

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 310

Complaint HA24-00236

St. Joseph's Health Care London

November 6, 2025

Summary: The complainant asked a hospital to correct personal health information from notes documenting his consultation with a specialist doctor. The hospital denied the correction request.

In her decision, the adjudicator upholds the hospital's decision not to correct the notes, finding that the exception to the duty to correct at section 55(9)(b) of the *Act* applies to the majority of the personal health information at issue, and that the hospital has no duty to correct the remaining information under section 55(8), as that information was not inaccurate or incomplete for the purposes for which the hospital uses it. She dismisses the complaint.

Statutes Considered: *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A, sections 3(1), 4(1), 55(1), (8), (9)(b), and (11).

BACKGROUND:

[1] The complainant made a correction request under section 55(1) of the *Personal Health Information Protection Act* (the *Act*) to St. Joseph's Health Care London (the hospital). He asked that the hospital make several corrections to Consultation Notes dating from a meeting that the complainant had with a doctor (the doctor). The correction request largely encompassed the complainant's reasons for believing that he is infected with human immunodeficiency virus (HIV), contrary to the doctor's opinion as set out in the Consultation Notes. The complainant also requested the hospital to correct a statement saying the doctor did not receive funding from the National Institutes of Health (NIH).

[2] The hospital denied the correction request in full pursuant to section 55(9)(b) of the *Act*. The hospital stated that the request had been reviewed by the doctor, who declined to make the requested changes as these consisted of professional opinions or observations made in good faith.

[3] The complainant filed a complaint with the Information and Privacy Commissioner of Ontario (IPC). During the mediation of this complaint, the hospital agreed to make one correction to the records, to reflect that a nurse was not present for the entire consultation. The hospital otherwise maintained its decision not to make the requested corrections to the records.

[4] As mediation did not resolve the complaint, it was moved to the adjudication stage of the complaints process, where an adjudicator may conduct a review. As the adjudicator assigned to the complaint file, I decided to conduct a review and sought representations from both the hospital and the complainant.¹

[5] In this decision, I find that the hospital does not have a duty under section 55(8) to correct the majority of complainant's personal health information in the Consultation Notes, because the exception to the duty to correct at section 55(9)(b) applies. For the remaining portion related to NIH funding, I find that the hospital does not have a duty to make the requested correction, as that information is not incomplete or inaccurate for the purposes for which the hospital uses the information. I dismiss the complaint.

RECORD:

[6] The record is a three-page report titled "Consultation Notes" dating from a consultation that occurred on February 5, 2024.

DISCUSSION:

[7] There is no dispute between the parties, and I find, that the hospital is a health information custodian as defined in section 3(1) of the *Act*. I also find that the Consultation Notes contain the complainant's personal health information as defined under section 4(1) of the *Act*.

[8] The sole issue to be determined is whether the hospital has a duty to make the remaining corrections requested by the complainant. The requested corrections are:

- The complainant disagrees that the doctor's statement that he (the doctor) does not receive any funding grants from the NIH.

¹ Representations were shared in accordance with the IPC's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*.

- The complainant disagrees that he is being investigated for monoclonal gammopathy of undetermined significance (MGUS). The complainant states that he has MGUS and is being monitored to confirm if this condition is progressing to multiple myeloma blood cancer.
- The complainant disagrees with the doctor's opinion that his alarm sleep study results have nothing to do with HIV.
- The complainant disagrees with the doctor's opinion that his symptoms ("body fat changes, facial atrophy, buffalo hump on [his] neck, central adipose and muscle wasting in [his] quads") are not related to HIV infection. The complainant disagrees with the doctor's statement that Cushing syndrome or a growth hormone abnormality could not be ruled out as causes for his symptoms, stating that the NIH had ruled out Cushing syndrome and his hepatitis tests have been negative.
- In the Consultation Notes, the doctor did not mention that the complainant suffers from: fatty liver disease; enlarged spleen; below normal epidermal growth factor receptor (EGFR); below normal absolute lymphocyte counts; below normal red blood cell count; below normal hematocrit hemoglobin counts; and abnormal CD3, CD4, and CD8 counts.
- The complainant disagrees with the doctor's assessment that he cannot have HIV based on his assay results and lack of immune response to HIV. The complainant states that an allele present in his blood is relevant, and states that the doctor did not mention that the complainant's testing was similar to that of a HIV positive seronegative adult.
- The complainant states that the doctor did not mention a virtual call that the complainant had with NIH personnel about the complainant's assays being similar to that of a HIV positive seronegative adult. The complainant also included his reasons for believing his testing is similar to such rare cases.

