

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 315

Complaint HA21-00233

The Corporation of the County of Bruce

December 9, 2025

Summary: The complainant, a substitute decision-maker for his wife, asked the county for his wife's medical records. The county operates the long-term care home where the wife previously resided. The county gave the complainant partial access to the records. The county withheld information it claimed was exempt from the right of access provided by section 52 of the *Personal Health Information Protection Act, 2004*, including investigation related information and the names of some of its employees. To withhold that information, it relied on the exemptions at sections 52(1)(d) (inspection, investigation or similar procedure), 52(1)(e)(ii) (identification of person required by law to provide information) and 52(1)(e)(iii) (identification of a confidential source) of the *Act*.

The complainant asked the IPC to review the county's access decision. He also challenged the county's search for records responsive to his request and asserted that additional records exist.

In this decision, the adjudicator finds that the exemptions claimed by the county do not apply to the withheld records and information. She orders the county to grant the complainant access to all the records that are dedicated primarily to his wife's personal health information, and for the records that are not, to grant him access to his wife's personal health information that can reasonably be severed from those records for the purpose of providing access in accordance with section 52(3). The adjudicator upholds the county's search for responsive records.

Statutes Considered: *Personal Health Information Protection Act, 2004*, SO 2004, c3 Sch A, sections 52(1)(d), 52(1)(e)(ii) and 52(1)(e)(iii).

Orders and Investigation Reports Considered: PHIPA Decisions 24, 194 and 307.

OVERVIEW:

[1] The complainant sought access, under the *Personal Health Information Protection Act (PHIPA)*, to the medical records for his incapable wife (the patient), a former resident of a long-term care home. The complainant is the substitute decision-maker for the patient under *PHIPA*. As a result, he is authorized to exercise her right of access under section 52(1) of *PHIPA* on her behalf.

[2] The Corporation of the County of Bruce operates the long-term care home. It responded to the complainant's access request since the Director of Long-Term Care for Bruce County is the health information custodian (the custodian) of the requested records under section 3(1)4ii of *PHIPA*.¹

[3] After making his request, the complainant clarified that he seeks access to "all charting" from April 21, 2021, to the date of his request. The complainant then filed this complaint with the Information and Privacy Commissioner of Ontario (the IPC) because the custodian did not issue an access decision within the response time required by section 54 of *PHIPA*.

[4] The IPC attempted to mediate the complaint. During mediation, the custodian issued an access decision, followed by two supplementary access decisions, granting the complainant partial access to the responsive records.

[5] In its decision letters, the custodian relied on the exemptions to the right of access at sections 52(1)(d) (inspection, investigation or similar procedure), 52(1)(e)(ii) (identification of person required by law to provide information) and 52(1)(e)(iii) (identification of a confidential source) to withhold information in the records. The custodian provided no explanation of its exemption claims.

[6] The complainant confirmed that he sought access to all the redacted information in the records he received from the custodian. He also asserted that additional responsive records exist. Specifically:

- records relating to the June 29, 2021, meeting he and his son had with the long-term care home's social worker at the specific request of the home's management, including:
 - the referral form that triggered the meeting
 - any assessments/notes from the meeting

¹ Section 3(1)4ii of *PHIPA* includes as a health information custodian a person who operates a long-term care home within the meaning of *Fixing Long-Term Care Act, 2021*, SO 2021, c.39 Sched 1. (*Fixing Long-Term Care Act*)

- progress notes in the patient's chart about the meeting
- records of internal follow-up meetings between the social worker and the home's management on July 6 and 8, 2021 (which meetings were "charted" on July 8th)
- "documentation from Social Worker" noted in a July 9 chart follow-up entry
- electronic communications records (emails, text messages etc.) pertaining to the patient.
- the original source document from the custodian's management requesting the June 29th social worker meeting with the patient's family
- all internal and external patient-related email communications that have been withheld by the custodian, except social worker notes from June 29 that have been provided
- any other patient-related documents that may exist in the custodian's possession that the complainant does not know about.

[7] A mediated resolution of the complaint was not achieved. The complaint moved to adjudication where an adjudicator may conduct a review. I conducted a review and invited representations from the parties on the issues set out below. The custodian provided representations and asked that parts of them not be shared with the complainant for confidentiality reasons. I considered whether the custodian's representations satisfied the confidentiality criteria in the IPC's *Code of Procedure for Matters Under the Personal Health Information and Protection of Privacy Act, 2004*. I determined that only some information qualified as confidential. I issued a sharing decision and shared the custodian's remaining, non-confidential, representations with the complainant.

[8] The complainant provided lengthy representations in response, including attachments that he asked to be kept confidential. I determined that I did not need to share the complainant's representations with the custodian.² However, I invited the custodian to reply to the complainant's argument about the application of section 52(1)(d). I address this further in Issue B, below.

[9] In this decision, I uphold the custodian's search for responsive records, but I do not uphold its exemption claims. I order the custodian to grant the complainant full access

² The complainant's representations include many concerns and allegations about the custodian's conduct towards the patient and her family. These concerns and allegations about the custodian's conduct are not before me in this review. They are beyond the scope of this complaint for access to the patient's personal health information and my jurisdiction under *PHIPA*, and I do not address them for that reason. I note that the complainant's representations confirm that he has availed himself of, and may currently still be involved in, other proceedings to address his various concerns and allegations about the custodian's conduct.

to records 1, 2, 5-9, 14, 15, 17, 18 and 21, which I find are dedicated primarily to the patient's personal health information. For records 10-13 and 22, which I find are not dedicated primarily to the patient's personal health information, I order the custodian to grant access to those portions of the patient's personal health information in the records that can reasonably be severed from the records for the purpose of providing access in accordance with section 52(3) of *PHIPA*.

