

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 279

Complaint HA25-00095

Queensway Carleton Hospital

PHIPA Decision 274

April 30, 2025

Summary: An individual submitted a request for reconsideration of PHIPA Decision 274, where the adjudicator found that the hospital conducted a reasonable search for records relating to the individual's father's hospital stay. In this reconsideration decision, the adjudicator finds that the complainant has not established grounds for reconsideration under section 27.01 of the *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004* and denies the request.

Statutes Considered: *Personal Health Information Protection Act, 2004*, c. 3, Sched A, as amended, sections 52(1), 53, 54(1)(b), 61(1), and 64(1) and *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*, section 27.01.

Decisions Considered: PHIPA Decisions 25 and 274.

Cases Considered: *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; and *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 S.C.R. 708.

BACKGROUND:

[1] In this reconsideration decision, I consider whether the complainant's request for reconsideration of PHIPA Decision 274 fits within any of the grounds set out in section

27.01 of the *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004* (the *Code*). I find that it does not.

[2] PHIPA Decision 274 addressed the complainant's request to the Queensway Carleton Hospital (the hospital) under the *Personal Health Information Protection Act* (*PHIPA* or the *Act*) for access to records relating to her father's hospital stay. Specifically, the complainant requested:

All information available as it pertains to hospital visit of [specified two days]
- from initial ER assessment to stay in ER Observation A, Observation B and 4th floor, all test results (e.g. blood work, urinalysis, scans, COVID tests, etc.), medical imaging, consultation notes, doctors and nurses notes (patient monitoring - vitals measured and recorded like BP, urinary output, etc.), medication prescribed until end of [last day of visit].

[3] The hospital provided the complainant with electronic records responsive to the request, and an email confirming that she had been provided with full access to the records requested. After the complainant filed an access complaint to the Information and Privacy Commissioner of Ontario (IPC) regarding this matter, the hospital conducted additional searches and responded to the complainant's concerns in writing.

[4] In PHIPA Decision 274, the issue before me was whether the hospital conducted a reasonable search for responsive records related to the complainant's request as required by sections 53 and 54 of *PHIPA*. During adjudication, the complainant raised an additional issue of whether the hospital, in making its decision, had treated her request as a request for disclosure under Part IV of the *Act* or an access request under Part V of the *Act*.

[5] In PHIPA Decision 274, I found as a preliminary matter, that: the complainant made her request under the access provisions in Part V of the *Act*; the complainant, as her deceased father's estate trustee, had a right of access to his records of personal health information; and the hospital had treated the complainant's request as a request for access to personal health information under Part V of the *Act*. I then found that the hospital had met its obligations to conduct a reasonable search as required under the *Act*.

[6] After receiving PHIPA Decision 274, the complainant requested that I reconsider that decision. In support of her position, the complainant sent in a two-part reconsideration request.

[7] For the following reasons, I deny the complainant's reconsideration request.

DISCUSSION:

Grounds for reconsideration under section 27.01 of the *Code*

[8] Section 27.01 of the *Code* provides for four grounds for reconsideration of a decision:

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;
- b) there is some other jurisdictional defect in the Decision;
- c) there is a clerical error, accidental error or omission or other similar error in the Decision; or
- d) new facts relating to an Order come to the IPC's attention or there is a material change in circumstances relating to the Order.

[9] Mere disagreement with a decision is not a ground for reconsideration under section 27.01 of the *Code*.¹

The complainant's request for reconsideration

[10] The complainant asserts that PHIPA Decision 274 should be reconsidered pursuant to sections 27.01(a), (c), and (d) of the *Code*.

[11] The first part of the complainant's reconsideration request contains what she describes as seven key points, followed by additional details expanding upon each of these points. She states that all of these points fall into grounds 27.01(a) and (c) and states that one of the points also falls into the grounds described in 27.01(d). In addition, the complainant also submitted a second part of her reasons for seeking a reconsideration request, which she asked not be shared with the hospital. Given this, I will refer only to these reasons in the second part of her submissions in general terms.

