

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 283

Complaint HA25-00087

Queensway Carleton Hospital

PHIPA Decision 275

May 30, 2025

**Summary:** An individual submitted a request for reconsideration of PHIPA Decision 275, where the adjudicator ordered the hospital to conduct a further search, which was to include searching for emails between identified doctors. The individual stated that there was a reasonable basis to order the hospital to conduct additional searches of the entirety of the patient's legal health record, rather than the locations that the hospital had identified as containing communications between doctors.

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, and 54 and *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*, section 27.01.

**Decisions Considered:** PHIPA Decisions 25 and 275.

**Cases Considered:** *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848 and *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

## BACKGROUND:

[1] In this reconsideration decision, I consider whether the complainant's request for reconsideration of PHIPA Decision 275 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 275 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 documentation regarding her deceased father. Specifically, the complainant asked to be provided with the following:

Any and all correspondence, messages or documentation between [two identified physicians] regarding an assessment, radiologist reports, CT scans, X-rays, diagnosis, surgery consult, NG Tube insertion, Vital signs NEWS2 Total score prognosis, or any other notes that relate to [the complainant's deceased father].

Any and all correspondence, messages or documentation between [the first physician identified above and a third physician], regarding an assessment, radiologist reports, CT scans, X-rays, diagnosis, surgery consult, NG Tube insertion, Vital signs NEWS2 Total score, prognosis, or any other notes that relate to [the complainant's deceased father].

[3] The hospital issued an access decision to the complainant, advising that its search efforts included searching a messaging feature within Meditech, its electronic medical records (EMR) system. The search located some responsive messages between the specified physicians. The decision letter stated that the hospital was providing the complainant with all available communications.

[4] After the complainant filed an access complaint to the Information and Privacy Commissioner of Ontario (IPC). The complainant stated that the hospital had an obligation under section 53(3) of the *Act*<sup>1</sup> to contact her to clarify her request, and that

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<sup>1</sup> Section 53 of *PHIPA* states:

**Request for access**

**53** (1) An individual may exercise a right of access to a record of personal health information by making a written request for access to the health information custodian that has custody or control of the information.

**Detail in request**

(2) The request must contain sufficient detail to enable the health information custodian to identify and locate the record with reasonable efforts.

**Assistance**

(3) If the request does not contain sufficient detail to enable the health information custodian to identify and locate the record with reasonable efforts, the custodian shall offer assistance to the person requesting access in reformulating the request to comply with subsection (2).

the hospital's searches were not adequate.

[5] In PHIPA Decision 275, the issues before me were 1) 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 and 2) whether the hospital acted contrary to its obligations under section 53(3) of *PHIPA* when it did not contact the complainant to offer assistance in reformulating her request.

[6] In PHIPA Decision 275, I found that the hospital's interpretation of the complainant's request as seeking correspondence and communications between the named sets of doctors was reasonable, and that the hospital did not act contrary to its obligations under section 53(3) of *PHIPA*.

[7] I also found that the hospital did not provide sufficient evidence to demonstrate that it made a reasonable effort to identify and locate all of the responsive records within its custody or control. This finding was made on the basis that the evidence provided by the hospital did not demonstrate that it conducted searches of emails between the third named doctor and the other two doctors. I ordered the hospital to conduct a further search for records responsive to the complainant's request. I also ordered the hospital to provide a detailed explanation of its search efforts that includes the efforts the hospital made to identify emails to and from the doctors specified in the complainant's request.

[8] After receiving PHIPA Decision 275, the complainant requested that I reconsider that decision, stating that there is a reasonable basis to order the hospital to conduct additional searches. In the complainant's view, the hospital should have searched the patient's medical records for responsive records, rather than searching the areas of its record holdings containing direct doctor-to-doctor communications. The complainant states that my failure to order a search of the entirety of the patient's medical records, which the complainant regards as typical locations of documentation the documents she is seeking, is an omission that can form the grounds for her request for reconsideration.

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

## **DISCUSSION:**

### **Grounds for reconsideration under section 27.01 of the *Code***

[10] 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.

[11] Mere disagreement with a decision is not a ground for reconsideration under section 27.01 of the *Code*.<sup>2</sup>

### **The complainant's request for reconsideration**

[12] The complainant asserts that PHIPA Decision 275 should be reconsidered pursuant to sections 27.01(a) and (c) of the *Code*. I have reviewed all of the complainant's submissions in making my decision.

[13] The complainant provided the following five reasons why she believes PHIPA Decision 275 should be reconsidered under both sections 27.01(a) and (c):

- I did not establish that the complainant was seeking access as an executor/estate trustee under section 52(1) of the *Act*;
- I did not appear to be informed of all the representations that the complainant provided to the adjudicator previously assigned to the file;
- I failed to analyze the aspect of her complaint that focussed on the hospital's failure to search physical documentation and failed to make findings about documentation;
- I provided unclear instructions on the further search that I ordered the hospital to conduct; and
- I did not order the hospital to conduct a new search for documentation, only emails.

[14] The complainant's request for reconsideration expands upon each of the above reasons.