RECORDS:

[10] At issue in this complaint are the following 17 records that contain information withheld by the custodian:

- Records 1, 2 and 5 (248 pages) – the patient's medical documentation, progress notes, and toileting and care chart from the long-term care home
- Record 6 (4 pages) – social worker referral form and progress notes
- Records 7 and 8 (34 pages) – medical and treatment administration records
- Record 9 (3 pages) – email from the social worker to staff
- Record 10 (2 pages³) – critical incident report
- Record 11 (1 page) – handwritten staff note
- Record 12 (4 pages) – staff emails
- Record 13 (1 page) – summary of complaint investigation
- Record 14 (3 pages) – authorization for admission forms and emails
- Record 15 (1 page) – meeting minutes
- Record 17 (17 pages) – emails between the complainant and custodian
- Record 18 (2 pages) – summary of notes from discussions with the complainant's family in June and July 2021
- Record 21 (29 pages) – emails between the custodian, staff and multidisciplinary health care providers (April 28 to July 25, 2021)
- Record 22 (62 pages) emails between the custodian, staff and multidisciplinary health care providers (May to September 2021)

³ The index of records provided by the custodian incorrectly indicates that record 10 is 8 pages.

[11] The custodian has withheld portions of records 5-9, 14, 15, 17, 18 and 21, and all of records 10-13, claiming they are exempt. It has also fully withheld record 22.

ISSUES:

- A. Are the records “dedicated primarily” to the personal health information of the patient within the meaning of section 52(3) of *PHIPA*?
- B. Does the exemption at section 52(1)(d) for information created or collected in the course of an investigation authorized by law apply to the withheld information in records 10-13, 15 and 18?
- C. Does the exemption at section 52(1)(e)(ii) or section 52(1)(e)(iii) apply to the remaining withheld information at issue?
- D. Did the custodian conduct a reasonable search for records responsive to the access request?

DISCUSSION:

A. Are the records “dedicated primarily” to the personal health information of the patient within the meaning of section 52(3) of *PHIPA*?

[12] The parties agree, and I find, that all the records at issue are records of “personal health information” of the patient within the meaning of section 4 of *PHIPA*. They all contain identifying information about her in recorded form that relates to her physical and mental health, the provision of health care to her and the identification of a person as a provider of health care to her, within the meaning of sections 4(1)(a) and (b) of *PHIPA*. Some of them also identify the complainant as the patient’s substitute decision-maker, which is her personal health information under section 4(1)(g).

[13] Having found that the records all contain the patient’s personal health information, to which the complainant exercises a right of access on the patient’s behalf, I must now determine the extent of that right of access. I begin by determining the threshold question of whether the records are “dedicated primarily” to the personal health information of the patient.

[14] The right of access in *PHIPA* applies either to the whole record, or only to certain portions of it, subject to any applicable exemptions. Specifically, while section 52(1)⁴ of *PHIPA* grants a right of access to the whole record, section 52(3) limits access where the record is not “dedicated primarily” to the individual’s personal health information. Section 52(3) of *PHIPA* states:

⁴ Set out in Issue B, below.

Despite subsection (1) [setting out exemptions from the right of access in *PHIPA*], if a record is not a record dedicated primarily to personal health information about the individual requesting access, the individual has a right of access only to the portion of personal health information about the individual in the record that can reasonably be severed from the record for the purpose of providing access.

[15] The IPC's approach to interpreting section 52(3)⁵ is to consider various factors to determine whether a record is "dedicated primarily" to the personal health information of the individual within the meaning of section 52(3). The factors the IPC considers in this qualitative approach, include:

- the quantity of personal health information of the requester in the record
- whether there is personal health information of individuals other than the requester in the record
- the purpose of the personal health information in the record
- the reason for the creation of the record
- whether the personal health information of the requester is central to the purpose for which the record exists, and
- whether the record would exist "but for" the personal health information of the requester in it.

Records 1, 2, 5-9, 14, 15, 17, 18 and 21 are dedicated primarily to the patient's personal health information

[16] The parties agree and I find that records 1, 2, 5-9, 14, 17, and 21 are dedicated primarily to the patient's personal health information within the meaning of section 52(3) of *PHIPA*.

[17] The custodian submits that records 15 and 18 are not dedicated primarily to the patient's personal health information because they were created in response to a complaint it received from the patient's family and to document steps taken to address and resolve that complaint. The custodian argues that since the personal health information in records 15 and 18 was provided by the complainant, from his perspective, and was not recorded in the regular course of medical charting about the patient's clinical experience or care plan, it does not concern the provision of health care within the meaning of *PHIPA*. The custodian asserts that records 15 and 18 would exist irrespective of the personal health information in them because the custodian has a duty to maintain the records for complaint reporting and investigations under the *Long-Term Care Homes*

⁵ Set out in PHIPA Decision 17, at paragraphs 85 to 115.

*Act, 2007*⁶(*LTCHA*). The custodian adds that it severed the patient's personal health information in records 15 and 18 and provided that information to the complainant as part of record 4, which is not at issue.