[9] Section 55(1) of the *Act* permits an individual to request that a custodian correct a record of personal health information if the individual believes that the record is inaccurate or incomplete for the purposes for which the custodian has collected, uses or has used the information.

[10] Section 55(8) provides for a right of correction to records of an individual's own personal health information in some circumstances. It states that:

The health information custodian shall grant a request for correction under subsection (1) if the individual demonstrates, to the satisfaction of the custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information and gives the custodian the information necessary to enable the custodian to correct the record.

[11] This right is subject to the exceptions set out in section 55(9) of the *Act*. Only section 55(9)(b) is relevant in this complaint.² It reads:

Despite subsection (8), a health information custodian is not required to correct a record of personal health information if,

(b) it consists of a professional opinion or observation that a custodian has made in good faith about the individual.

Representations of the Parties

Hospital's representations

[12] The hospital observes that, in his correction request, the complainant set out his vehement disagreement on matters in the Consultation Notes. The hospital's position is that during the consultation, the doctor provided his professional opinion on the complainant's diagnoses based on his examination of the complainant and the information available to him. The hospital provided the doctor's qualifications regarding infectious diseases and HIV in particular.

[13] The hospital states that the doctor reviewed the correction request and confirmed that the matters that the complainant requested correction of are his professional opinions. The hospital states that these statements fall under the exception in section 55(9)(b) of the *Act*, and the hospital is therefore not required to make the requested corrections.

Complainant's representations

[14] The complainant's representations address both his reasons for his belief that he has HIV and his reasons for seeking correction of the Consultation Notes. The complainant also included evidence that he states supports the conclusion that he is HIV positive.

[15] The complainant's representations also address matters relating to a connection between the doctor and the NIH. By way of background, the complainant had previously been in communication with the NIH about his HIV status. Based on his interactions with the NIH, the complainant had concluded that an NIH investigator had not been honest with him about his assay results.

[16] The complainant makes two separate but related arguments regarding this connection between the NIH and the doctor. First, the complainant states that the doctor's statement in the Consultation Notes that the doctor did not receive NIH funding

² Section 55(9)(a) provides an exception to the right of correction in cases where the record of personal health information "consists of a record that was not originally created by the custodian and the custodian does not have sufficient knowledge, expertise and authority to correct the record."

is wrong and should be corrected. The complainant states that the doctor is chair of a department within a university, and that department received NIH grants for infectious disease research. The complainant states that this is the usual mechanism by which the doctor would have received grants, so his statement that he does not receive funding is not correct.

[17] Second, the complainant states that the doctor is in a conflict of interest due to his university department having received NIH funding. The complainant states that prior to meeting for the consultation, he had provided the doctor with a letter setting out his reasons for believing that the NIH investigator had been dishonest. The complainant states that the doctor, being aware of this, should not have agreed to a consultation with the complainant. The complainant argues that the doctor acted in bad faith by dismissing evidence that the complainant presented and that the doctor's assessment that he does not have HIV was also made in bad faith.

[18] The remainder of the complainant's representations and attachments focus on presenting medical evidence contradicting the doctor's statements within the Consultation Notes. The complainant attached a letter that he states contains his MGUS diagnosis, as well as blood test results which the complainant states point towards his MGUS diagnosis progressing towards cancer.

[19] While the doctor stated in the Consultation Notes that the complainant's sleep disturbances are not a sign of HIV dementia, the complainant clarifies that, rather than believing he currently has dementia, he is concerned about getting dementia in future if his HIV goes untreated. The complainant included evidence linking HIV to both sleep disturbances and neuropathy, which are both conditions that the complainant states he suffers from.

[20] The complainant disputes the doctor's statements in the Consultation Notes that body fat changes, such as those experienced by the complainant, are a result of earlier versions of antiviral therapy, rather than a consequence of having HIV. The complainant provides a study linking a type of lipodystrophy³ with being HIV positive and asserts that he would have a better chance of winning the lottery than having the fat distribution changes he has experienced if he did not have HIV.