[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*

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<sup>2</sup> See *Chandler v. Alberta Assn. of Architects*, 1989 CanLII 41 (SCC), as discussed in PHIPA Decision 25 and others.

*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.<sup>3</sup> As Justice Sopinka commented in *Chandler v. Alberta Association of Architects*,<sup>4</sup> "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals."

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 275. 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*),<sup>5</sup> past IPC orders

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<sup>3</sup> 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*.

<sup>4</sup> *Supra* note 2.

<sup>5</sup> 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:

have determined that a fundamental defect in the adjudication process may include:

- failure to notify an affected party,<sup>6</sup>
- failure to invite representations on the issue of invasion of privacy,<sup>7</sup>
- failure to allow for sur-reply representations where new issues or evidence are provided in reply.<sup>8</sup>

[19] All of these are examples of circumstances where a breach of the rules of natural justice protecting procedural fairness qualifies as a fundamental defect in the adjudication process.

[20] The main matter that the complainant raises in her request is her belief that the hospital did not search the correct portions of its record-holdings for responsive records. All but the first of the complainant's cited reasons for requesting reconsideration fall within the umbrella of the hospital's failure to search what the appellant believes to be the appropriate documentation.

[21] The hospital searched the areas of its records that it identified as containing direct communications between doctors – namely, its email system and its internal Meditech messaging system. However, the complainant's view is that a reasonable search would be much broader and would include searching the patient's medical records generally. I set out her position at paragraph 38 of PHIPA Decision 275 as follows:

The complainant's view of her request is that it includes more than direct communication from one identified doctor to another. This can be seen from her proposal for a reasonable search, which in her view would include exploring portions of the Meditech system "that physicians typically consult for evidence of notes and reports by the physicians who recorded in the patient record, to explore the EMR Notes and EMR Reports, etc."

[22] The complainant states that, in addition to not ordering the searches she believes are reasonable, I also did not adequately address why I did not order such searches. She states that I "[offered] no analysis nor findings regarding the apparent lack of search in the typical location most likely to find documentation between physicians (i.e. Meditech EMR Notes, EMR Reports, etc.) and the unreasonableness of such an obvious omission in the search activity."

[23] The complainant's position is that, as I neither ordered searches of what, in her

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(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.

<sup>6</sup> Orders M-774, R-980023, PO-2879-R, and PO-3062-R.

<sup>7</sup> Order M-774.

<sup>8</sup> Orders PO-2602-R and PO-2590.

view, are the obvious locations of responsive records nor adequately addressed why I did not order such searches, there was a fundamental defect in the adjudication process.

[24] In paragraphs 37 through 41 of PHIPA Decision 275, I set out both the hospital's and the complainant's interpretations of her request. These interpretations were considered in the context of the complainant's allegation that the hospital was obliged under section 53(3) of the *Act* to follow up with the complainant regarding the formulation of her request. Section 53(3) states that "[if] the request does not contain sufficient detail to enable the health information custodian to identify and locate the record with reasonable efforts, the custodian shall offer assistance to the person requesting access in reformulating the request."

[25] The hospital's position was that it had previously provided the complainant with the entirety of her father's health record in response to previous request for access, and it was therefore "reasonable for the hospital to conclude that the complainant was seeking correspondence and communications that may not have been included under the previously completed request for the complete legal health record." Instead, the hospital searched the areas of its records that it identified as containing direct communications, which were an internal Meditech messaging feature and the hospital's email system.

[26] Having considered both interpretations, I determined that the hospital was reasonable in viewing the complainant's request as seeking direct communications between the named doctors, setting out my rationale at paragraph 40:

While the parties have different interpretations, the request specifies that the complainant is seeking "correspondence, messages or documentation" between named physicians. In my view, the use of "between" implies communications flowing from one party to the other, as the hospital interpreted it. I agree with the hospital's position that the request itself provided sufficient information to identify and locate the records, without offering the complainant assistance in reformulating the request as set out in section 53(3) of the *Act*.

[27] As set out in PHIPA Decision 275, health information custodians must provide sufficient evidence to show that they made a reasonable effort to identify and locate responsive records.<sup>9</sup> The hospital established to my satisfaction that it acted reasonably in interpreting the complainant's request as seeking direct communications between the named doctors, and choosing to search in the places in which doctor-to-doctor communications may exist. The relevant search efforts to be evaluated were those of the Meditech messaging system and the email communications, as those contain records of direct communication. There was no need to for the decision to consider searches of other parts of the hospital's record-holdings, including its Meditech documentation, and failure to include such analysis in the decision was not a fundamental defect in the

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<sup>9</sup> Orders P-624 and PO-2559; PHIPA Decision 18.

adjudication process.

[28] Rather, the complainant disagrees with my finding that the hospital acted reasonably in interpreting her request and is attempting, in my view, to reargue the reasonableness of the hospital's search, which is a matter already considered and decided in PHIPA Decision 275. As previously noted, the reconsideration process is not intended to provide a form for re-arguing points made during the review.