[18] The complainant disagrees with the custodian and asserts that records 15 and 18 are dedicated primarily to the patient's personal health information, including his concerns as her substitute decision-maker about the management of her disease progression and the providing of health care to her by the custodian's staff. He states that the meeting minutes in record 15 should be dedicated primarily to the patient because they are specifically about her: they detail a meeting between him, his son and the long-term care home's leadership about declining service standards of personal care that impacted the patient. The complainant makes similar submissions about record 18 arguing that, because the scope of the meeting and the resulting notes were dedicated primarily to the patient, record 18 should be released to him.

[19] I agree with the complainant that records 15 and 18 are dedicated primarily to the patient's personal health information. Both records contain a significant amount of the patient's personal health information, which reflects the fact that it is central to the purpose for which the records exist. While I accept that records 15 and 18 were created for the administrative and regulatory reasons cited by the custodian – its reporting and other obligations under the *LTCHA* – and not for the clinical purpose of providing health care to the patient, they are, nonetheless, qualitatively about the patient's clinical experience at the long-term care home. They concern the providing of health care to her and consist of communications with the complainant and his son about the patient's receiving appropriate care considering specific medication and other concerns. Records 15 and 18 would not exist without the patient's personal health information in them because their focus is the health care that was being provided to the patient. Applying the qualitative approach, I find that records 15 and 18 are dedicated primarily to the patient's personal health information.

[20] As a result, the complainant can exercise the patient's right of access on her behalf to the whole of records 1, 2, 5-9, 14, 15, 17, 18 and 21, subject to any applicable exemptions. I consider those in Issues B and C, below.

Records 10-13 and 22 are not dedicated primarily to the patient's personal health information

[21] The custodian submits that the remaining records, 10-13 and 22, are not dedicated primarily to the personal health information of the patient. It asserts that these records are not qualitatively about the patient's clinical experience and do not contain a large quantity of her personal health information. The complainant disagrees.

⁶ The custodian's representations cite the *Long-Term Care Homes Act, 2007*, SO 2007, c.8, which was in force at the time of the complainant's access request and the filing of his IPC complaint. The *LTCHA* was repealed on April 10, 2022, and replaced by the *Fixing Long-Term Care Act*.

[22] The custodian explains that records 10-13 were created after a physical altercation between the patient and another individual (the incident) and they contain the personal health information of the other individual. It says these records describe the incident and the outcome, including a complaint against the custodian filed by the complainant. The custodian asserts that these records were created for the purpose of satisfying its reporting and other obligations under the *LTCHA* and their main purpose is to address administrative, procedural and legal issues. The custodian argues that these records would exist even without the inclusion of the patient's personal health information, which is not central to the purpose for which the records exist. In the alternative, the custodian argues that even accepting that the records would not exist but for the patient's personal health information in them, this factor alone is not determinative under the qualitative approach applied to decide whether the records are primarily dedicated to personal health information. The custodian adds that it provided a summary of records 10-12 in record 3, and a summary of record 13 in record 4, and gave records 3 and 4 to the complainant as part of its access decisions.

[23] The custodian argues that record 22, consisting of emails between its employees and other multidisciplinary health care providers, is not dedicated primarily to the patient's personal health information because it contains no personal health information. The custodian says that record 22 contains information about intake, staff schedules, the scheduling of assessments, the scheduling of meetings with the complainant and family visits, as well as discussions about the strategy to deal with the complainant. The custodian submits that record 22 does not deal qualitatively with the patient's clinical experience and it does not exist for personal health information purposes.

[24] In response, the complainant argues that all personal health records pertaining to the incident are or should be dedicated primarily to the patient. The complainant's submissions on records 10-13 are mostly a critique of the custodian's conduct the day of the incident. He also alleges the custodian's true motive for withholding these records is to conceal the events following the incident and shield its employees from scrutiny of their actions. Regarding record 22, the complainant submits that it consists of emails between different custodians and their staff all relating to and dedicated primarily to the patient. He argues that the emails should all be released to him, excluding the names of other patients that may be severed under section 52(2).

[25] Throughout his representations, the complainant repeatedly asserts that these records are dedicated primarily to the patient, however, section 52(3) refers to "a record dedicated primarily to personal health information about the individual requesting access" – in this case, the patient.

[26] Having examined records 10-13 and 22, and considered the parties' representations, I find that they are not dedicated primarily to the personal health information of the patient.

[27] Applying the qualitative approach, I note that the records each contain a small

amount of the patient's personal health information. The small quantity of the patient's personal health information in records 10-13, reflects that fact that it is not central to the purpose for which the records exist. Records 10-13, relating to the incident, also contain personal health information of another individual. As noted by the custodian, none of the records was created for the clinical purpose of providing health care to the patient, although the records all relate to the patient's residing and receiving health care at the long-term care home. I accept that records 10-13 were created for the administrative and regulatory reasons cited by the custodian – its reporting and other obligations under the *LTCHA*.

[28] The emails that comprise record 22 are administrative emails that address staff scheduling issues, the complainant's concerns about the services being provided and/or how the long-term health care home was addressing those concerns, and the complainant's access request. All these emails would exist irrespective of the patient's personal health information in them, because their focus is the complainant's displeasure with the long-term care home's services and administration. The emails comprising record 22 were created for staff to coordinate and communicate their approach about certain actions of the custodian, not to capture the patient's personal health information. Their purpose and function were the consideration of and response to the complainant's concerns and requests.

[29] Because I have found that records 10-13 and 22 are not dedicated primarily to the patient's personal health information, the right of access under *PHIPA* that the complainant can exercise on the patient's behalf is only to the patient's reasonably severable personal health information in these records, in accordance with section 52(3). Section 52(1) provides that some or all that personal health information may be exempt from the right of access. Accordingly, below, I address the right of access to the reasonably severable personal health information of the patient in records 10-13 and 22 in my consideration of the section 52(1) exemptions claimed by the custodian.

