

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 296

Complaints HA22-00218 and HA23-00014

Drs. Harold Kalin and Jonathan Saper

August 13, 2025

Summary: The complainant sought access to her medical records from her former doctor, who retired in 2018 and transferred most of the records in his possession to another doctor, only retaining those that belonged to deceased patients. Both of the doctors searched the records in their possession but could not locate the complainant's medical records.

In this decision, the adjudicator upholds the two doctors' searches as reasonable and dismisses the complaints.

Statutes Considered: *Personal Health Information Protection Act, 2004*, c. 3 Sched. A, as amended, sections 12, 53, and 54.

Decision Considered: PHIPA Decision 86.

BACKGROUND:

[1] This decision considers two access requests made by a complainant and two complaints, about the responses to these requests, to the Information and Privacy Commissioner of Ontario (IPC).

HA22-00218

[2] The complainant made a request to her physician, Dr. Harold David Kalin, under the *Personal Health Information Protection Act, 2004* (PHIPA) for access to her

complete medical file.

[3] In response to the access request, Dr. Kalin issued a decision letter stating that when he retired from his practice in 2018, his practice was transferred to Dr. Jonathan Saper, with the medical records remaining at the practice's office. The decision letter stated that the only records remaining in Dr. Kalin's possession are those of patients who died while he was practising and whose records he is required to keep for ten years after their deaths.

[4] The complainant filed a complaint about Dr. Kalin's decision to the IPC and Complaint HA22-00218 was opened. The IPC attempted mediation of the complaint.

[5] During mediation, the complainant asserted that records responsive to her access request exist because she was Dr. Kalin's patient for several years before she left his care in 2014. She argued that, because she stopped being an active patient of Dr. Kalin's in 2014, when Dr. Kalin retired in 2018 he would and should have known that she was no longer an active patient of his. The complainant stated that she made several access requests to Dr. Kalin while she was an active patient, with the first request made in 2011. She advised that, at one point, she was told by Dr. Kalin that her records were being reviewed by a solicitor prior to being disclosed. The complainant stated that she never received a copy of her records from Dr. Kalin. She also stated that she had made an access request to Dr. Saper (who took over Dr. Kalin's practice) that also did not result in the location of her medical records.

[6] In response, Dr. Kalin stated he repeatedly searched his patient files still in his possession and was unable to locate the complainant's records. He advised that when he retired and transferred his practice to Dr. Saper, he left all the active patient files in the filing cabinet in his office for Dr. Saper. He stated that he only maintained paper copies of his records during the time that he was practising and that his retention practice was to destroy files after 10 years. He clarified that his practice was to remove active patient files if a patient had not attended for some time, however, in his view the complainant did not meet that time threshold. He further clarified that he searched for records under the complainant's maiden and married names, but located no records.

[7] No further mediation was possible, and the complaint was transferred to the adjudication stage of the complaint process.

HA23-00014

[8] The complainant made a request to Dr. Jonathan Saper under *PHIPA* for access to her medical records. In response, Dr. Saper issued a decision letter that stated that he was not in possession of the complainant's medical records. The decision letter stated that when he took over Dr. Kalin's practice, Dr. Saper did not receive a copy of the complainant's medical records. It also stated that he has not provided the complainant with medical care, nor acted as her family physician, and that he is not a

health information custodian of the complainant's medical records.

[9] The complainant was dissatisfied with Dr. Saper's decision. She filed a complaint about it to the IPC and Complaint HA23-00014 was opened. The IPC attempted mediation of the complaint.

[10] During mediation, the complainant asserted that records responsive to her access request exist. She stated she had also made an access request to Dr. Kalin and he did not locate any of her medical records. Instead, he directed her to Dr. Saper, who assumed Dr. Kalin's practice in 2018. The complainant sought information from Dr. Saper about the transfer of Dr. Kalin's practice to him. She maintained that her medical records should be with either Dr. Kalin or Dr. Saper.

[11] In response, Dr. Saper stated that he is not the health information custodian for the records sought because the complainant was never his patient. He stated that, nonetheless, to assist the complainant, he had undertaken a reasonable search.