[21] The complainant states that he tested positive for Hepatitis A and provided a study linking Hepatitis A and HIV. The complainant states that he has tested negative for Hepatitis B and C, and that the NIH ruled out Cushing syndrome. The complainant therefore disputes the doctor's statement that further testing would be required to rule out these causes for his symptoms. The complainant also provided a letter stating that he has non-alcoholic liver disease, together with a study linking this condition with HIV. The complainant states that the doctor was aware that the complainant also had several

³ Per the Cleveland Clinic, lipodystrophy is a general term for a group of conditions that are characterized by a complete or partial loss of fat tissue in certain areas of your body and/or abnormal distribution of fat tissue: <https://my.clevelandclinic.org/health/diseases/23441-lipodystrophy>.

acute infections associated with HIV infection.

[22] The complainant also notes that the doctor did not mention that his estimated glomerular filtration rate and antigen counts are below normal, which the complainant states are consistent with HIV infection.

[23] The complainant states that he shared studies with the doctor that showed that T cells failing to proliferate beyond HIV antigens is a sign of exhausted cells from chronic HIV infection, but that the doctor did not address these studies. The complainant states that the doctor likewise failed to address a study he shared which demonstrates that one can have HIV and have no detectable HIV antibodies. The complainant's position is that he is an "HIV controller" in that his body is controlling his HIV infection through various processes. The complainant states that he provided the doctor with evidence that this was the case, but the doctor discounted this evidence.

[24] The complainant questions why the doctor did not get him to repeat some of the assay tests, speculating that this was due to not wanting to expose NIH deception. The complainant states that since the consultation with the doctor, the NIH communicated to him that one copy of HIV was detected in an assay. However, the NIH stated that they believe this was a false positive due to contamination, which the complainant disagrees with. On this point, the complainant goes into some detail regarding his experiences and communications with the NIH since receiving this information.

[25] After submitting his representations, the complainant contacted the IPC to provide additional information. In this follow-up, the complainant states that he obtained a redacted copy of his research record with the NIH, which showed that 55 copies of HIV RNA were detected. The complainant also states that he had an immune response that was with the range of responses of HIV positive controls in the study. The complainant notes that the NIH lead investigator stated in a written report that the complainant's results were similar to those of a HIV seronegative control but the complainant describes this statement as a "flat out lie."

Analysis and findings

[26] Depending on the nature of the correction request, the information that the individual seeks to have corrected, and the reasons for the custodian's refusal of the request, the IPC may approach the analysis in a correction complaint initially under section 55(8) or 55(9).⁴ In this case I will begin by determining whether the exception at section 55(9)(b) applies to the corrections at issue. If it does, there is no duty to make a correction under section 55(8), and no need to further address the duty to correct under that section. If it does not, I will then address whether the hospital has a duty to make the requested correction(s) pursuant to section 55(8) of the *Act*.

⁴ PHIPA Decision 36.

Section 55(9)(b): exception for professional opinion or observations

[27] The purpose of section 55(9)(b) is to preserve “professional opinions or observations,” *accurate or otherwise*, that have been made in good faith. This is based on sound policy considerations, including the need for documentation that may explain treatments provided or events that followed a particular observation or diagnosis. This approach is consistent with the approach taken to similar provisions in other jurisdictions.⁵

[28] Where a “professional opinion or observation” is involved, section 55(8) does not give a right to request a correction that amounts to a substitution or change to the custodian’s “professional opinion or observation,” unless it can be established that the professional opinions or observations were not made in good faith. Moreover, a request for correction or amendment should not be used to attempt to appeal decisions or professional opinions or observations with which a complainant disagrees and cannot be a substitution of opinion, such as the complainant’s view of a medical condition or diagnosis.

[29] In order for section 55(9)(b) to apply, the personal health information must qualify as either a “professional opinion” or a “professional observation.” Only those observations and opinions that require a health information custodian or an agent to exercise or apply special knowledge, skills, qualifications, judgment, or experience relevant to their profession should be defined as “professional observations” or “professional opinions” within the meaning of section 55(9)(b) of the *Act*.