B. Does the exemption at section 52(1)(d) for information created or collected in the course of an investigation authorized by law apply to the withheld information in records 10-13, 15 and 18?

[30] One of the purposes of *PHIPA*, set out in section 1(b), is to provide individuals with a right of access to personal health information about themselves, subject to limited and specific exceptions set out in *PHIPA*.

Exemptions from the right of access and the burden of proof

[31] Parts of a record may be exempt from the right of access in *PHIPA* under the exemptions listed in section 52(1). Exemptions may apply whether the right of access is under section 52(1) or 52(3) of *PHIPA*.

[32] For records 1, 2, 5-9, 14, 15, 17, 18 and 21, which are dedicated primarily to the

patient's personal health information and the right of access under *PHIPA* is to the whole record, section 52(1) provides that parts of the record may be exempt from the right of access.

[33] For records 10-13 and 22, which are not dedicated primarily to the patient's personal health information and the right of access under *PHIPA* is only to the patient's reasonably severable personal health information in the record, section 52(1) provides that some or all of that personal health information may be exempt from the right of access.

[34] The custodian relies on the exemptions in sections 52(1)(d), 52(1)(e)(ii) and 52(1)(e)(iii), as described in more detail below. The custodian bears the burden of establishing that the exemptions apply to the information at issue.

Section 52(1)(d)

[35] The custodian relies on the exemption at section 52(1)(d) of *PHIPA* to withhold records 10-13 completely, and portions of records 15 and 18. Section 52(1)(d) states:

Subject to this Part [Part V of *PHIPA*, setting out the rights of access and correction], an individual has a right of access to a record of personal health information about the individual that is in the custody or under the control of a health information custodian unless,

(d) the following conditions are met:

- (i) the information was collected or created in the course of an inspection, investigation or similar procedure authorized by law, or undertaken for the purpose of the detection, monitoring or prevention of a person's receiving or attempting to receive a service or benefit, to which the person is not entitled under an Act or a program operated by the Minister, or a payment for such a service or benefit, and
- (ii) the inspection, investigation, or similar procedure, together with all proceedings, appeals or processes resulting from them, have not been concluded[.]

[36] Section 52(1)(d) requires that the conditions at paragraphs (i) and (ii) both be met for the exemption to apply. Accordingly, the exemption can only apply to information collected or created in the course of one of the specified activities in paragraph (i), and only until such time as that specified activity and all proceedings, appeals, or processes resulting from it have been concluded as stipulated in paragraph (ii).

[37] In the Notice of Review that I sent to the parties, I noted that the IPC had not yet

considered section 52(1)(d) of *PHIPA*.⁷

The parties' representations

[38] In its representations, the custodian submits that it collected the information it withheld under section 52(1)(d) for the purpose of complying with its obligations under the *LTCHA*, namely, its duty as a licensee to report specific information to the Ministry of Long-Term Care (the ministry). It states that it collected the personal health information in records 10-12 to comply with its duty, in section 107 of Ontario Regulation 79/10 (the regulation) to the *LTCHA*, to report critical incident information to the Director of the ministry.

[39] Regarding the minutes and summaries of meetings between the complainant, the custodian and/or its employees contained in records 13, 15 and 18, it submits that it collected the personal health information as per its obligation under sections 21 and 23 of the *LTCHA*.⁸ The custodian explains that: section 21 of the *LTCHA* requires it to create written procedures that incorporate the requirements of section 101 of the regulation; section 22 requires it to forward complaints it receives to the Director of the ministry; and section 23 requires that complaints be responded to and acted on. The custodian states that section 101 of the regulation outlines the specific recordkeeping obligations that it followed in this instance, resulting in the creation of these records.

[40] The custodian asserts that the records are properly exempt under section 52(1)(d) because they were created in the course of legislated procedures similar to an inspection or investigation – namely, reporting requirements mandated by the *LTCHA*. The custodian explains that the withheld records are referred to and are being relied on, in part, in the appeals to the Health Services Appeal and Review Board (HSARB) of the ministry's Orders, and to a related complaint to the College of Nurses of Ontario (CNO), which have not yet been resolved.

[41] The complainant disputes the custodian's claim that section 52(1)(d) applies and argues that it is illegitimate considering the custodian's continuous compliance obligations as a licensee under the *LTCHA*. He argues that any internal step or procedure that the custodian was obliged to take in its continuous compliance under this framework – including its internal service investigations, or its documenting, sharing or reporting requirements – is not a legitimate basis to claim section 52(1)(d). He also cites the first IPC decision interpreting and applying section 52(1)(d), PHIPA Decision 194, which was

⁷ I also noted that, as stated in the *Guide to the Ontario Personal Health Information Protection Act*, by Halyna Perun et al., (PHIPA Guide), at page 525, section 52(1)(d) appears to be particularly relevant to the Ministry of Health and Long-Term Care (the relevant ministry at the time) as a custodian of personal health information that has been collected in the course of monitoring fraudulent activities or in the course of investigations, inspections and assessments conducted to ensure compliance with Ministry of Health and Long-Term Care legislation.

⁸ It states that similar obligations are imposed regarding complaint and incident recordkeeping and reporting in the currently applicable legislation, the *Fixing Long-Term Care Act* at sections 26-28 and sections 107-109, 112 and 115 of Ontario Regulation 246/22.

issued before he prepared his representations. The complainant says that PHIPA Decision 194 is a helpful and instructive decision to address the section 52(1)(d) exemption. He relies on paragraphs 67 to 76 of PHIPA Decision 194, which set out the adjudicator's reasons for finding that section 52(1)(d) did not apply in the circumstances before her.