[12] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*,² the Supreme Court of Canada reaffirmed its finding in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*³ that an administrative decision maker is not required to explicitly address every argument raised by the parties. Moreover, the fact that a decision maker's reasons do not address all arguments will not, on its own,

¹ See *Chandler v. Alberta Assn. of Architects*, 1989 CanLII 41 (SCC), as discussed in PHIPA Decision 25 and others.

² 2019 SCC 65, at paragraphs 128 and 301 [*Vavilov*].

³ 2011 SCC 62, [2011] 3 S.C.R. 708 [*Newfoundland Nurses*].

impugn the validity of those reasons or the result.⁴

[13] I write this reconsideration decision with this principle in mind. In total, the complainant submitted 35 pages relating to her request for reconsideration of PHIPA Decision 274. I have reviewed all of the complainant's submissions in making my decision. However, for the sake of succinctness, I only summarize the points that I find to be most directly related to my determination of whether the complainant has established grounds for a reconsideration under section 27.01(a), (c), or (d) of the *Code*.

[14] Within the complainant's submissions, she provides the following reasons for why she is seeking reconsideration of PHIPA Decision 274:

- my use of various phrases indicated either a misunderstanding or mischaracterization of the hospital's position or were a departure from past practice of this office;
- I did not take into account all relevant information that the complainant submitted regarding her complaint;
- I did not ask the hospital to provide evidence that the complainant believes to be relevant; and
- I did not recognize that the hospital's method of searching did not use a standard that the complainant states is appropriate.

[15] Before addressing the specific grounds for reconsideration suggested by the complainant's submissions, I start by observing that the IPC's reconsideration power is not intended to provide an opportunity for a party to re-argue their position. In PHIPA Decision 25, former Assistant Commissioner Sherry Liang reviewed the IPC's approach to reconsideration requests in the context of the *Freedom of Information and Protection of Privacy Act* and concluded that it should be applied to requests for reconsideration under PHIPA. In making this finding, she stated:

It is important to note that the reconsideration power is not intended to provide a forum for re-arguing or substantiating arguments made (or not made) during the review, nor is reconsideration intended to address a party's disagreement with a decision or legal conclusion.⁵ As Justice Sopinka commented in *Chandler v. Alberta Association of Architects*,⁶ "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals."

⁴ *Vavilov*, *supra* note 5, at paragraph 91; *Newfoundland Nurses*, *ibid*, at paragraph 16.

⁵ The Assistant Commissioner relied on *Ontario (Health and Long-Term Care) (Re)*, 2015 CanLII 83607 at paras. 21-24, which she found to enunciate relevant principles that are generally applicable to a request for reconsideration under *PHIPA*.

⁶ *Supra* note 1.

On my review of the ministry's submissions, I conclude that they amount to re-argument of issues decided in PHIPA Decision 19, including arguments that the ministry could have but did not raise in the review. I am satisfied, therefore, that there are no grounds to reconsider PHIPA Decision 19. Even if the ministry's submissions establish grounds for reconsidering PHIPA Decision 19, for the reasons below, I would still exercise my discretion to deny the ministry's request.

[16] I agree with the reasoning of former Assistant Commissioner Liang and will bear this reasoning in mind in my review of this reconsideration request.

Section 27.01(a): fundamental defect in the adjudication process

[17] The complainant asserts that the key points she provided in her submissions amount to a "fundamental defect" in the adjudication process of PHIPA Decision 274. Section 27.01 of the *Code* allows the IPC to reconsider a decision where there was a fundamental defect in the adjudication process.

[18] A key requirement of this reconsideration ground is that the alleged defect be in the adjudication process. In considering the identical reconsideration ground in section 18.01(a) of the earlier version 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*),⁷ past IPC orders have determined that a fundamental defect in the adjudication process may include:

- failure to notify an affected party,⁸
- failure to invite representations on the issue of invasion of privacy,⁹
- failure to allow for sur-reply representations where new issues or evidence are provided in reply.¹⁰

[19] All of these are examples of circumstances where a breach of the rules of natural

⁷ The *FIPPA/MFIPPA Code* was updated in September 2024, and its provisions regarding grounds for reconsideration are now located at sections 15.01 and 15.02, which read as follows:

15.01 IPC decisions are final. The IPC may only reconsider an Order or other decision where it is established that there is:

(a) a fundamental defect in the Adjudication process;
(b) a jurisdictional defect in the decision; or
(c) a clerical error, accidental error or omission or other similar error in the decision.

