

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 300

Complaint HA25-00250

Queensway Carleton Hospital

PHIPA Decision 282

September 4, 2025

Summary: An individual submitted a request for reconsideration of PHIPA Decision 282, where the adjudicator found that the hospital conducted a reasonable search for correspondence, messages, or documentation between specified doctors at the Queensway Carleton Hospital, after having been ordered to conduct a further search in PHIPA Decision 275.

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

Orders and Investigation Reports Considered: PHIPA Decisions 25, 275, and 282.

BACKGROUND:

[1] In this reconsideration decision, I consider whether the complainant's request for reconsideration of PHIPA Decision 282 fits the grounds set out in section 27.01(a) 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 282 addressed the reasonableness of the Queensway Carleton Hospital's (the hospital) search for responsive records relating to the complainant's deceased father's hospital stay, after having been ordered to conduct a further search in PHIPA Decision 275. The complainant made a request to 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] 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*¹ to contact her to clarify her request, and that the hospital's searches were not adequate.

[5] In PHIPA Decision 275, I found that the hospital's interpretation of the complainant's request as seeking correspondence and communications between the

¹ 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).

named sets of doctors was reasonable, and that the hospital did not act contrary to its obligations under section 53(3) of *PHIPA*.

[6] 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 included the efforts the hospital made to identify emails to and from the doctors specified in the complainant's request.

[7] The hospital conducted further searches, which did not locate any additional records, and submitted representations and two affidavits outlining its search efforts to the IPC. These representations and affidavits were shared with the complainant, and, in turn, she provided representations setting out reasons for her belief that the hospital's searches were inadequate.

[8] In *PHIPA* Decision 282, the sole issue before me was whether the hospital conducted a reasonable search for responsive records related to the complainant's request in response to the order provisions set out in *PHIPA* Decision 275. I reviewed the hospital's representations and the affidavits provided and was satisfied that the parameters of the later searches looked for emails between all three named doctors. I was also satisfied that the search terms that the hospital used represented a reasonable effort to locate emails relating to the patient among the emails between the named doctors. I found that the complainant did not establish a reasonable basis to conclude that additional responsive emails or messaging system messages may exist. Therefore, I upheld the hospital's searches for records responsive to the complainant's request and dismissed the complaint on that basis.

[9] After receiving *PHIPA* Decision 282, 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, there were several defects in the adjudication process of *PHIPA* Decision 282. These largely fell into two categories. The first related to lack of clarity in *PHIPA* Decision 275's order provisions, which the complainant alleged allowed the conditions of the search to be modified by the hospital without notice to the complainant. The second related to the hospital's purported inadequate search measures and my acceptance of them.

[10] In this reconsideration decision, I deny the complainant's reconsideration request.

DISCUSSION:

Grounds for reconsideration under section 27.01 of the *Code*

[11] Section 27.01 of the *Code* provides 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.

The complainant's request for reconsideration

[12] The complainant asserts that PHIPA Decision 282 should be reconsidered pursuant to section 27.01(a). I have reviewed all of the complainant's submissions in making my decision.

[13] The complainant provided the following seven reasons why she believes PHIPA Decision 282 should be reconsidered under section 27.01(a). I have summarized them as follows:

- I did not signal different or modified conditions for the new search that I ordered in PHIPA Decision 275, and doing so after the issuance of that decision was a breach of procedural fairness;
- I failed to clarify the new search ordered in PHIPA Decision 275 before asking the complainant to respond to the hospital's search in response to that order provision;
- I permitted the hospital to search for a narrower date range of emails, by not requiring the hospital to search for emails up to the present day;
- I made an assumption that the hospital searched the content of emails despite the hospital's affidavit regarding the new search not specifically stating that they had done so;
- I treated the search conducted in 2025 as part of the hospital's overall search efforts, when it should stand on its own;

- I failed to request details of the hospital's 2025 search instructions from the hospital when these were not included in the hospital's explanation of its search; and
- I failed to be concerned with "the lack of fundamentally sound search methods by [the hospital]".

