

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 303

Complaint HA23-00164

Mahesh Prajapat

PHIPA Decision 265

September 19, 2025

Summary: A father filed a complaint under the *Personal Health Information Protection Act* regarding a social worker's decision to deny him access to notes and documents relating to the social worker's preparation of a custody and access assessment report.

In PHIPA Decision 265, the adjudicator found that in preparing a custody and assessment report the social worker was not a "health information custodian" within the meaning of that term under section 3(1) of *PHIPA*. As a result, the adjudicator found that the father did not have a right of access under *PHIPA* to the social worker's notes. The adjudicator exercised her discretion not to conduct a review under sections 57(4)(a) and (b) of *PHIPA*.

In response, the father filed a request for the adjudicator to reconsider PHIPA Decision 265. In this reconsideration decision, the adjudicator finds that the father 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 his request.

Statutes Considered: *Personal Health Information Protection Act, 2004*, c. 3, Sched A, as amended, sections 52(1), 53, and 54 and the *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*, section 27.01.

Decisions Considered: PHIPA Decisions 25, 96 and 265.

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 265 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*) and finds that it does not.

[2] In PHIPA Decision 265, I found that the complainant does not have a right of access to the notes of a social worker relating to a custody and access assessment report (custody and access report or section 30 assessment). The social worker (the respondent) had been retained by the complainant and his children's mother to prepare a custody and access report. The respondent granted the complainant access to some documentation in his file but denied access to the remaining records.

[3] The complainant filed a complaint with the Information and Privacy Commissioner of Ontario (IPC), and the file was transferred to me when it reached the adjudication stage of the complaint process. After reviewing the complaint file, I provided the complainant with an opportunity to submit written representations in response to my preliminary assessment that the respondent was not a "health information custodian" for the purposes of preparing the custody and access report and therefore, that the complainant did not have a right of access to the notes related to the preparation of that custody and access report. After I considered the complainant's written representations, I issued PHIPA Decision 265 in which I exercised my discretion to not conduct a review under sections 57(4)(a) and (b) of the *Personal Health Information Protection Act (PHIPA)*.

[4] On his receipt of PHIPA Decision 265, the complainant sent two emails and a written reconsideration request raising concerns about the decision. The complainant argues that a fundamental defect in the adjudication process occurred and/or that the decision contains a number of errors, which fall under one of the grounds for reconsideration under the *Code*. I will address these grounds, the complainant's submissions, and my decision to not reconsider PHIPA Decision 265 later in this decision.

Other concerns raised by the complainant

Delay

[5] The complainant raised a concern about delay regarding the amount of time it took to resolve his complaint. However, I note that this reconsideration decision marks the fourth time the IPC communicated a decision to the complainant about this matter. The complainant filed a complaint with the IPC on May 18, 2023. He received a letter, dated June 23, 2023, from our early resolution department communicating its assessment that *PHIPA* did not provide him a right of access to the respondent's notes. The complainant did not accept this assessment and requested that the file be assigned to a mediator. Mediation did not resolve the complaint, and the complainant requested that the file be transferred to adjudication with the issuance of the Mediator's Report, dated November 10, 2023. The file was assigned to me, and I wrote to the complainant on

February 21, 2024, sharing my preliminary assessment that the complaint should not proceed to a review. My preliminary assessment provided my reasons and analysis for concluding that the complainant did not have a right of access under *PHIPA* because the documents were not in the custody or control of a "health information custodian." The complainant was also advised that even if he had a right of access to the respondent's notes under *PHIPA* he would have established, under section 23 or 26, that he was entitled to exercise an independent right of access for records pertaining to his children, apart from his children's mother. I issued PHIPA Decision 265 on November 15, 2024, after considering of the complainant's written representations. In my view, there is insufficient evidence that the complainant suffered prejudice in the time it took to issue PHIPA Decision 265. The IPC has maintained regular contact with the complainant and provided him an opportunity to explore mediation. Most importantly, the complainant was provided with two written assessments about the merits of his complaint at the early resolution and adjudication stages of the complaint.

Investigation into respondent's conduct

[6] The complainant also appears to raise a concern about the IPC not investigating his concerns relating to the respondent's conduct. The complainant says in the materials he filed after the issuance of PHIPA Decision 265 that, if requested, he could provide documentation that would demonstrate independent "findings of inappropriate conduct by the social worker." I did not request that the complainant provide me with this information as the IPC does not have the authority to review the respondent's conduct regarding the services he provided the complainant and his family.