15.02 The IPC will not reconsider a decision simply on the basis that:

(a) new evidence is provided, whether or not that evidence was available at the time of the decision; or
(b) a Party disagrees or is dissatisfied with the result.

⁸ Orders M-774, R-980023, PO-2879-R, and PO-3062-R.

⁹ Order M-774.

¹⁰ Orders PO-2602-R and PO-2590.

justice protecting procedural fairness qualifies as a fundamental defect in the adjudication process.

[20] Of the complainant's reasons, one allegation fits directly within the categories above. The complainant states that I failed to provide the hospital with an opportunity to provide representations in reply to the complainant's sur-reply representations, so that the hospital could correct a date.

[21] Concerns about procedural fairness may be asserted by the party who experienced the alleged procedural unfairness. In this case, any procedural unfairness that may have occurred would have accrued to the hospital, as the party not provided with an opportunity to respond. The hospital has not requested reconsideration of PHIPA Decision 274 or raised any procedural fairness issues to me since it received PHIPA Decision 274. As such, any failure to allow for sur-sur-reply representations is not a fundamental defect in the adjudication process.

[22] In addition, one of the grounds that the complainant raised in the second part of her submissions is a supposition that I overlooked material evidence of the parties on a highly relevant fact. Past orders and decisions of the IPC have found that in such a case, there may be a fundamental defect in the adjudication process.¹¹ As noted, this was in the portion of the complainant's submission that she asked to be kept confidential, so I will only provide a general description of the complainant's submission on this point. In PHIPA Decision 274, I found that there was no evidence before me to indicate that the hospital failed to meet its notice requirements under section 54(1) of the *Act*, which requires notice if a health information custodian refuses a request for personal health information, in whole or in part. The complainant's assertion is that I overlooked evidence establishing that the hospital had refused her request in part, by severing or otherwise withholding personal health information.

[23] I have reviewed the complainant's evidence on this point, and do not agree that it establishes that the hospital refused the complainant's request, in whole or in part, so as to trigger the hospital's section 54(1) notice obligations. Moreover, the matter at issue in PHIPA Decision 274 was the search efforts of the hospital, and the complainant's point does not relate to the question of reasonable search. As such, the alleged misapprehension could not be in relation to a "highly relevant fact" as it does not relate to the issue being decided in PHIPA Decision 274. Therefore, I do not find that I overlooked material evidence of a highly relevant fact.

[24] The complainant also states that I failed to request relevant evidence from the hospital, which the complainant characterizes as a fundamental defect in the adjudication process. In particular, the complainant states that I did not request that the hospital provide the IPC with a list of the responsive records it located, or the number of records

¹¹ Orders PO-4044-R and PO-4268-R and PHIPA Decision 273.

it located.

[25] As noted, the issue addressed in PHIPA Decision 274 was the reasonableness of the search efforts that the hospital made in responding to the complainant's request. A listing of the records it located or the number of records it located does not describe the hospital's search efforts. Evidence of this nature is not required to make a finding that the hospital conducted a reasonable search. Given this, I do not find that the fact that I did not request that the hospital provide me with a list of the records it located was a fundamental defect in the adjudication process.

[26] Some of the complainant's other points, which relate to phrases I used or did not use within PHIPA Decision 274 or how I conducted my review, also do not fit within the categories that the IPC has viewed as amounting to a fundamental defect in the adjudication process. Having reviewed her arguments on these points, I do not view these as satisfying the grounds for reconsideration as set out in section 27.01(a) of the *Code*.

[27] Finally, the remaining of the complainant's points are essentially an attempt to re-argue her position as to why the hospital's search did not meet the standard of a reasonable search as required under sections 53 and 54 of the *Act*. As set out in PHIPA Decision 25, reconsideration is not meant "to provide a forum for re-arguing or substantiating arguments made (or not made) during the review, nor is reconsideration intended to address a party's disagreement with a decision or legal conclusion."

