

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 295

Complaint HA24-00286

Unity Health Toronto

August 7, 2025

Summary: An individual sought access from Unity Health Toronto to records of their personal health information about a specific incident. The hospital advised that no responsive records could be located. The individual filed a complaint as they believe responsive records exist. In this decision, the decision-maker finds that the hospital conducted a reasonable search and dismisses the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004, S.O. 2004, c.3*, as amended, section 54.

BACKGROUND:

[1] On April 22, 2024, the complainant asked Unity Health Toronto (the hospital) for access under the *Personal Health Information Protection Act, 2004 (PHIPA)* to records about a specific incident in 2019, where a nurse and a police officer from the Mobile Crisis Intervention Team (MCIT)¹ interacted with the complainant. The request was for:

I want all information (reports, emails, phone calls, including internal notes) related to this incident as it pertains to me. This nurse provided a report of

¹ The MCIT is a collaborative partnership between participating hospitals, like the hospital and the Toronto Police Service. The program partners a mental health nurse and a specially trained police officer to respond to 911 emergency and police dispatch calls involving individuals experiencing a mental health crisis.

the incident which was overseen by the OIPRD². In [their] statement, [they] only referred to [them]self as "Witness 1".

[2] In response to the request, the hospital issued a decision on July 5, 2024, stating no responsive records were found.

[3] The complainant filed a complaint of the hospital's decision with the Information and Privacy Commissioner of Ontario (the IPC), indicating that they are seeking the report of their interaction with the MCIT nurse.

[4] As informal dispute resolution did not resolve the complaint, I decided to conduct an expedited review. I sought and received representations from the hospital and the complainant.

[5] In this decision, I find that the hospital has conducted a reasonable search for records of the complainant's personal health information and I dismiss the complaint.

DISCUSSION:

[6] The only issue before me is whether the hospital conducted a reasonable search for records of the complainant's personal health information responsive to the complainant's request.

[7] Where a requester claims that records exist beyond those identified by the custodian, the issue is whether the custodian has conducted a reasonable search for records as required by sections 53 and 54 of *PHIPA*. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the custodian's decision. If I am not satisfied, I may order the custodian to conduct another search for records.

[8] The IPC has extensively canvassed the issue of reasonable search in orders issued under the *Freedom of Information and Protection of Privacy Act (FIPPA)* and its municipal counterpart the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. It has also addressed the issue of reasonable search under *PHIPA*.³ In addition to what is set out in *PHIPA* Decision 18, principles outlined in the IPC's orders addressing reasonable search under *FIPPA* and *MFIPPA* are instructive to the review of this issue under *PHIPA*.

[9] Although a requester will rarely be in a position to indicate precisely which records the custodian has not identified, they still must provide a reasonable basis for concluding

² The OIPRD is the Office of the Independent Police Review Director which receives, screens, and investigates public complaints concerning police conduct. On April 1, 2024, the OIPRD was renamed the Law Enforcement Complaints Agency (LECA). In this decision, I use OIPRD to refer to the agency now known as LECA.

³ *PHIPA* Decision 18.

that such records exist.⁴

[10] *PHIPA* does not require the custodian to prove with absolute certainty that further records do not exist. However, the custodian must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records;⁵ that is, records that are "reasonably related" to the request.⁶

[11] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.⁷ The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all responsive records within its custody or control.⁸

The hospital's representations

[12] The hospital provided an affidavit from the hospital's Interim Manager Privacy Enterprise Risk (the manager), who is familiar with the personal health information request in this appeal and was involved in processing the request. They state that they oversee the hospital's information access and privacy department.

[13] The manager affirms that the request is for records about a visit from the MCIT, which is part of the outpatient mental health team. They also affirm that staff from the health records release of information ("ROI") team, the chart completion team, and the ROI operations leader conducted a search of the health records department. In addition, they affirm that the hospital also contacted the outpatient mental health team to assist with the search and verify whether it had records of this visit from the MCIT with the complainant.

[14] The manager affirms both electronic and paper file records in the following places were searched:

- Electronic medical records platform at the time of the incident;
- Paper charts stored in health records;
- Off-site storage site; and
- Outpatient mental health.

[15] The manager further affirms that, after completing a search of all available records, no responsive records were located, the health records department did not receive a

⁴ Order MO-2246.

⁵ Orders P-624 and PO-2559.

⁶ Order PO-2554.

⁷ Orders M-909, PO-2469 and PO-2592.

⁸ Order MO-2185.

record of this visit, and that the outpatient mental health team did not have these records.