Evidence relied upon

[7] Finally, the complainant says that he should be provided "disclosure of the factual evidence relied upon in reaching the decision, particularly regarding [the adjudicator's] conclusion about the scope of services provided by the social worker." The complainant here is asking for my reasons in deciding not to conduct a review. In response to this concern, I refer the complainant to PHIPA Decision 265. In particular, I draw the complainant's attention to paragraphs 29 to 38 of PHIPA Decision 265 which explain my reasons for concluding that his complaint did not warrant a review.

DISCUSSION:

Grounds for reconsideration under section 27.01 of the Code

[8] 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; [or]
- c) there is a clerical error, accidental error or omission or other similar error in the Decision[.]

[9] 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* 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.¹ As Justice Sopinka commented in *Chandler v. Alberta Association of Architects*,² "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.

[10] I agree with the approach taken by the former Assistant Commissioner Liang and apply it to the circumstances of this complaint. Mere disagreement with a decision is not a ground for reconsideration under section 27.01 of the *Code*.³

The complainant's request for reconsideration

[11] As stated above, after receiving a copy of PHIPA Decision 265, the complainant sent two emails⁴ requesting changes be made to the decision and filed a written reconsideration request.

¹ 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*.

² [1989] 2 S.C.R. 848, at 861.

³ See *Chandler v. Alberta Assn. of Architects*, 1989 CanLII 41 (SCC), as discussed in PHIPA Decision 25 and others.

⁴ Emails dated November 15, 2024, and November 16, 2024.

[12] In the emails, the complainant requests that I consider PHIPA Decision 96 and make the following changes to paragraph 28 of PHIPA Decision 265⁵:

- add the dates he says that he contacted the social worker's regulator,
- add the full name of the social worker's regulator instead of referring to it as "the respondent's regulator," and
- correct the portion of the paragraph where I stated that he had contacted the regulator "regarding his concerns that the respondent did not prepare a contract for service or retainer agreement for his signature." The complainant says that he did not contact the respondent's regulator about the lack of retainer agreement but instead had questions about the regulator's duty to provide access to his notes and records to clients.⁶

[13] The complainant subsequently filed a written reconsideration request alleging that the following fundamental defects in the adjudication process or errors in the decision had occurred:

- PHIPA Decision 265 incorrectly says that his contact with the respondent's regulator was related to an inquiry about the respondent's failure to provide a retainer agreement. The complainant says that PHIPA Decision 265 "mischaracterizes the nature of [his] representations and undermines [his] concerns about the social worker's conduct,"
- I failed to consider "precedents and arguments" he referenced in his representations,⁷
- I should not have relied on the reasoning of PHIPA Decision 15 in finding that the respondent did not provide health care services to his children. The complainant says that the circumstances of his complaint are unique.

[14] The complainant's arguments suggest that he believes that PHIPA Decision 265 should be reconsidered under both sections 27.01(a) (fundamental defect in the adjudication process) and 27.01(c) (clerical error, accidental error, or omission in the decision).

⁵ Paragraph 28 of PHIPA Decision 265 states:

The complainant also says that he has already been in contact with the respondent's regulator regarding his concerns that the respondent did not prepare a contract for service or retainer agreement for his signature.

⁶ In support of this position, the complainant provided a copy of an email exchange between himself and the regulator which had already provided to the IPC.

⁷ In support of this position, the complainant provided another copy of his representations, dated February 21, 2024.

Analysis and findings

Section 27.01(a): fundamental defect in the adjudication process

[15] Section 27.01 of the *Code* allows the IPC to reconsider a decision where there was a fundamental defect in the adjudication process.

[16] 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*),⁸ past IPC orders have determined that a fundamental defect in the adjudication process may include:

- failure to notify an affected party,⁹
- failure to invite representations on the issue of invasion of privacy,¹⁰
- failure to allow for sur-reply representations where new issues or evidence are provided in reply.¹¹

[17] 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.

[18] The crux of the complainant's submission is his disagreement with my application of PHIPA Decision 15 to the circumstances of his complaint. Paragraphs 29 to 38 of PHIPA Decision 265 set out my reasons for concluding the circumstances of this complaint are *not* distinguishable from PHIPA Decision 15. My reasons take into consideration the complainant's evidence. In my view, the complainant's reconsideration submissions in this regard merely repeats arguments he already made.

⁸ 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.

⁹ Orders M-774, R-980023, PO-2879-R, and PO-3062-R.