[28] For the above reasons, I find that the complainant has not established that the ground in section 27.01(a) applies for reconsidering PHIPA Decision 274.

Section 27.01(c): clerical error, accidental error or omission

[29] Section 27.01(c) of the *Code* allows this office to reconsider a decision where there is a clerical error, accidental error or omission or other similar error in the decision. Based on my consideration of the information before me, and PHIPA Decision 274, I find that there were no such errors in my decision.

[30] To begin, I observe that the matters the complainant raises are not what would typically be considered a clerical error, accidental error or omission. A clerical error, accidental error or omission, or other similar error would commonly be a typographical error or a misplaced word, such as "not", in the decision. It is an error that generally originates with this office rather than with a party and is usually obvious to the reader.

[31] The complainant alleges that, by stating that the hospital "searched its medical records system for the patient's name and [medical record number]," I mischaracterized the hospital's search, which used a Boolean "OR" operator. However, this phrasing is a general description of the search and is not intended to describe the Boolean operators used by the hospital in its searches. The use of "and" is not in error in the context in which it was used.

[32] The complainant's remaining grounds, as set out above, largely describe objections to how I conducted my review,¹² objections to my use of phrases within the decision, and attempts to re-argue her position. None of these are clerical errors, accidental errors or omissions, or similar. As such, the complainant has failed to establish grounds for reconsideration under section 27.01(c) of the *Code*.

Section 27.01(d) – new facts relating to an Order come to the IPC's attention or there is a material change in circumstances relating to the Order

[33] As noted in paragraph 24 of this decision, the complainant states that I should have requested that the hospital provide a list of responsive records or the total number of responsive records that it located. I note that the hospital provided the complainant with access to the responsive records that it located.

[34] This is the sole reason that the complainant cites for stating that PHIPA Decision 274 should be reconsidered on the basis of section 27.01(d). That paragraph permits reconsideration if it is established that "new facts relating to an Order come to the IPC's attention or there is a material change in circumstances relating to the Order."

[35] The ground for reconsideration in section 27.01(d) mirrors the power given to the IPC under section 64(1) of *PHIPA*, which provides for reconsideration of orders made after a review.¹³ Section 64(1) states:

After conducting a review under section 57 or 58 and making an order under subsection 61(1), the Commissioner may rescind or vary the order or may make a further order under that subsection if new facts relating to the subject-matter of the review come to the Commissioner's attention or if there is a material change in the circumstances relating to the subject-matter of the review. [emphasis added]

[36] Under section 27.01(d) of the *Code* and section 64(1) of *PHIPA*, reconsideration of a decision on the basis of new facts or a material change in circumstances is only available where an order has been made under section 61(1) of *PHIPA*.

[37] The complainant's cited reason for requesting reconsideration does not fit the parameters set out in section 27.01(d). An assertion that I should have obtained a list of responsive records does not allege new facts or a material change in circumstances. Moreover, PHIPA Decision 274 does not include any order provisions. Therefore, section 27.01(d) of the *Code* and section 64(1) of *PHIPA* do not apply in this matter.

¹² For example, I did not request sur-sur-reply representations from the hospital (see paragraphs 20-21) or a list of the records that the hospital located in response to the complainant's request (see paragraphs 24-25).

¹³ PHIPA Decisions 146 and 161.

Conclusion

[38] Overall, I find that through her reconsideration request, the complainant seeks to re-argue positions previously taken during the complaint in an effort to persuade me to reach a different decision and order the hospital to conduct additional searches.

[39] I find that the complainant has not established that there is a fundamental defect in the adjudication process or that there are new facts relating to an order or a material change in circumstances relating to an order for the purpose of sections 27.01(a) or (d) of the *Code*. I also find that the complainant has not established that there was a clerical error, accidental error or omission or other similar error in the decision under section 27.01(c) of the *Code*. Consequently, I find that the complainant has not established any of the grounds for reconsideration of PHIPA Decision 274.

[40] For the foregoing reasons, I deny the complainant's request for reconsideration of PHIPA Decision 274.

NO RECONSIDERATION:

The reconsideration request is denied.

Original Signed by: _____

Jennifer Olijnyk
Adjudicator

April 30, 2025