dates provided. He also stated that there was a note in Spectrum briefly describing a later meeting with the complainant’s former counsel, but the OMA PHP had already provided these notes to the complainant in response to her request.

[77] The OMA PHP states that it conducted a further search for these meeting notes.

From that search, the OMA PHP located notes for the given day and month, but for the year before the specified date. The OMA PHP administrator confirmed that these meeting notes had also been previously provided to the complainant.

[78] Beyond the meeting notes, the complainant also states that a final version of the PHP Report should have been located. The OMA PHP states that the final version was never completed. The OMA PHP states that it paused this assessment process after the complainant communicated that she felt traumatized by this process. This occurred prior to the completion of the report.

[79] The OMA PHP describes the draft PHP report as “only in template form with some notes added.” The OMA PHP states that the matters raised by the complainant that caused the pause in the assessment process were, in the view of the assessor, new information of a nature that meant that a draft version of the report could not be finalized and circulated for feedback. As such, the only version of the PHP report was the draft.

### ***Analysis and findings***

[80] Based on my review, I am satisfied the OMA PHP conducted a reasonable search for records in response to the complainant’s request. The OMA PHP has explained its records storage system and specified that this system includes emails, as well as all other records relating to an individual’s diagnosis, treatment or monitoring plan or assessment. The OMA PHP set out the various searches that it performed, as well as the documents that it located from these searches. In these circumstances, I am satisfied that the OMA PHP met its obligations under *PHIPA* to conduct a reasonable search.

[81] Furthermore, I find the complainant did not provide a reasonable basis for her belief that additional responsive records exist. While the complainant has stated that adequate record-keeping would require the OMA PHP to take interdisciplinary notes, the OMA PHP has unequivocally stated that it does not take such notes and is not required to under the record-keeping standards applicable to that body. I am also satisfied with the OMA PHP’s explanation of why the PHP report only exists in draft format and was not circulated. Upon review of the complainant’s representations, I find she has not established a reasonable basis for me to conclude that the OMA PHP has not conducted a reasonable search for responsive records.

### **ORDER:**

For the foregoing reasons, pursuant to section 61(1) of the *Act*:

1. I order the OMA PHP to grant the complainant access to the draft PHP report that it withheld pursuant to section 4(4) of the *Act* by **March 4, 2025**.
2. In order to verify compliance with this Decision, I reserve the right to require that a copy of the record be provided to me.



3. I uphold the OMA PHP's search for responsive records as reasonable.

Original Signed by: \_\_\_\_\_  
Jennifer Olijnyk  
Adjudicator

\_\_\_\_\_ January 31, 2025