

Information and Privacy Commissioner,  
Ontario, Canada



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

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## RECONSIDERATION PHIPA Decision 273

PHIPA Decision 268

Complaint HA23-00049

Trillium Health Partners

February 20, 2025

**Summary:** This reconsideration decision addresses the custodian's request for reconsideration of PHIPA Decision 268. In that decision, the adjudicator found that the custodian was obliged to provide the complainant with an electronic copy of her records of personal health information. The adjudicator also found that the custodian charged a fee in excess of what was permitted under section 54(11) of the *Act*.

In this reconsideration decision, the adjudicator finds that the custodian has established grounds for reconsideration of PHIPA Decision 268 under section 27.01(a) of the *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*. The adjudicator grants the custodian's reconsideration request and rescinds one of the order provisions of PHIPA Decision 268.

**Statutes Considered:** *Personal Health Information Protection Act, 2004*, S.O. 2004, c.3, Sched. A, sections 52 (1.1), 54(10), and 54(11) and *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*, section 27.01.

**Orders and Investigation Reports Considered:** PHIPA Decision 268.

### BACKGROUND:

[1] This decision addresses Trillium Health Partners' (the hospital) request for reconsideration of PHIPA Decision 268 pursuant to section 27.01(a) of the *Code of*

*Procedure for Matters under the Personal Health Information Protection Act (the Code).*

[2] PHIPA Decision 268 addressed whether the hospital was required under section 52(1.1) of the *Personal Health Information Protection Act* (the *Act*) to provide a complainant with records of her personal health information in electronic format and whether the hospital's fee for access to the records exceeded the amount of reasonable cost recovery allowable under section 54(11) of the *Act*. In that decision, I found that the hospital had provided the complainant with a portion of her records of personal health information in electronic format, and that the hospital was required to provide the complainant with the remainder of those records in electronic format, if she still sought an electronic version of these records. I also did not uphold the fee charged by the hospital for access to the records, finding that it exceeded the amount of reasonable cost recovery.

[3] The hospital subsequently made a reconsideration request to the Information and Privacy Commissioner of Ontario (the IPC). The request stated that I had overlooked relevant information in its representations. This included that the hospital had acknowledged its obligation to provide records in electronic format, and that it had provided the complainant with all records of her personal health information in electronic format.

[4] I decided that it was not necessary to seek representations from the complainant.

[5] For the reasons that follow, I find that the hospital has established the claimed ground for reconsideration under section 27.01(a) of the *Code*. Accordingly, I have decided to reconsider PHIPA Decision 268 and rescind and replace the order provisions of that decision.

## **DISCUSSION:**

[6] Section 27 of the *Code* sets out the IPC's reconsideration process for *PHIPA* decisions. Section 27.01 addresses the grounds for reconsideration of a *PHIPA* decision. In this case, the hospital relies on section 27.01(a):

The IPC may reconsider a Decision at the request of a person who has an interest in the Decision or on the IPC's own initiative, where it is established that:

a) there is a fundamental defect in the adjudication process;

### **The hospital's reconsideration request**

[7] The hospital makes its reconsideration request on the basis that there was a fundamental defect in the adjudication process in PHIPA Decision 268, as contemplated by section 27.01(a) of the *Code*. The hospital argues that PHIPA Decision 268 did not

reflect the hospital's statements within its representations that it had provided the complainant with all of the records in electronic format. The hospital also states that the decision did not reflect that it had acknowledged its obligation to provide such records in electronic format. Specifically, the hospital states that I overlooked the following passages within its representations:

Please note that Trillium Health Partners is now in the process of updating its procedures and fee schedule relating to requests that involve large volumes of historical records to ensure that responses reflect 1) PHIPA's requirement to provide records electronically where requested, and 2) the 2006 fee framework and IPC decisions relating to fees for the provision of records in electronic format including review time.

...

. . .Trillium Health Partners has now completed preparing the full electronic version of all of the records (i.e. from both legacy and current systems), comprised of 39 files, and couriered the CD on [date of representations] to [complainant's legal counsel]

...

Trillium Health Partners couriered the CD with PDF versions of the records on [date of representations] and is updating its procedures for requests that involve large volumes of historical records to ensure that responses reflect PHIPA's requirement to provide records electronically where requested.

[8] The hospital states that by not taking into account this relevant information, I made unnecessary findings and an unnecessary order in relation to the question of whether the hospital was required to provide the complainant with an electronic version of her records of personal health information.

[9] The hospital argues that previous IPC orders<sup>1</sup> under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* have found that an adjudicator overlooking material evidence is an example of a fundamental defect in the adjudicative process and that this same reasoning should be applied to PHIPA Decision 268.

[10] As a remedy, the hospital requested specific revisions, including both deletions and adjustments, to various portions of PHIPA Decision 268. These proposed revisions were not limited to the Order provisions of that decision.