[30] Court decisions have stated that a finding that someone has not acted in good faith can be based on evidence of malice or intent to harm another individual, as well as serious carelessness or recklessness. The courts have also stated that persons are assumed to act in good faith unless proven otherwise. Therefore, the burden of proof rests on the individual seeking to establish that a person has acted in the absence of good faith to rebut the presumption of good faith.⁶ In the context of section 55(9)(b) of *PHIPA*, the burden rests on the individual seeking the correction to establish that the custodian did not make the professional opinion or observation in good faith.⁷

[31] The record at issue in this complaint consists of notes documenting a consultation that occurred between the doctor and the complainant. The Consultation Notes are the doctor’s recounting of the complainant’s description of the symptoms he suffers from and a brief description of his health status and medication usage. They include a description of the doctor’s observations of the complainant that occurred during the examination. Following that, the doctor notes that he attempted to explain his reasons for believing that the complainant does not have HIV but was unable to do so, as the complainant became upset and started yelling that the doctor was “compromised”. The doctor

⁵ See, for example, Orders H2004-004, H2005-006 and H2005-007 of the Information and Privacy Commissioner of Alberta.

⁶ *Finney v. Barreau du Québec*, [2004] 2 SCR 17, 2004 SCC 36 (CanLII)

⁷ See, for example, *PHIPA* Decisions 37 and 67.

addressed various test results that he discussed with the complainant, and his reasons for believing that these test results were not compatible with someone who had come into contact with HIV. The Consultation Notes conclude with a section setting out the symptoms and potential causes that the doctor would have discussed with the complainant, had the complainant not made further discussion impossible.

[32] The Consultation Notes also include the doctor's statement that he does not receive NIH funding. This is clearly not a professional opinion or observation about the complainant and on this basis, I find that this statement does not meet the criteria for the section 55(9)(b) exemption. I will address this statement further in my later discussion of the application of section 55(8).

[33] The remainder of the complainant's requested corrections largely fall into two categories: 1) observations or diagnoses made by the doctor that the complainant believes are incorrect; and 2) information that the doctor did not include in the Consultation Notes but that the complainant feels is relevant.

[34] As set out earlier, the complainant disagrees with the doctor's assessment that his symptoms and test results – including sleep study results, assay results, fat distribution and other physical conditions – are not indicative of the complainant being HIV positive. The complainant has also provided evidence in the form of studies and test results, which the complainant states support his position.

[35] The complainant's position is that this medical evidence supports his conclusion regarding his health conditions, rather than the doctor's, and the corrections should therefore be made. However, section 55(9)(b) provides that there is no duty to correct professional opinions and observations, regardless of whether they are correct or not, so long as they were made in good faith. The doctor's comments regarding the complainant's condition and his opinions of the reasons for the complainant's health conditions certainly fall into the category of observations or opinions that require the doctor to exercise or apply special knowledge, judgment, or experience relevant to his profession. The doctor is a specialist in infectious diseases, and his opinions and observations of the complainant's health, including his opinion that the complainant is not HIV positive, required the doctor to apply his knowledge and experience relating to that profession.

[36] Further, part of documenting a professional opinion or observation includes determining what information is relevant and should therefore be documented. While I appreciate the complainant's position that the doctor failed to include relevant information, the doctor was utilizing his knowledge and experience not just during the consultation itself, but also afterwards, in determining what information was relevant and ought to be included in the Consultation Notes.

[37] Given the above, I find that the requested corrections, other than the statement regarding NIH funding, fulfill the first part of the section 55(9)(b) test, as they are the doctor's professional opinions or observations. Accordingly, the complainant has no right

of correction, unless the professional opinions or observations were not made in good faith. As noted above, the burden rests on the individual seeking the correction to establish this.

[38] The hospital states that the doctor provided his professional opinion on the complainant's diagnosis based on his examination of the complainant and the information available to him.

[39] The complainant argues that the doctor's opinions and observations were made in bad faith. He states that the doctor was biased because the doctor is the chair of infectious diseases of a university department that receives NIH funding grants. The complainant's position is that the doctor was compromised by this relationship, and should not have agreed to perform the consultation, given the complainant's position that the NIH had acted deceptively towards him. The complainant states that the doctor, by neither avoiding this situation nor proactively disclosing the details of his interactions with NIH to the complainant, acted contrary to the relevant guidance and requirements regarding physicians' conflicts of interest.

