

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 280

Complaint HA22-00103

Dr. Kathy Kaye

May 6, 2025

Summary: The complainant made an access request to a doctor for records relating to his child's health care. The doctor located and granted access to records. The complainant filed a complaint based on his belief that additional records should exist.

In PHIPA Decision 272, the adjudicator found that the doctor did not conduct a reasonable search for the complainant's child's records and ordered her to conduct another search. In this final decision, the adjudicator finds that the doctor has now conducted a reasonable search and dismisses the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004*, S.O. 2004, c.3, sections 53 and 54.

Decisions Considered: PHIPA Decision 272.

BACKGROUND:

[1] This decision addresses the reasonableness of the doctor's (the custodian) search for responsive records relating to the complainant's child's health care after having been ordered to conduct a further search in PHIPA Decision 272.

[2] By way of background, the complainant made an access request to the custodian under the *Personal Health Information Protection Act, 2004* (*PHIPA* or the *Act*) for all records relating to his child's health care. In his request, the complainant made certain

allegations about the custodian's response to a previous access request, also for his child's records. The complainant also asked the custodian to transcribe any illegible portions of the records and to confirm in writing that she provided a copy of all of her records.

[3] The custodian responded by expressing her disagreement with the complainant's assertions. The custodian confirmed that the complainant had already received a complete copy of the records through a different process. Nevertheless, the custodian provided another copy of the records to the complainant, along with a transcription of her handwritten notes.

[4] The complainant filed a complaint with the Information and Privacy Commissioner of Ontario (IPC) regarding the custodian's decision.

[5] As mediation did not resolve the complaint, the file was transferred to the adjudication stage of the complaint process where an adjudicator may conduct a review under *PHIPA*. The adjudicator originally assigned to the complaint sought and received representations from the custodian and the complainant.

[6] The complaint was subsequently transferred to me to continue the review. In PHIPA Decision 272, I found that I did not have sufficient evidence to conclude that the custodian's search for records was reasonable. I ordered the custodian to conduct a further search for records and to provide me with a written explanation of her search efforts and the results of her search.

[7] In compliance with PHIPA Decision 272, the custodian conducted a further search and submitted an affidavit outlining her search efforts. The custodian indicated that she located one additional page during her search, which she released to the complainant. I shared the custodian's explanation of her search with the complainant and invited his response. The complainant did not provide a response.

[8] In this final decision, I uphold the custodian's search as reasonable and dismiss the complaint.

DISCUSSION:

[9] The sole issue to be determined in this complaint is whether the custodian has now conducted a reasonable search for records responsive to the complainant's request.

[10] Where a complainant 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 the IPC is satisfied that the search carried out was reasonable in the circumstances, the custodian's decision will be upheld. If the IPC is not satisfied, it may order further searches.

[11] Previous IPC decisions have found that the principles established in reasonable

search orders issued under the *Freedom of Information and Protection of Privacy Act* (*FIPPA*) and its municipal equivalent, the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*) provide guidance in determining whether a custodian has conducted a reasonable search under *PHIPA*.¹

[12] These decisions establish that *PHIPA* does not require a custodian to prove with absolute certainty that further records do not exist. However, the custodian must provide sufficient evidence to show that she made a reasonable effort to identify and locate responsive records.² To be responsive, a record must be “reasonably related” to the request.³

[13] Although a requester will rarely be in a position to indicate precisely which records the custodian has not identified, the requester (in this case, the complainant) must still provide a reasonable basis for concluding that such records exist.⁴

Representations

[14] The custodian submits that she has conducted a reasonable search. By way of background, the custodian reiterates that she retired in 2021 and last assessed the complainant’s child in 2013.

[15] The custodian states that after receiving *PHIPA* Decision 272, she searched the only location where she keeps files for long-term storage: namely, in banker’s boxes that are labelled and organized alphabetically at her residence. The custodian submits that all her files are paper-based and that this is the only place where the complainant’s child’s files could have been located.

[16] The custodian submits that she reviewed the records that she located and compared them with the records that were released to the complainant following his request in 2022.⁵ Based on her review, the custodian states that she identified only one page (the second page of a two-page document listing common medical abbreviations) that was not previously released to the complainant. The custodian submits that the first page of this document was previously released to the complainant, but the second page was inadvertently omitted. The custodian explains that this document does not contain any patient or health information, but was provided to the complainant in order to assist him in interpreting his child’s records.

[17] The custodian states that she has not lost or destroyed any records. The custodian reiterates that she retains records for 15 years from the last date that a patient is

¹ *PHIPA* Decisions 17 and 18.

² Orders P-624 and PO-2559.

³ Order PO-2554.

⁴ Order MO-2246.

⁵ The complainant’s 2022 request is the request at issue in this appeal. The complainant previously made another request to the custodian in 2020, which is not at issue in this appeal.

assessed, and that fewer than 15 years have elapsed since she last assessed the complainant's child.

[18] The complainant did not submit any representations on the reasonableness of the custodian's most recent search.

Analysis and findings

[19] In PHIPA Decision 272, I found that I did not receive sufficient evidence about the custodian's efforts to identify and locate records responsive to the request at issue. Although the custodian provided information about her search for records, I found that almost all of this information related to the search that the custodian conducted in response to an earlier request from the complainant, rather than in response to the request at issue. Consequently, I ordered the custodian to conduct an additional search for records and to provide an explanation of that search.

[20] I have now received representations from the custodian on the search that she conducted in response to the request at issue. Based on these representations, I am satisfied that the custodian has conducted another search and that it is reasonable. I accept that as the complainant's child's former physician, the custodian is experienced with and knowledgeable in the subject matter of the request. Given the relevant circumstances, including the custodian's statement that she has been retired for almost three and a half years and has not seen the complainant's child in over ten years, I am also satisfied that the custodian has expended a reasonable effort to locate records which are reasonably related to the request.

[21] I note that the explanation that the custodian provided about her search in response to PHIPA Decision 272 is largely consistent with the information that she previously provided during the inquiry stage of the adjudication process. For instance, the custodian has maintained that her files are paper-based and stored in one location at her residence. The custodian has also provided a consistent explanation about her file retention and deletion policy. I find that I have no reason to believe that the custodian's search was not comprehensive or that any responsive records have been lost or destroyed. Additionally, I accept that the second page of the two-page document of medical abbreviations was omitted in error and that this page has now been released to the complainant.

[22] I also find that in the absence of the complainant's representations on the custodian's most recent search, I do not have sufficient basis to conclude that additional records exist.

[23] For the above reasons, I am satisfied that the custodian has conducted a reasonable search in compliance with her obligations under *PHIPA*. I dismiss the complaint.

ORDER:

I find that the custodian has conducted a reasonable search and dismiss the complaint.

Original Signed by: _____
Anda Wang
Adjudicator

_____ May 6, 2025