[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 Privacy Act*² 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.³ As Justice Sopinka commented in *Chandler v. Alberta Association of Architects*,⁴ "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals."

[16] I agree with the reasoning of former Assistant Commissioner Liang and bear it 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 points she provided in her submissions are "fundamental defects" in the adjudication process of PHIPA Decision 282. Section 27.01(a) 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*

² R.S.O. 1990, c. F.31.

³ 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*.

⁴ [1989] 2 S.C.R. 848, at 861.

Information and Protection of Privacy Act (the *FIPPA/MFIPPA Code*),⁵ past IPC orders have determined that a fundamental defect in the adjudication process may include:

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

[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 complainant's reasons for reconsideration fall into two main categories:

- I modified the conditions of the search in regard to the date range of the search and did not give the complainant an opportunity to respond to the modified conditions; and
- The search that the hospital conducted in response to my order was not adequate, and I failed to recognize the inadequacy of the search.

Date Range of Email Search

[21] The complainant takes the position that her request was for all records to present day (meaning 2025). The complainant states that the order provisions in PHIPA Decision 275 were unclear, and because of that, she had not been aware that I would be satisfied by a search for emails that was limited to March 2022. The complainant states that she was therefore denied an opportunity to make submissions on the appropriate date range for the search for responsive emails.

[22] I do not agree that the complainant was not provided with sufficient opportunity

⁵ 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:

- (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.

⁶ Orders M-774, R-980023, PO-2879-R, and PO-3062-R.

⁷ Order M-774.

⁸ Orders PO-2602-R and PO-2590.

to respond to the search that the hospital conducted in response to the search ordered in PHIPA Decision 275. The hospital's initial search for responsive emails was outlined in paragraph 14 of PHIPA Decision 275 as encompassing a four-day period, consisting of the patient's two-day hospital stay (which occurred in March 2022), plus a day on each side. While I ultimately found that the hospital's search for records was not reasonable, I stated at paragraph 49 of PHIPA Decision 275 that my sole reason for making that finding was that the hospital had not provided sufficient evidence that it had searched for emails between two sets of doctors. Therefore, the order provisions in PHIPA Decision 275 required the hospital to conduct a further search and provide an affidavit that "must identify, at a minimum, the efforts made to identify emails to and from the doctors specified in the complainant's November 27, 2022, request."

[23] In response to the order, the hospital submitted two affidavits, one addressing searches of the emails, and the other addressing searches of another messaging system. The affidavit addressing emails between the doctors stated that hospital searched for emails from March 2022, the month of the patient's stay. I shared these affidavits with the complainant and invited her representations in response. In those representations, the complainant raised that the date range of the email search did not correspond with the date range of her request and stated that she was seeking records from the time of the patient's hospital visit to the present day. I considered the complainant's representations but ultimately found that the hospital conducted a reasonable search.

[24] I find that the complainant has not established that there was a fundamental defect in the adjudication process based on not inviting representations addressing the appropriate date range of the search for responsive emails. In PHIPA Decision 275, the complainant was provided with my reasons for ordering a search and the order provisions relating to that subsequent search. After I received the hospital's representations and affidavits relating to their subsequent search, which include the date range of the search, I provided these to the complainant and gave her an opportunity to address the search that the hospital conducted. In her representations in response to the hospital's subsequent search, the complainant raised that the date range of the search did not correspond with her request. I considered the complainant's representations on that matter, and found that the hospital's search, including limiting its subsequent email search to emails from March 2022, was a reasonable search for responsive records. In my view, the complainant's reasons for reconsideration based on a failure to provide her with an opportunity to address the date range of the search are not a defect of the adjudication process, but rather an attempt to re-argue her previously expressed position.

Adequacy of Searches

[25] The complainant submits several reasons as to why the hospital's descriptions of its searches did not meet the threshold of a reasonable search, and correspondingly, why my acceptance of the hospital's searches was a fundamental defect in the adjudication process.