[40] Having reviewed the complainant's arguments alleging bias, the hospital's arguments, and the records themselves, I find that the complainant's evidence is not sufficient to displace the presumption of good faith. The complainant's argument is that due to the doctor's association with a body that has been granted NIH funding, the doctor's professional opinions and observations must have been made in bad faith. However, the complainant has not provided evidence of malice or intent to harm, and I do not accept that the doctor's connection to the other institution, on its own, is evidence of bad faith. Moreover, while I understand that the complainant vehemently disagrees with the doctor's assessment, a review of the Consultation Notes shows that they include reasons for the doctor's observations and opinions, albeit reasons that the complainant disagrees with. On this basis, I am not persuaded that the doctor acted with serious carelessness or recklessness.

[41] Having found that the complainant has requested corrections to records of personal health information that consist of professional opinions or observations made in good faith about the complainant, I find that the exception at section 55(9)(b) applies in the circumstances of this complaint, with the exception of the doctor's statement regarding NIH funding.

Section 55(8): right of correction to records of an individual's personal health information

[42] Section 55(8) provides for a right of correction to records of an individual's own personal health information in some circumstances. It states:

The health information custodian shall grant a request for correction under subsection (1) if the individual demonstrates, to the satisfaction of the

custodian, that the record is incomplete or inaccurate for the purposes for which the custodian uses the information and gives the custodian the information necessary to enable the custodian to correct the record.

[43] As I have found that the exception set out in section 55(9)(b) applies to the majority of the requested corrections, it is only necessary for me to address the application of section 55(8) to the statement relating to the doctor receiving NIH funding.

[44] The complainant's argument is that the doctor's statement that "[he has] not had any NIH funding" is incorrect because funding to his university department is effectively funding to him, based on how grants are allocated.

[45] Having reviewed the records and the complainant's arguments, I am not satisfied that the complainant has established that the statement is "incomplete or inaccurate for the purposes for which the [hospital] uses the information" as required by section 55(8). The Consultation Notes resulted from a consultation regarding the complainant's physical condition and the possible connection between his symptoms and the complainant's HIV status. It occurred due to a referral from the complainant's internal medicine specialist. Based on this information, the hospital's use of the Consultation Notes would be related to the provision of health care to the complainant.

[46] During that consultation, the complainant was the party that raised the possibility of a connection between the NIH and the doctor, by stating that the doctor must have a relationship with the NIH. The doctor responded to that statement by saying that he has not had NIH funding. The reason that the doctor's response is in the Consultation Notes is due to the complainant's speculation regarding the doctor, rather than for a purpose related to health care. In my view, the complainant has not demonstrated that the doctor's statement regarding NIH funding is inaccurate *for the purposes for which the hospital uses the information*, which are limited to the provision of health care. Whether the doctor received NIH funding – either directly or through grants to a university department he is affiliated with – is irrelevant to the hospital's use of the Consultation Notes for the purpose of providing health care to the complainant.

[47] For these reasons, I find that the hospital is not obliged to grant the correction request relating to the doctor's statement regarding NIH funding on the basis that the complainant has failed to establish that the record is incomplete or inaccurate for the purposes for which the hospital uses the information. The requirements of section 55(8) are therefore not met regarding this part of the complainant's correction request.

Summary

[48] I find that the majority of the information that the complainant seeks to correct consists of the professional opinions and observations of the doctor who wrote the Consultation Note and that these opinions and observations were made in good faith. Accordingly, the exception at section 55(9)(b) applies to the complainant's correction

requests, with the exception of the complainant's request to correct a statement regarding the doctor's receipt of NIH funding.

[49] I find that the complainant has not established that the statement regarding the doctor's receipt of NIH funding is inaccurate or incomplete for the purposes for which the hospital uses that information. Accordingly, the hospital is not obliged to correct that statement under section 55(8), as the requirements of that section have not been met.

[50] Though I have found that the hospital is not required to make the requested corrections, the *Act* gives the complainant the right to attach a statement of disagreement to the Consultation Notes setting out his disagreement with the information contained in that record.⁸

NO ORDER:

For the foregoing reasons, no order is issued and the complaint is dismissed.

Original Signed by: _____

Jennifer Olijnyk
Adjudicator

November 6, 2025

⁸ Section 55(11) of the *Act*.