[16] The manager affirms that it is unaware why the nurse did not record the visit, which is part of its standard policy and procedure.

[17] Finally, the manager affirms they reengaged with the senior clinical director of the MCIT after the complaint was filed, who conducted another search which did not yield records.

The complainant's representations⁹

[18] The complainant submits that the hospital failed to conduct a proper search under sections 54(1) and 54(8) of *PHIPA* and withheld the record despite its existence. They also submit that the hospital's affidavit is false and misleading.

[19] The complainant submitted a copy of an investigative report by the Toronto Police Services (TPS) regarding a complaint they filed of the officer involved in the incident, a letter from the OIPRD liaison with TPS agreeing with the investigative findings, a decision letter from the OIPRD that reviewed and supported TPS's decision, and an affidavit and court filings made by TPS to the Ontario Superior Court of Justice.

[20] They allege that the nurse's statement was submitted to the Unit Complaint Coordinator with TPS and that the nurse is identified as "Civilian Witness #1" in the TPS investigative report. They explain that the report:

- contains detailed clinical and mental health observations made by the nurse;
- was created as part of the nurse's role as a MCIT nurse;
- was used in TPS's investigative report from 14 Division formal findings; and
- contains personal health information (PHI) which must be disclosed under *PHIPA*.

[21] The complainant requests an "order under *PHIPA*".

Analysis and findings

[22] For the reasons outlined below, I find that the hospital has conducted a reasonable search for responsive records of the complainant's personal health information.

[23] As noted above, although a requester will rarely be in a position to indicate

⁹ The complainant's representations include a list of remedies they are seeking, including an order that names the MCIT nurse. However, these remedies are not available in this complaint, which is reviewing whether the hospital conducted a reasonable search for responsive records of the complainant's personal health information. The remedy available in this complaint is to order the hospital to conduct another search for responsive records of the complainant's personal health information if the hospital is found to have not conducted a reasonable search.

precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.¹⁰

[24] In this complaint, the complainant provided an investigative report from TPS to demonstrate a reasonable basis that responsive records may exist with the hospital. I am satisfied that this report provides a reasonable basis for finding that responsive records should exist with the hospital. I now review the hospital's search efforts to locate responsive records.

[25] A reasonable search is one in which an experienced employee makes reasonable effort to locate records reasonably related to a request.¹¹ A further search is ordered if a custodian does not provide enough evidence to show it made a reasonable effort to identify and locate all responsive records within its custody or control.¹²

[26] In this complaint, the hospital provided an affidavit to demonstrate that it conducted a reasonable search for responsive records of the complainant's personal health information. The manager has affirmed their experience overseeing the hospital's information access and privacy department, and their personal knowledge of the processing of the request. They provided details of the hospital's search efforts, including who completed the searches and locations where records were searched for, and that an additional search was conducted in response to the complaint. I am satisfied that the hospital has made reasonable efforts to locate records of the complainant's personal health information reasonably related to the complainant's request.

[27] In Orders PO-4629 and PO-4625, Adjudicator Truong dismissed appeals because she found that there was insufficient evidence to establish a reasonable basis to conclude that the specific records the appellants believed should exist, exist within the institutions' record holdings but had not yet been located by the institutions through their searches. In both appeals, Adjudicator Truong was not persuaded that ordering another search would yield records that the appellants claimed should exist.

[28] I find the circumstances of this complaint to be similar. In this complaint, while the complainant believes the hospital should have responsive records and the hospital acknowledges that it should have a record of the interaction between the complainant and the MCIT nurse, the hospital has been unable to locate any responsive records despite its initial search efforts and additional search in response to this complaint. In addition, I note that the incident took place in 2019 and the complainant requested the information in 2024.

[29] If I find the hospital has not conducted a reasonable search in response to the request, the remedy available in this complaint is to order the hospital to conduct another search. In the circumstances of this complaint, I am satisfied that the hospital has made

¹⁰ Order MO-2246.

¹¹ Orders M-909, PO-2469 and PO-2592.

¹² Order MO-2185.

reasonable efforts to locate responsive records of the complainant's personal health information. I am not convinced that the complainant's representations establish deficiencies in the hospital's searches that would require me to order the hospital to conduct another search. I am also not persuaded that ordering the hospital to conduct another search will locate the records that the complainant claims should exist.

[30] Accordingly, I find the hospital conducted a reasonable search for responsive records of the complainant's personal health information. I uphold the hospital's search and will dismiss this complaint.

ORDER:

For the foregoing reasons, I dismiss the complaint without issuing an order.

Original Signed by: _____
Asma Mayat
Case Lead

August 7, 2025 _____