[11] Finally, the hospital states that it will be providing a refund to the complainant in

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<sup>1</sup> The hospital cites Reconsideration Orders MO-4129-R, PO-4268-R, PO-4044-R, and MO-4004-R.

the amount of \$158, the amount of the overcharge set out in PHIPA Decision 268.<sup>2</sup>

### **Analysis and findings**

[12] In the request that was the subject of PHIPA Decision 268, the complainant requested an electronic copy of her records “where available.” The hospital initially provided the complainant with a physical copy of her records. The reasons provided for this was that some of the complainant’s records were found in the hospital’s active electronic medical records system, but the majority were in its legacy system. The hospital stated that the records within the legacy system could only be provided electronically if hard copies of those records were first printed, and then scanned into an electronic format.

[13] At issue in PHIPA Decision 268 was whether the complainant had a right to her records of personal health information in electronic format, and whether the access fee charged by the hospital exceeded the amount of reasonable cost recovery that the custodian was permitted to charge under section 54(11) of the *Act*.

[14] In PHIPA Decision 268, I set out my understanding that, in addition to the hard copies, the hospital later provided the complainant with electronic copies of the portion of the records in its active system but had only provided the complainant with a hard copy version of the records it held in its legacy system. I found that the complainant had a right of access to her personal health information in electronic format under section 52(1.1) of *PHIPA*. I ordered the hospital to provide the complainant with an electronic version of the records of her personal health information within the legacy system. That order was conditioned on the complainant contacting the hospital within 30 days of the date of the order, to confirm that she was still seeking an electronic copy of these records.

[15] The remainder of PHIPA Decision 268 addressed the fee charged by the hospital for providing access to the complainant’s records of personal health information. The hospital’s requested revisions to the decision include some aspects of this portion of the decision. However, the hospital has not asked me to reconsider my decision in regard to the access fee charged by the hospital and has since provided the complainant with the refund amount set out in my order.

[16] At paragraph 15 of PHIPA Decision 268, I set out the hospital’s stance on what would be required to provide the complainant with electronic copies of the entirety of the records from both the active and legacy systems. The information that I drew this from was the following passage from the hospital’s representations:

Providing the records in electronic format (PDF) to the requester requires re-printing the 4,676 pages of records from the historical systems (already provided to the requester in paper copy), scanning the 4,676 pages to

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<sup>2</sup> PHIPA Decision 268 ordered that the hospital refund the complainant either \$148 or \$158, depending on how the electronic records were provided to the complainant.

create PDFs, and saving the PDFs to an encrypted CD. There are 572 pages (also already provided in paper copy) from the current EPIC system that can be saved directly to PDF format.

[17] However, I overlooked the information in the remainder of that paragraph, which stated that the hospital had “now completed preparing the full electronic version of all of the records (i.e. from both legacy and current systems)” and couriered the CD with these records to the complainant’s lawyer on the same date that it submitted its representations to the IPC.

[18] Section 27.01(a) of the *Code* allows this office to reconsider a decision where there was a fundamental defect in the adjudication process. In considering the equivalent reconsideration ground in section 15.01(a)<sup>3</sup> of the IPC’s *Code of Procedure for appeals under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act* (the *FIPPA/MFIPPA Code*), past orders of this office have determined an adjudicator overlooking material evidence of the parties on a highly relevant fact is a fundamental defect in the adjudication process.<sup>4</sup> This includes overlooking facts set out within a party’s representations.<sup>5</sup>

[19] I find that a similar error occurred here. I find that by ordering the hospital to provide an electronic version of records (conditional on the complainant confirming she still sought access to the records) and not recognizing that the hospital had already provided this access, I failed to fully consider highly material evidence. I find that this failure constitutes a fundamental defect in the adjudication process. Therefore, I find that the hospital has established grounds under section 27.01(a) of the *Code*, and I allow the hospital’s reconsideration request.

[20] The hospital has not asked that I reconsider my decision regarding the fee charged for access to the records and stated in its representations that it would be issuing a refund in the amount of \$158.

[21] Finally, I note that the hospital also requested that PHIPA Decision 268 be revised to reflect both its earlier provision of the entirety of the records, as well as its acknowledgement of its obligation to provide access to electronic records set out in section 52(1.1) of the *Act*. As I have noted both of these in this reconsideration decision and rescinded the order provisions in PHIPA Decision 268, I find that revision of PHIPA Decision 268 is not necessary.

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<sup>3</sup> In the previous version of the *FIPPA/MFIPPA Code*, the equivalent section was found at section 18.01(a)

<sup>4</sup> See Orders PO-4044-R and PO-4268-R.

<sup>5</sup> See Orders PO-4004-R and PO-4044-R.

**ORDER:**

1. I allow the hospital's reconsideration request.
2. I rescind order provisions 1(a) and 1(b) of PHIPA Decision 268 and replace them with the following order provision: "I order the hospital to provide the complainant with a refund in the amount of \$158."

Original Signed by: \_\_\_\_\_

Jennifer Olijnyk  
Adjudicator

February 20, 2025 \_\_\_\_\_