[42] The complainant asserts that section 52(1)(d) does not apply to the records because the condition in paragraph (ii) is not met. The complainant states that all procedures and any proceedings resulting from them have been concluded. The complainant also asserts that the HSARB and CNO proceedings the custodian refers to relate to separate events involving the patient that occurred well after the creation of the records. Finally, the complainant states that he made other similar *PHIPA* access requests for the patient's health records during the same time with her remaining health care providers and the ministry, and none of those custodians invoked section 52(1)(d) to withhold information.

[43] After receiving the complainant's representations, I shared the information in paragraphs 41 and 42 with the custodian. I asked the custodian to advise whether the various procedures and proceedings mentioned in its representations have been concluded, as claimed by the complainant, such that it no longer claims section 52(1)(d) to withhold records 10-13 fully and portions of records 15 and 18. I also invited the custodian to provide additional representations in response to the complainant's submission and on any relevance PHIPA Decision 194 may have to the circumstances in this complaint.

[44] The custodian replies that, contrary to the complainant's assertion, the proceedings related to the withheld records are not yet concluded. It submits that those proceedings resulted from the investigations that prompted the creation of the records. The custodian explains that the proceedings address the question of whether the patient was suited to long-term care. The custodian states that records 10-12, 15 and 18 were created to prevent an ill-suited resident from remaining at the long-term care home. It submits that records 10-12 relate to an investigation authorized by section 27 of the *Fixing Long-Term Care Act* (abuse of another resident) and by section 32.03(1) of the *Occupational Health and Safety Act*⁹ (assessment of the risks of workplace violence). The custodian adds that records 15 and 18 were authorized by sections 22 and 23 of the *LTCHA* in force at the time that the records were created.

The section 52(1)(d) exemption does not apply

[45] Considering the evidence before me, including the parties' representations and the records themselves, I am not satisfied that the requirements of section 52(1)(d) are met. Specifically, the custodian's representations do not establish that the second requirement at paragraph (ii) is met and that records 10-13 and the withheld information in records

⁹ RSO 1990, Chapter 0.1.

15 and 18 are exempt.

[46] I accept that the custodian collected the personal health information in record 10, the incident report, in the course of its investigation of the incident, and that section 23(1)(a)(i) of the *LTCHA* required the custodian to investigate the incident because it involved the abuse of a resident. I also accept that the custodian was mandated by section 22 of the *LTCHA* to report the results of its investigation to the Director of the ministry and to forward any written complaints to the Director of the ministry. While the custodian's duty under section 23(1)(a)(i) of the *LTCHA* may satisfy the "authorized by law" component of the requirement in paragraph (i) of section 52(1)(d) for record 10, its argument that its *LTCHA* duty to forward written complaints to the Director of the ministry does not persuade me that the "investigation...authorized by law" component is satisfied with respect to records 10-13, 15 and 18. In any event, due to my finding below, it is not necessary for me to make a finding about whether the investigation conducted by the custodian, that resulted in the records at issue, was authorized by law as required by the first part of the section 52(1)(d) exemption.

[47] The custodian submits that the paragraph (ii) requirement of the exemption is met because its inspection, investigation or similar procedure together with all proceedings, appeals or processes resulting from them, have not yet been concluded. It states that the withheld records are referred to and are being relied on, in part, in ongoing appeals of the ministry's Orders before HSARB, and in a related CNO complaint, all of which, it submits, resulted from the investigations that prompted the creation of the records and address the question of whether the patient was suited to long-term care.

[48] The complainant states that all procedures and any proceedings resulting from the custodian's investigation have been concluded, and that the HSARB and CNO proceedings the custodian refers to relate to separate events involving the patient that proceeded the creation of the records. He relies on PHIPA Decision 194 to support his argument.

[49] In PHIPA Decision 194, the IPC found that the section 52(1)(d) exemption did not apply because the requirement in paragraph (ii) was not met. The record at issue in that decision was an investigation report that resulted from a custodian's internal investigation under the *Ambulance Act*. In making her finding, the adjudicator noted that the custodian's internal investigation had concluded and that the subsequent investigation of the same incident by the ministry did not qualify as a proceeding, appeal or process resulting from the investigation. At paragraph 75, the adjudicator reasoned:

I do not accept the fact that the MOHLTC opened an investigation into the incident establishes that paragraph (ii) of the exemption at section 52(1)(d) has been met. As previously mentioned, the report was created "in the course" of the custodian's investigation into the complaint. It was not created "in the course" of any MOHLTC investigation. In my view, any subsequent (or even concurrent) investigation into the matter conducted by the MOHLTC is separate and distinct from the custodian's internal

investigation; there is no evidence to support a conclusion that such investigation can be characterized as an appeal of or process arising from the custodian's own internal investigation.

