

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 289

Complaint HA24-00336

Dr. Niall O'sullivan

July 15, 2025

Summary: On September 16, 2024, the complainant and his spouse asked their physician for access to their personal health information. The complainant complained because the doctor failed to respond to the request within the prescribed time limit. The decision-maker finds that the doctor is deemed to have refused the complainant's access request under section 54(7) of the *Act* and orders the doctor to respond to the complainant's access request.

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

BACKGROUND:

[1] On September 16, 2024, the complainant and his spouse asked their physician Dr. Niall O'Sullivan (the doctor) for access under the *Personal Health Information Protection Act, 2004* (the *Act*) to their medical records.

[2] On December 18, 2024, the complainant complained to the Information and Privacy Commissioner of Ontario (IPC) because the doctor failed to respond to their access request within 30 days. The IPC opened HA24-00336 for this matter.

[3] The doctor is retired, however, the website of the College of Physicians and Surgeons of Ontario (CPSO) provides an email address for former patients wishing to receive their medical information from the doctor.

[4] On April 22, 2025, I emailed the doctor using the address on the website of the CPSO to discuss this complaint and determine if the records had been released. No response was received.

[5] On April 29, 2025, I telephoned the doctor's previous clinic. I learned that the practice now belongs to another physician, who did not take over the doctor's records.

[6] On May 5, 2025, I again emailed the doctor advising that if I did not hear back by May 9, 2025, I would proceed to a formal expedited review of this matter. I did not hear back from the doctor.

[7] On May 15, 2025, I issued a Notice of Expedited Review, encouraging the doctor to respond to the complainant's access request by June 9, 2025.

[8] A response was not received by June 9, 2025. As of today, no response has been provided by the doctor 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 doctor 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 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 therefore, is a *health information custodian* within the meaning of section 3(1) of the *Act*².

Issue: Is the doctor 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

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.

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 doctor has not responded to the complainant's access request despite the filing of a complaint with the IPC, and my decision to conduct an expedited review and issue of a Notice of Expedited Review, encouraging them to do so by June 9, 2025.

[15] Therefore, I find the doctor 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 doctor 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 doctor to respond to the complainant's access request in accordance with the *Act* and without recourse to a time extension, by **July 29, 2025**.
2. To verify compliance, the doctor shall provide me by email with a copy of the response referred to in provision 1 by **July 29, 2025**.

Original Signed by: _____

Kelley Sherwood
Case Lead

July 15, 2025 _____