[26] First, the complainant states that I should have only evaluated the searches that the hospital made in response to the order provision in PHIPA Decision 275 in considering whether the hospital conducted a reasonable search, submitting that the recent search activity must stand on its own. That is not the case; when considering whether an institution has conducted a reasonable search for records, the entirety of its search efforts is relevant.

[27] In PHIPA Decision 275, I ordered the hospital to conduct a further search because I was not satisfied that they had searched for a specific subset of the email communications that the complainant requested. As I noted in that decision, my reason for ordering a further search was "solely that the hospital had not provided evidence to demonstrate that it searched for emails between Drs. A and C and between Drs. B and C." In response to my order, the hospital provided an affidavit setting out that it subsequently searched for that subset of email communications. The hospital had already provided evidence in PHIPA Decision 275 demonstrating it had conducted a reasonable search for other responsive records, beyond the specific subset at issue. Given this, there was no need for evidence of further searches for those records and my failure to require such evidence is not a fundamental defect in the adjudication process.

[28] The complainant also states that I failed to request information from the hospital regarding the specifics of its searches. The complainant states that the hospital affidavit addressing its search for emails (conducted in response to the order provisions in PHIPA Decision 275) is silent on whether the hospital searched the content of the emails at issue for the relevant information. The complainant asserts that finding a reasonable search with such evidence lacking was a fundamental defect in the adjudication process.

[29] In PHIPA Decision 282, the complainant raised that the hospital's affidavit did not explicitly state whether its searches included the body of emails, full text search or email attachments. The complainant noted that, given this lack of specificity, the hospital may have only searched certain fields within the emails. In PHIPA Decision 282, I considered the complainant's representations on this point but was not persuaded by this argument. I found that the complainant had not provided sufficient evidence to indicate that the hospital had only searched select fields within the emails, and not the emails themselves. The complainant's argument on this point is fundamentally a disagreement of my assessment of whether the hospital's evidence was sufficient to establish that it conducted a reasonable search for the email communications. In my view, this is not a fundamental defect in the adjudication process, but rather an attempt to re-argue the complainant's position.

[30] Similarly, the complainant states that I failed to request details of the 2025 search instructions so that these details could be properly evaluated. As evidence for this, the complainant notes that the two search affidavits – one relating to the emails and one to the other messaging system – have some differences in search terms and parameters.

[31] As I noted in PHIPA Decision 282, the hospital is obliged to conduct a reasonable

search, not the search that the complainant believes is most appropriate. In that decision, I found that I did not require the specific information she raised to evaluate the reasonableness of the hospital's search. In my view, the complainant's reason for reconsideration on this point is an attempt to re-argue her previously argued position regarding the hospital's search efforts.

[32] Finally, the complainant cites my "failure to be concerned" about aspects of the hospital's searches, including lack of fundamentally sound search methods, lack of standard patient identifiers, and inconsistent application of those identifiers. The complainant states that I failed to recognize that the representations she made are "widely recognized, long established fundamentally sound search methods – not personal preferences."

[33] I understand that the complainant is not satisfied with the hospital's search efforts. However, I reviewed her representations regarding the search efforts in PHIPA Decision 282, together with the evidence of the searches presented by the hospital, and determined that the hospital's search for responsive records was reasonable. The argument made by the complainant does not establish that there was a fundamental defect in the adjudication process, but rather, is an attempt to re-argue the complainant's submissions regarding the searches conducted by the hospital. As set out in PHIPA Decision 25, reconsideration is not meant "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."

[34] For the above reasons, I find that the complainant has not established that the ground in section 27.01(a) applies for reconsidering PHIPA Decision 282 and I deny the complainant's request for reconsideration of PHIPA Decision 282.

NO RECONSIDERATION:

The reconsideration request is denied.

Original Signed by: _____

Jennifer Olijnyk
Adjudicator

September 4, 2025 _____