[50] I agree with this reasoning and apply it to the circumstances before me. In this complaint, the custodian's investigation of the incident has concluded. The records at issue were created in the course of the custodian's investigation into the incident. Even if ongoing HSARB and CNO proceedings exist, I do not accept that they qualify as "proceedings, appeals or processes resulting from" the custodian's investigation. The personal health information in the records at issue was not collected or created in the course of the HSARB or CNO proceedings, which are separate and distinct from the custodian's own internal investigation. I am not persuaded by the custodian's broad claim that the HSARB and CNO proceedings resulted from its own investigation because they all address the patient's suitability to long-term care. This claim is not consistent with the custodian's initial claim that the withheld records and information were created to satisfy its *LTCHA* duties to investigate incidents of abuse of a resident and to report the results of its investigation and forward any written complaints to the Director of the ministry. While the records at issue may be referred to and relied on, in part, in ongoing appeals of the ministry's Orders before HSARB, and in a related CNO complaint, those proceedings do not qualify as "resulting from" the custodian's investigation.

[51] Accordingly, I find that the requirement at paragraph (ii) is not met and the exemption in section 52(1)(d) does not apply to records 10-13 and the withheld information in records 15 and 18.

[52] The custodian does not claim any other exemption to withhold records 10-13. I have found that records 10-13 and 22, for which the custodian claims no exemption, are not dedicated primarily to the patient's personal health information. Since these records are not dedicated primarily to the patient's personal health information and they are not subject to any exemption, the complainant has a right of access, as the substitute decision-maker, to the patient's personal health information that can reasonably be severed for the purpose of providing access in accordance with section 52(3). I will order the custodian to grant access to those portions of the patient's personal health information in records 10-13 and 22 that can reasonably be severed from these records.

[53] For the withheld information in records 15 and 18, the custodian also claims that the section 52(1)(e)(ii) and (iii) exemptions also apply. I consider these exemptions and records 15 and 18, next.

C. Does the exemption at section 52(1)(e)(ii) or section 52(1)(e)(iii) apply to the remaining withheld information at issue?

Sections 52(1)(e)(ii) and 52(1)(e)(iii) of *PHIPA*

[54] To withhold the remaining information at issue in records 1, 2, 5-9, 14, 15, 17, 18,

and 21, the custodian relies on the exemptions at sections 52(1)(e)(ii) and 52(1)(e)(iii) of *PHIPA*. These exemptions state that an individual has a right of access to a record of personal health information about the individual that is in the custody or under the control of a health information custodian unless:

- (e) granting the access could reasonably be expected to,
 - (ii) lead to the identification of a person who was required by law to provide information in the record to the custodian, or
 - (iii) lead to the identification of a person who provided information in the record to the custodian explicitly or implicitly in confidence if the custodian considers it appropriate in the circumstances that the identity of the person be kept confidential[.]

[55] Sections 52(1)(e)(ii) and 52(1)(e)(iii) apply where granting access to a record “could reasonably be expected to” cause the harms specified in those sections. In the Notice of Review that I sent to the custodian I noted that, from my examination of the information withheld under sections 52(1)(e)(ii) and 52(1)(e)(iii), the custodian appeared to be claiming these exemptions to withhold information that identifies a person as a health care provider to the patient, even though the identification of a person as a patient’s health care provider qualifies as the patient’s personal health information under the definition of that term in section 4(1)(b) of *PHIPA*. Accordingly, I asked the custodian to address the section 4(1)(b) definition of “personal health information,” which confirms that “the identification of a person as a provider of health care to the individual” “relates to the providing of health care to the individual” and qualifies as the individual’s personal health information, in its representations on the possible application of the section 52(1)(e)(ii) and (iii) exemptions.

Section 52(1)(e)(ii) – identification of person required by law to provide information

[56] The IPC has not yet considered section 52(1)(e)(ii) of *PHIPA* in any of its decisions. Although the section 52(1)(e)(ii) exemption has not yet been interpreted by the IPC, it is similar to the exemption at section 52(1)(e)(iii), which has been interpreted and applied in IPC decisions. To apply, both exemptions require that granting access to the record “could reasonably be expected to lead to the identification of a person.” For section 52(1)(e)(ii) the person must have been “required by law to provide information in the record to the custodian.”

[57] In the Notice of Review that I sent to the parties, I referred them to the discussion of section 52(1)(e)(ii) in the *PHIPA* Guide.¹⁰ I noted that the *PHIPA* Guide addresses this exemption at pages 528 and 529, and provides an example of circumstances in which it would apply: where a medical officer of health receives a report from a physician, under

¹⁰ See footnote 7, above.

the *Health Protection and Promotion Act*, about a patient with a reportable disease, that patient does not have a right to access the information in the hands of the medical officer of health that would lead to the identification of that physician. It also notes that, as a result of the words “reasonably be expected,” the section 52(1)(e)(ii) exemption to the right of access is not limited to the name of the person who made the report; it encompasses all information that, if revealed to the patient, would reasonably be expected to reveal the identity of the person who was required to report the information.

Section 52(1)(e)(iii) – identification of a confidential source

[58] The IPC has applied the section 52(1)(e)(iii) exemption in several PHIPA decisions. The IPC has upheld a custodian’s decision to deny access to information that qualified for exemption under section 52(1)(e)(iii), despite the requester’s having a right of access to the personal health information in the record under *PHIPA*. In PHIPA Decision 24, the IPC upheld a city’s claim of the section 52(1)(e)(iii) exemption to withhold information that identified persons who reported a public health issue, relating to another individual, to a public health nurse in the Health Promotion and Disease Prevention Unit of the city’s Health Unit. The adjudicator in PHIPA Decision 24 agreed with the city that the withheld names of the referral sources were exempt under section 52(1)(e)(iii) because the sources had contacted the custodian in a personal capacity and implicitly provided the information in the records in confidence. In PHIPA Decision 307, the IPC withheld sensitive information provided to a hospital nurse, about a child receiving medical care, from the child’s custodial parent.

