

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 276

Complaint HA24-00146

Family Care Medical Centre - Whitby

March 12, 2025

Summary: On June 23, 2024, the complainant asked a doctor at Family Care Medical Centre - Whitby (the custodian) for access to their personal health information under the *Act*. The complainant filed a complaint with the IPC because the custodian failed to respond to the request within the prescribed time limit. The decision-maker finds that the custodian is deemed to have refused the complainant's access request under section 54(7) of the *Act* and orders the custodian to respond to the complainant by March 26, 2025.

Statutes Considered: *Personal Health Information Protection Act, 2004*, as amended, sections 54(2) and 54(7).

BACKGROUND:

[1] On June 23, 2023, the complainant, through their representative, requested access from Dr. William Cecutti (the doctor) working at Family Care Medical Centre – Whitby (the clinic) (together, the custodian) under the *Personal Health Information Protection Act, 2004* (the *Act*) for:

... any and all external communications that have taken place between [the clinic] and social workers associated with the following organizations: 1. Children's Aid Society 2. [a specific elementary school]. Furthermore, I request access to any investigation notes that may be in your possession or have been generated by other staff members within [the custodian's] office regarding the [complainant and their child].

[2] On June 24, 2024, the complainant filed a complaint with the Information and Privacy Commissioner of Ontario (IPC) against the clinic, as it failed to respond to the access request within 30 days. The IPC opened HA24-00146 for this matter.

[3] On October 23, 2024, the IPC contacted the clinic to discuss this complaint; no response was received.

[4] On November 4, 2024, the IPC contacted the clinic again. The receptionist advised that the doctor would reach out via email in the next few days.

[5] On November 22, 2024, I was assigned as case lead.

[6] On November 28, 2024, I contacted the clinic. I spoke with the receptionist, who advised that she would leave a message with the doctor and ask them to contact me. I advised that if I did not hear back by December 9, 2024, I would proceed to a formal review of this matter. To date, I have not heard back from the clinic or the doctor.

[7] On January 10, 2025, I issued a Notice of Expedited Review, encouraging the custodian to respond to the complainant's access request by January 23, 2025.

[8] A final decision was not issued by January 23, 2025; as of today, no response has been provided by the custodian to the complainant's access request.

[9] Considering the above and to ensure that there are no further delays in processing this request, I will order the custodian to respond to the complainant's access request in accordance with the *Act*.

DISCUSSION:

Preliminary issues

[10] Based on the information before me in this complaint, I am satisfied that:

- the requested records may contain "personal health information", as defined in sections 2 and 4 of the *Act*; and
- the doctor is a *health care practitioner* within the meaning of section 2 of the *Act*¹ and the doctor works at the clinic, who operates a group practice of health care practitioners; each is a *health information custodian* within the meaning of section 3(1) of the *Act*².

¹ *Health care practitioner* is defined as "a person who is a member within the meaning of the Regulated Health Professions Act, 1991 and who provides health care".

² *Health information custodian* is defined as a health care practitioner or a person who operates a group practice of health care practitioners.

Issue: Is the custodian in a deemed refusal situation pursuant to section 54(7) of the *Act*?

[11] Under section 54(8) of the *Act*, if a health information custodian refuses or is deemed to have refused an access request, the burden of proof in respect of the refusal lies on the health information custodian.

[12] Section 54(2) of the *Act* outlines the time parameters for a custodian to respond to an access request:

(2) Subject to subsection (3), the health information custodian shall give the response required by clause (1) (a), (b), (c) or (d) as soon as possible in the circumstances but no later than 30 days after receiving the request.

[13] Section 54(7) of the *Act* outlines the circumstances that give rise to a deemed refusal:

(7) If the health information custodian does not respond to the request within the time limit or before the extension, if any, expires, the custodian shall be deemed to have refused the individual's request for access.

[14] As of today's date, the custodian has not responded to the complainant's access request despite the filing of a complaint with the IPC, and my decision to conduct a review and issue of a Notice of Expedited Review, encouraging it to do so by January 23, 2025.

[15] Therefore, I find the custodian to be in a deemed refusal situation under section 57(4) of the *Act*.

[16] To ensure that there are no further delays, I will order the custodian to respond to the complainant's access request in accordance with the *Act*.

ORDER:

Pursuant to section 61(1) of the *Act*:

1. I order the custodian to respond to the complainant's access request in accordance with the *Act* and without recourse to a time extension, by **March 26, 2025**.
2. To verify compliance, the custodian shall provide me by email with a copy of the response referred to in provision 1 by March 26, 2025.

Original Signed by: _____
Alline Haddad
Case Lead

March 12, 2025 _____