[12] Dr. Saper explained that when he took over Dr. Kalin's practice in 2018 he took over the physical office space and later digitized all the records that were in his possession. He stated that he searched for the complainant's records in both digital and paper formats on two occasions. He shared that it was his understanding that he was only provided with Dr. Kalin's active patient files when the practice was transferred. He further clarified that he searched for records under the complainant's maiden and married names.

[13] No further mediation was possible, and the complaint was transferred to the adjudication stage of the complaint process.

The joint review

[14] The adjudicator initially assigned to the two complaints issued separate Notices of Review to Dr. Kalin and Dr. Saper. Legal counsel representing both doctors submitted joint representations from them. The adjudicator then issued a joint Notice of Review to the complainant, and received a single set of representations for both complaints from the complainant.

[15] The complaint was then assigned to me to complete the review. I considered the representations of the parties and determined that I did not need to seek additional representations.

[16] For the reasons that follow, I uphold the decisions of both doctors and dismiss the complaints.

DISCUSSION:

Preliminary issues: personal health information, right of access, and health information custodians

[17] None of the parties dispute, and I find, that the records sought by the complainant are her “personal health information” as defined in section 4(1) of *PHIPA*. Accordingly, I find that she has a right of access to them under section 52 of *PHIPA*, and she may exercise that right of access under section 53 of *PHIPA*.

[18] Furthermore, it is not disputed that Dr. Kalin was the health information custodian for the medical records of his patient, the complainant, while he was practising, and he is the health information custodian for the medical records that have remained in his possession since he retired.

[19] It is also not disputed that Dr. Saper did not treat the complainant or act as her family physician, and he could therefore only be in possession of her medical records as a result of obtaining them from Dr. Kalin. It is not disputed that, should these records exist, he is the health information custodian for these records.

[20] Dr. Saper notes that this would only apply to the paper records, rather than those scanned into his current clinic’s electronic medical records system. He submits that whether he is a health information custodian of the scanned records is not relevant to the complaint, as all of the records he received from Dr. Kalin continue to exist in paper format. I agree, and will assess his search efforts on this basis.

The doctors’ search efforts

[21] Having considered the above preliminary issues, the only remaining issue in this complaint is whether the doctors conducted reasonable searches for records.

[22] Where a requester 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 I am satisfied that the search carried out was reasonable in the circumstances, the custodian’s decision will be upheld. If I am not satisfied, I may order further searches.

[23] 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*.¹ In *PHIPA* Decision 18, the adjudicator concluded that the principles established in reasonable search orders under *FIPPA* and *MFIPPA* are relevant in determining whether a custodian has conducted a reasonable search under *PHIPA*. I adopt and apply this

¹ See for example *PHIPA* Decisions 18, 43, 48, 52, 57, 61, and 89.

approach to this complaint. In addition to what is set out in PHIPA Decision 18, the principles outlined in orders of the IPC addressing reasonable search under *FIPPA* and *MFIPPA* are instructive to the review of this issue under *PHIPA*.

[24] These decisions establish that *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.² To be responsive, a record must be "reasonably related" to the request.³

[25] 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.⁴ A further search will be ordered if the custodian does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁵

[26] Although a requester will rarely be in a position to indicate precisely which records the custodian has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁶

Representations

The doctors' representations

[27] The doctors provide joint representations for the two complaints.

Dr. Kalin's searches

[28] Dr. Kalin submits that he performed multiple searches of the records in his possession to try to find the complainant's medical records. He submits that as the complainant's former family physician, he is knowledgeable in the subject matter of the request.

[29] Dr. Kalin provides an affidavit outlining his search efforts and the context of the complaint. In the affidavit, he affirms that he retired from practising medicine in 2018. He explains that he had approximately 2000 patients in his practice, and that upon retirement he transferred his practice to Dr. Saper. He affirms that six to eight months before his retirement he sent a letter to his patients advising them of his retirement and transfer of the practice to Dr. Saper.

[30] He affirms that, throughout his practice, he retained medical records for his

² Orders P-624; PO-2559.

³ Order PO-2554.

⁴ Orders M-909; PO-2469; PO-2592.

⁵ Order MO-2185.