[29] The remainder of the complainant's arguments relates to my not explicitly establishing that the complainant made her request for access as the estate trustee for her deceased father pursuant to section 52(1) of the *Act*. The complainant states that the hospital had never clearly communicated to her whether it had treated her request as one made under section 52(1) or under another section of the *Act*. She states that I did not make a finding on this point or include a statement in the order section that the further search should be conducted in regard to a section 52(1) request. The complainant describes these omissions as "potentially a fundamental defect which could significantly misinform the hospital in their new search activity (as per the Order) and the records the hospital will choose to return and share with the complainant (me)."

[30] In my view, failing to include a finding that the complainant made an access request under section 52(1) of the *Act*, rather than another section, is not a fundamental defect in the adjudication process. Sections 52, 53, and 54 of the *Act* fall within Part V: Access to Records of Personal Health Information and Correction. Section 52(1) states that individuals have a right of access to their own personal health information, unless certain circumstances are present. Sections 53 and 54, respectively, set out how an individual may exercise a right of access and the duties of health information custodian to respond to such an access request. These two sections relate to access requests made under section 52(1), and section 54 repeatedly references section 52(1).

[31] The sole issue in PHIPA Decision 275 was whether the hospital conducted a reasonable search for records in response to an access request as required under sections 53 and 54 of the *Act*. The hospital conducted searches and provided the complainant with a decision letter in response to her request. In doing so, the hospital's actions were consistent with the actions of a health information custodian responding to a request for access under section 52(1) of the *Act*. Moreover, the hospital did not dispute the complainant's authority, as her father's estate trustee, to make an access request under section 52(1) of the *Act*.<sup>10</sup> As there was no dispute between the parties regarding the complainant's authority to make a request for her father's personal health information under section 52(1), it was not necessary to make a finding on that point.

[32] In addition, the complainant speculates on the effect this lack of a finding may have on the hospital's search efforts. Given that the hospital has previously conducted

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<sup>10</sup> This was addressed as a preliminary issue in PHIPA Decision 274, a decision that involved the same parties and a request for records of personal health information relating to the same patient.



searches of its records in response to the complainant's access request, it is not clear why the lack of a finding on this point would affect its subsequent search results. Regardless, under Order Provision 2 of PHIPA Decision 275, I note that I will share the hospital's explanation of its search efforts with the complainant. This provides the complainant a more appropriate opportunity to raise any concerns she may have with the search efforts.

[33] Finally, I note that the fact that I did not explicitly address all of the marginal or ancillary arguments made by the complainant throughout all of the material she submitted to the IPC during the adjudication stage does not demonstrate that there was a fundamental defect of the adjudication process of PHIPA Decision 275. As found by the *Supreme Court of Canada in Canada (Minister of Citizenship and Immigration) v. Vavilov*<sup>11</sup>:

Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis" (*Newfoundland Nurses*<sup>12</sup>, at para. 25), or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion" (para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice.

[34] For the above reasons, I find that the complainant has not established the grounds for reconsideration in section 27.01(a) of the *Code*.

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

[35] 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 275, I find that there were no such errors in my decision.

[36] The complainant's request for reconsideration includes several references to omissions in PHIPA Decision 275. As outlined above, the complainant states that I did not include an order provision requiring the hospital to search in what the complainant views as the most obvious place to search for records – documentation within the health records – and that I likewise omitted analysis as to why I did not make such an order. The complainant also states that my failure to make a finding that the complainant's access request was made under section 52(1) was an omission, presumably under section 27.01(c).

[37] 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

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<sup>11</sup> 2019 SCC 65 at paragraph 128.

<sup>12</sup> 2011 SCC 62, [2011] 3 S.C.R. 708.

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.

[38] The omissions raised by the complainant are not clerical or accidental in nature. The complainant’s view is that the hospital should have searched the patient’s medical records for responsive records, rather than searching the areas of its record holdings containing direct doctor-to-doctor communications. The complainant states that not ordering such a search or addressing the hospital’s failure to search its “documentation” is an omission that can form the grounds for her request for reconsideration.

[39] I note that PHIPA Decision 275 included the hospital’s rationale for searching within its messaging systems and my view that the hospital’s approach was a reasonable one. I understand that the complainant disagrees with this position. However, her contention does not raise a clerical or accidental error or omission, as is required to fulfil section 27.01(c), and the reconsideration process is not intended to provide parties who disagree with a decision an opportunity to re-argue their case.

[40] Similarly, the failure to include a finding that the complainant made her request under section 52(1) of the *Act* cannot be characterized as an accidental or clerical omission, similar to a missing word or typographical error. I also view this as an attempt to re-argue the position that the complainant presented during the review.

[41] As the complainant’s request for reconsideration does not describe a clerical error, accidental error or omission, I find that the complainant has not established the grounds for reconsideration in section 27.01(c) of the *Code*.

[42] In conclusion, having reviewed the complainant’s reconsideration request, I find that there was no fundamental defect in the adjudication process, or clerical error, accidental error or omission in PHIPA Decision 275. Therefore, I find that the complainant’s request does not meet the grounds in sections 27.01(a) or (c) of the *Code*, upon which this office may reconsider a decision.

## **NO RECONSIDERATION:**

[43] The reconsideration request is denied.

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

Jennifer Olijnyk  
Adjudicator

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May 30, 2025