[59] In the Notice of Review that I sent to the parties, I referred to the discussion of this exemption at page 529 of the PHIPA Guide, which addresses the exemption and provides an example of circumstances in which it would apply: a physician could rely on this exemption to withhold the name of a family member who provided information about the patient. However, in some instances, deleting the name alone may not be enough to protect the identity of the individual. This exemption extends to information that could “reasonably be expected” to lead to the identification of the individual.

The custodian’s representations

[60] The custodian says that it does not dispute that records 1, 2, 5-9, 14, 15, 17, 18 and 21 contain personal health information within the meaning of section 4(1)(b) of *PHIPA* (identification of a person as a provider of health care to the individual). It states that it withheld the treating physician’s name in record 7 only. It notes that while it has not withheld the names of the treating physicians in the remaining records, it has withheld the names of the nurses, personal support workers, social workers and other multidisciplinary professionals who were required to provide regular charting, and complaint and incident information to the custodian pursuant to the *LTCHA*.

[61] In support of its claim of the section 52(1)(e)(ii) exemption, the custodian explains that the employees whose names and identifying information it withheld were required

to document health records under the *LTCHA* and particularly sections 231 to 233 of the regulation, which require that every licensee of a long-term care home create and update records of current residents, and that records of former residents be retained for at least 10 years. It states that the records at issue are both formal medical records, and emails and summaries of meetings that could lead to the identification of the individuals who created those records. The custodian submits that granting access to the withheld names or other identifying information of persons who provided the information in the health records to it pursuant to the *LTCHA* obligations would directly lead to the identification of those individuals.

[62] The custodian states that its longstanding practice is to redact personal information of its employees or contracted service providers and administrators in medical records, personal emails, meeting minutes and all other records. It states that, as part of this practice, it tells its employees that their personal information will not be disclosed to third parties unless required by a law that does not contain relevant exceptions. It asserts that, as a result, section 52(1)(e)(iii) applies. The custodian submits that this practice is intended to create a shield for staff to be able to perform their duties without undue recourse by a third party and it notes an example of this: when the ministry conducts an inspection, it does not refer to employees by name in its inspection report.

[63] The custodian adds that it withheld these employees' and contracted service providers' names under section 52(1)(e)(ii) in the interest of protecting them from harm and undue hardship; it notes that several of these employees, including multidisciplinary health care providers, have resigned from their position or terminated their contracts as a result of their personal information potentially being disclosed to the complainant.

The remaining withheld information at issue does not qualify for exemption under section 52(1)(e)(ii) or 52(1)(e)(iii)

[64] For the reasons that follow, I find that the custodian has not established that the section 52(1)(e)(ii) and (iii) exemptions apply to the withheld information.

[65] Considering the section 52(1)(e)(ii) exemption first, I do not accept that the withheld information was provided by a person "who was required by law to provide" it to the custodian. Rather, the withheld information was recorded in the normal course of the custodian's and its employees' responsibilities as health care providers to the patient. The fulfillment of the custodian's recordkeeping or incident reporting obligations by its employees, as required under the regulation or the *LHTCA*, does not fit within the meaning of "a person who was required by law to provide information in the record to the custodian" as required for the exemption to apply. The general recordkeeping requirements of the custodian and the professional duties of the multidisciplinary health care professionals to record the patient's personal health information and the health care they provided to her in her medical records, are not the providing of information "required by law" that section 52(1)(e)(ii) contemplates or protects.

[66] I apply the same reasoning in rejecting the custodian's claim that the withheld information was provided by "a person who provided information in the record...explicitly or implicitly in confidence" within the meaning of section 52(1)(e)(iii). The fulfillment of the custodian's duty to maintain specific incident and complaint information by its employees is not the providing of information section 52(1)(e)(iii) contemplates or protects. I do not accept that the withheld information in the records, that was recorded by the custodian's employees tasked with caring for the patient, was provided "explicitly or implicitly in confidence." The multidisciplinary health care providers who provided the information in the records did not have a reasonable expectation that the information they were required to provide and record about the patient's health care would be kept confidential.

[67] The individuals whose names the custodian has withheld are its employees who provided health care to the patient and were required, as part of that provision of health care, to keep detailed records of their work. Because the withheld information was provided as part of the regular employment duties of the multidisciplinary health care providers employed by the custodian, the circumstances in this complaint differ from those in PHIPA Decisions 24 and 307 where the exempt information was provided explicitly in confidence by an individual who was not the custodian or an agent of the custodian.

[68] While the custodian explains its reasons for its policy of keeping the names of multidisciplinary health care providers confidential, it cannot rely on sections 52(1)(e)(ii) or (iii) to withhold the names in the records at issue. I do not uphold the custodian's claim that the withheld names and other identifying information in records 1, 2, 5, 7-9, 14, 15, 17, 18 and 21, qualify for exemption under section 52(1)(e)(ii) or (iii).

[69] Since I have found that none of the exemptions relied on by the custodian applies to the withheld information in the records, I will order the custodian to grant full access to records 1, 2, 5-9, 14, 15, 17, 18 and 21, which I have found to be dedicated primarily to the patient's personal health information.

D. Did the custodian conduct a reasonable search for records responsive to the access request?

[70] Because the complainant claims that additional records exist beyond those identified by the custodian, I must decide whether the custodian has conducted a reasonable search for records as required by sections 53 and 54 of *PHIPA*. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the custodian's decision. If I am not satisfied, I may order further searches.