⁶ Order MO-2246.

patients and, when he retired, all medical records for his patients – other than medical records of patients who had died while he was practising – remained at his office and were transferred to Dr. Saper. He explains that he retained possession of medical records of patients who died while he was practising, and he personally transferred these records to a locked storage unit at his home. He affirmed that no one assisted him with the transport of the records, and he is the only one who has access to them. He explains that, upon his retirement, there was no documentation showing which medical records were transferred to Dr. Saper; Dr. Saper simply took possession of the medical records that remained at his office upon his (Dr. Kalin's) retirement in 2018.

[31] Dr. Kalin affirms that upon receiving the complainant's request in 2022 he reviewed all records in his possession and verified that they belong to deceased patients. He states that he looked in each chart in case the complainant's chart was mistakenly placed in another patient's chart, but he did not find the complainant's chart. He explains that he believes he last saw the complainant in 2014, but did not consider her to be an "inactive" patient, and, in any case, he did not separate his medical records based on "active" and "inactive" status. Dr. Kalin attests that he is not aware of the complainant ever requesting her medical records before 2022 and he never told her that her medical records were being reviewed by a lawyer before he could disclose them to her; he states that he has never asked a lawyer to review the complainant's medical records or any other patient's medical records in response to a patient's access request.

[32] Dr. Kalin affirms that he searched the medical records in his possession again upon receiving notice of the IPC complaint but was not able to locate the complainant's medical record. He states that, to the best of his knowledge, her medical records had remained at his office upon retirement, but there is no documentation showing which records were transferred to Dr. Saper. He further affirms that it was his standard medical practice to review his medical records on an annual basis and destroy the records of patients that he had not seen for over 10 years. He states that because he had seen the complainant within the 10 years preceding his retirement, he would not have intentionally destroyed her medical records. He states that, since retiring, he continues to review the medical records in his possession on an annual basis, destroying those that belong to patients who have been deceased for over 10 years.

[33] Dr. Kalin states that he searched his records for a third time, during the mediation stage of the IPC complaint process, but again did not locate the complainant's records.

Dr. Saper's searches

[34] Dr. Saper also provides an affidavit. He confirms that he assumed care of Dr. Kalin's patients in 2018, but states that not all of Dr. Kalin's patients decided to be transferred to him, including the complainant. He states that he is not the complainant's physician and did not provide her with care or treatment.

[35] He affirms that it was his understanding that the records that remained at Dr. Kalin's office after the transfer belonged to patients that Dr. Kalin was actively providing care to. He states that he does not know the identities of the patients whose records Dr. Kalin kept.

[36] Dr. Saper states that while practising out of Dr. Kalin's clinic he continued to maintain paper records for his patients. He explains that when he moved his practice to another clinic in 2018, he transferred all of his paper medical records to that location personally, and searched Dr. Kalin's clinic to ensure that no records were left behind. He states that the new clinic was using an electronic medical record system owned by the clinic. He submits that when he transferred his paper medical records to the new clinic, clinic staff scanned all of those records into the clinic's system. He affirms that after the medical records were scanned, he retained paper copies in a locked storage unit that only he has access to. He affirms that he has not destroyed any of these paper records.

[37] He submits that, after being notified of a deemed-refusal complaint by the IPC, he searched his new clinic's electronic medical records for the complainant's records using different criteria such as her maiden name, married name, and first name. He states that he conducted a second search of the clinic's system after receiving notice of the present complaint, and also searched the paper versions of the medical records. He submits that a third search was conducted by staff at his new clinic during the mediation stage of this complaint.

Complainant representations

[38] The complainant provides an overview of her relationship with Dr. Kalin and her access request.

[39] She explains that she was a patient of Dr. Kalin for over ten years. She submits that she made several requests to Dr. Kalin for her medical records while she was an active patient of his. She submits that she did not receive her medical records despite numerous requests during and following her time as his patient. She submits that her new doctor also requested records from Dr. Kalin, but they were not received. She states that she did not receive notice from Dr. Kalin regarding his retirement, or contact information for where she could make a request for her records.