¹⁰ Order M-774.

¹¹ Orders PO-2602-R and PO-2590.

[19] The complainant also says that I should have applied the reasoning of PHIPA Decision 96 to the circumstances of his complaint.¹² PHIPA Decision 96 addresses the distinction in *PHIPA* between **access to** and **disclosure of** personal health information (PHI). In some cases, where a parent has no right of access to a child's PHI, the custodian may still have a duty to consider whether *PHIPA* nonetheless permits it to disclose the requested information under Part IV of *PHIPA*. The IPC cannot order a custodian to disclose records under *PHIPA*'s disclosure provisions. The IPC's authority to review a custodian's disclosure decision is limited to review the custodian's exercise of discretion. In cases where the IPC determined that the disclosure provisions could apply, the IPC will direct the custodian to consider the complainant's request for PHI under Part IV.

[20] The adjudicator in PHIPA Decision 96 stated the following about a custodian's duty to consider the disclosure provisions under Part IV of *PHIPA*:

Although this duty will not arise in every request for information, there may be situations where a requester provides evidence that raises the potential application of sections of *PHIPA* that permit or require disclosure. In those cases, the custodian may have a duty to consider the request for disclosure under *PHIPA*.

[21] In my view, the duty to consider the disclosure provisions under *PHIPA* does not arise in the circumstances of this complaint given my finding that the PHI at issue is not in the custody or control of a "health information custodian." In other words, the disclosure provisions under *PHIPA* can only apply to PHI in the custody or control of a custodian.

[22] Having regard to the above, I find that the complainant's submissions in support of his reconsideration request is an attempt to voice his disagreement with my decision and re-argue his case. I find that the complainant's arguments do not establish that a fundamental defect in the adjudication process occurred as contemplated in section 27.01(a).

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

[23] 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. A clerical error, accidental error or omission, or other similar error would commonly be a typographical error or a misplaced word, such as "not", in the decision.¹³ It is an error that generally originates with this office rather than with a party and is usually obvious to the reader.¹⁴

[24] The complainant takes issue with paragraph 28 of PHIPA Decision 265, which appears under the heading "The parties' representations." In that paragraph, I stated:

¹² The complainant in his submissions also references Order M-787.

¹³ PHIPA Decision 275.

¹⁴ *Ibid.*

The complainant also says that he has already been in contact with the respondent's regulator regarding his concerns that the respondent did not prepare a contract for service or retainer agreement for his signature.

[25] I have considered the complainant's arguments and find that they do not describe a clerical error accidental error or omission. In my view, the complainant's arguments demonstrate his disagreement with how I summarized his submissions regarding his contact with the respondent's regulator in the decision. The complainant says that my summary of his submission "mischaracterizes" the nature of his representations and "undermines" his concerns about the respondent's conduct.

[26] The complainant says I should add the dates he contacted the respondent's regulator and refer to the regulator by its full name. The complainant also says that he did not contact the respondent's regulator about the lack of a retainer agreement but instead restricted his concerns about the regulator's duty to provide access to his records. In my view, the complainant's arguments are immaterial to my finding that his complaint should not be subject to a review under the *Act*. In any event, I note that the complaint file contains a notation that the complainant telephoned the IPC during the adjudication stage and advised the Adjudication Review Officer that he had telephoned the regulator and spoke to the Director who told him that a contract should have been signed.¹⁵

[27] In my view, the complainant's attempt to identify errors in PHIPA Decision 265 is an attempt to re-argue or bolster his case and does not establish that an error as contemplated in section 27.01(c) occurred.

SUMMARY

[28] Having regard to the above, I find that complainant's reconsideration request amounts to a re-arguing of his complaint and does not establish that a fundamental defect in the adjudication process occurred (section 27.01(a)) or that an error occurred (section 27.01(c)). As stated above, the reconsideration process is not intended to provide parties who disagree with a decision an opportunity to re-argue their case.

[29] I am also satisfied that the complainant's reconsideration request does not establish that any of the other grounds for reconsideration in section 27.01 of the *Code* have been established.

[30] Accordingly, I find that the complainant has not established any of the grounds for reconsideration of PHIPA Decision 265 and deny his request.

¹⁵ The complainant's telephone discussion with the Adjudication Review Officer was logged the same day the complainant received my preliminary assessment by email.

NO RECONSIDERATION:

The reconsideration request is denied.

Original Signed by: _____
Jennifer James
Adjudicator

_____ September 19, 2025