[71] The IPC has consistently found that although *PHIPA* does not require the custodian to prove that no further records exist, the custodian must provide sufficient evidence to

show that it has made a reasonable effort to identify and locate responsive records.¹¹ To be responsive, a record must be "reasonably related" to the request.¹²

[72] 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.¹³ 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.¹⁴

[73] Although a complainant will rarely be in a position to indicate precisely which records the custodian has not identified, the complainant still must provide a reasonable basis for concluding that such records exist.¹⁵

[74] The complainant asserts that additional responsive records related to the patient exist. Specifically, records relating to the June 29 meeting with the social worker, such as the original source document from the custodian's management requesting the June 29th social worker meeting with patient's family, internal/external patient-related email communications, and any other patient-related documents that may exist in the custodian's possession that the complainant does not know about.

[75] The custodian provides an affidavit sworn by its Director of Long-Term Care and Senior Services. In her affidavit, the Director explains that:

- the long-term care home does not have a central repository where all records, including employee communications, are kept
- each employee is responsible for documenting any discussions, meetings, or correspondence pertaining to a resident in the resident's progress notes or charts, as applicable
- parts of the searches for responsive records were performed by former employees, and the records located are those that are in the custody and control of the custodian.

[76] The Director provides the names and titles of the staff who searched the electronic and paper patient chart files for responsive records, and the dates and results of those multiple searches.

[77] Regarding the complainant's assertions that the specific additional records should exist, the Director affirms:

¹¹ PHIPA Decisions 17, 18, 43, 48, 52 and 57, among others.

¹² *Ibid*, citing Order PO-2554.

¹³ *Ibid*, citing Orders M-909, PO-2469 and PO-2592.

¹⁴ *Ibid*, citing Order MO-2185.

¹⁵ *Ibid*, citing Order MO-2246.

- There is no referral form because the former social worker, who worked once a week for 6-8 weeks, did not document all relevant information in the patient's medical record, despite being expected to do so by the custodian and required to do so by the professional regulatory standards and policies for social workers and the legislation applicable to long term care homes.
- To the best of her knowledge and belief, the social worker did follow the applicable professional standards, policies and regulations for social workers.
- The only record from the former social worker is the record 9 email provided to the complainant. The custodian contacted the service provider that employed the former social worker and was advised that no social worker records were available.
- There is no referral form that triggered the June 29, 2021, meeting, as suggested by the complainant, and there are no other records about or from the meeting, other than the 17 progress notes between June 29 and July 21 that have been provided to the complainant as part of record 2.
- There were no records created capturing any internal follow-up meetings between the social worker and the home's management on July 6 and 8, 2021, other than the July 8 progress note already provided to the complainant as part of record 2.
- The reference to "documentation from Social Worker" noted in a July 9 chart follow-up entry is not a reference to physical records, but to the documenting of the family's comments to the social worker during a meeting, which are contained in the record 9 email provided to the complainant.
- Record 21 contains all other electronic communications records pertaining to the patient and containing her personal health information.

[78] In response, the complainant insists that additional responsive records exist. He notes the repeated and ongoing discovery of additional records by the custodian prior to and during his IPC complaint. He also states that he knows additional records exist because he has copies of such records from other sources: these include an incident report from July 11, 2021, and reports from a behavioral support representative. The complainant attaches a copy of these records to his representations. He submits that, despite his repeated requests for all the patient's records from the custodian, the custodian has purposely failed to produce certain personal health information relating to the patient. He asks that the custodian be ordered to conduct a new search for specific responsive records he believes exist.

[79] Having considered the parties' representations, I am satisfied that the affidavit evidence provided by the custodian establishes that experienced employees knowledgeable in the subject matter of the request made reasonable efforts to search for responsive records. I accept the evidence provided by the Director of Long-Term Care and Senior Services that the more than 400 pages the custodian located are all the

responsive records in the custodian's custody or control.

[80] However, I also accept the complainant's assertion that there are additional records that he has received from other sources, and that he believes are responsive to his request, that the custodian has not produced. The custodian addresses the complainant's assertion in its affidavit evidence: the Director attests that the former social worker did not document all relevant information in the patient's medical record, despite being expected to do so by the custodian and required to do so by the professional standards for social workers. The Director also confirms that the custodian does not have a central repository for all records and that each of its employees is responsible for documenting any discussions, meetings, or correspondence pertaining to a resident in the resident's progress notes or charts. While the complainant is not satisfied with the custodian's response to his concerns about records he asserts the custodian should have, the custodian's response explains why it does not have those records even though they may have existed.

[81] I find that the complainant's receipt of various records from other sources – including proceedings with regulatory bodies and another access request – does not provide a reasonable basis for me to conclude that the custodian has those records but has not produced them. It may be that the custodian should have some of those records, however, this does not refute the custodian's affidavit evidence that it does not.

[82] I find that the custodian's evidence is sufficient to show its reasonable effort to identify and locate responsive records. Moreover, I am not convinced that ordering another search would yield additional responsive records. Accordingly, I uphold the custodian's search.

ORDER:

1. I do not uphold the custodian's claims of the exemptions in sections 52(1)(d), 52(1)(e)(ii) and 52(2)(e)(iii).
2. I order the custodian to grant access to the following records and information by January 13, 2026:
 - a. Records 1, 2, 5-9, 14, 15, 17, 18 and 21, in their entirety
 - b. the portions of the patient's personal health information in records 10-13 and 22, that can reasonably be severed from each record for the purpose of providing access in accordance with section 52(3).

Original Signed by:
Stella Ball
Adjudicator

December 9, 2025