[40] She submits that it was not until she contacted the College of Physicians and Surgeons (CPSO) and the IPC regarding her requests for medical records that she received responses from the two doctors stating that they could not locate her medical records. She explains how she feels a "tremendous sense of violation and loss of trust" regarding the two doctors being unable to locate her medical file. She also notes that under *PHIPA*, a privacy breach occurs when personal health information is lost. She also

provides a CPSO statement on medical records management.⁷

Analysis and finding

[41] As described above, in a reasonable search complaint the complainant must establish a reasonable basis for concluding that additional responsive records exist that have not yet been identified and located by a custodian.⁸ Considering the evidence before me, I am not satisfied that the complainant has provided sufficient evidence to establish a reasonable basis that additional responsive records exist.

[42] Neither party disputes that the complainant was a patient of Dr. Kalin, and therefore some records related to the health care the complainant received must have existed at some point. As explained by the doctors, Dr. Kalin retired in 2018, with some records transferred to Dr. Saper, and others retained by Dr. Kalin at his home in a secure storage unit. The complainant submits that she requested her records from Dr. Kalin several times before he retired, which Dr. Kalin disputes. Unfortunately, neither doctor can explain why the complainant's records are not in their possession.

[43] However, as discussed above, 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. If a custodian has not demonstrated that a reasonable search was conducted, the remedy is to order another search. The fact that records were not found during a search does not mean that the search was not reasonable.

[44] Ideally, Dr. Kalin would have additional documentation regarding what specific records were transferred to Dr. Saper when his practice was transferred, which could potentially help locate the complainant's records. However, the failure to have created this documentation does not mean that the searches that were conducted in response to the complainant's access request were not reasonable. I accept the affidavit evidence of the doctors and find that both doctors, knowledgeable in the subject matter of the request, have searched all locations that the records would reasonably be expected to be located multiple times and were not able to locate the records. Given the number of searches already conducted, I do not think that ordering another search by either doctor would result in the complainant's records being located.

[45] With respect to the complainant's submission that the doctors' inability to find her medical records constitutes a loss under *PHIPA*, I agree that, considering the circumstances, her records were likely misplaced at some point. In *PHIPA* Decision 86, the IPC considered whether a custodian complied with section 12(1) of *PHIPA* following a determination that records related to a hospitalization, that the custodian did not

⁷ Available online at <https://www.cpsso.on.ca/en/physicians/policies-guidance/policies/medical-records-management>. The complainant also cites records management provisions under *MFIPPA*, but these are not relevant to the present complaint.

⁸ Order MO-2246.

dispute occurred, could not be located.⁹ In finding that a review of the matter was not warranted, the adjudicator considered the custodian's response following the loss of personal health information, which included notifying the complainant and reviewing its policies and procedures to protect the personal health information in its custody or control.

[46] In the present complaint, both doctors have acknowledged that the transfer of records from Dr. Kalin to Dr. Saper lacked documentation regarding which specific records were transferred to Dr. Saper, and which remained with Dr. Kalin. Considering the circumstances of the complaint, such documentation could have assisted with searching for the complainant's records, and if nothing else, would have provided information about which doctor had custody of the records at the time of the complainant's request.

[47] It is unfortunate that the complainant's records could not be located, and the fact that they could not be suggests some degree of error in the doctors' record keeping practices. It is not acceptable for records containing personal health information to simply be lost following a doctor's retirement. However, even if the records were lost, the standard in section 12 is "reasonableness," rather than perfection.¹⁰ The doctors have acknowledged the loss of the complainant's records, as well as their lack of documentation regarding the transfer of records. The evidence before me suggests that while the complainant's records were not located in this specific instance, the doctors are aware of their record-keeping obligations under *PHIPA*.

[48] Section 12 of *PHIPA* further requires that the complainant be notified of the loss, along with the IPC in certain circumstances. Considering that the complainant and IPC have been notified of the loss through these complaints, I am satisfied that no further action is warranted in the circumstances.

NO ORDER:

I dismiss the complaints.

Original Signed by: _____
Chris Anzenberger
Adjudicator

August 13, 2025

⁹ Section 12(1) of *PHIPA* states: "A health information custodian shall take steps that are reasonable in the circumstances to ensure that personal health information in the custodian's custody or control is protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal."

¹⁰ *PHIPA* Decision 74, which was adopted in *PHIPA* Decision 86.