

Information and Privacy Commissioner,
Ontario, Canada



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

PHIPA DECISION 321

Complaint HA25-00488

St. Joseph's Health Care London

PHIPA Decision 310

December 23, 2025

Summary: An individual submitted a request for reconsideration of PHIPA Decision 310, where the adjudicator found that St. Joseph's Health Care London had no duty to correct the individual's records of personal health information.

In this reconsideration decision, the adjudicator finds that the complainant has not established grounds for reconsideration under section 27.01 of the *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004* and denies the request.

Statutes Considered: *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched A, as amended, sections 55(8), 55(9), 61(1), and 64(1) and *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*, section 27.01.

Decisions Considered: PHIPA Decisions 25 and 310.

Cases Considered: *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848.

BACKGROUND:

[1] In this reconsideration decision, I consider whether the complainant's request for reconsideration of PHIPA Decision 310 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*). I find that it does not.

[2] PHIPA Decision 310 addressed whether St. Joseph's Health Care London (the hospital) had a duty to make corrections to Consultation Notes under section 55(8) of the *Personal Health Information Protection Act* (*PHIPA*). The complainant made a correction request under section 55(1) of *PHIPA*. The corrections he requested 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).

[3] The hospital denied the correction request in full pursuant to section 55(9)(b) of *PHIPA*. 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.

[4] The complainant filed a complaint with the Information and Privacy Commissioner of Ontario (IPC) regarding the hospital's decision not to correct the records.

[5] In PHIPA Decision 310, I found that the hospital did 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) applied. For the remaining portion related to NIH funding, I found that the hospital did not have a duty to make the requested correction, as that information was not incomplete or inaccurate for the purposes for which the hospital uses the information. I dismissed the correction complaint.

[6] After receiving PHIPA Decision 310, the complainant requested that I reconsider that decision on the basis of new evidence that was not before me in my review of the complaint. The complainant states that this new evidence demonstrates that the Consultation Notes were not prepared in good faith, and that therefore, the hospital has a duty to make the requested corrections.

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

DISCUSSION:

Grounds for reconsideration under section 27.01 of the *Code*

[8] Section 27.01 of the *Code* provides four grounds for reconsideration of a decision:

The IPC may reconsider a Decision at the request of a person who has an interest in the Decision or on the IPC's own initiative, where it is established that:

- a) there is a fundamental defect in the adjudication process;
- b) there is some other jurisdictional defect in the Decision;
- c) there is a clerical error, accidental error or omission or other similar error in the Decision; or
- d) new facts relating to an Order come to the IPC's attention or there is a material change in circumstances relating to the Order.

[9] Mere disagreement with a decision is not a ground for reconsideration under section 27.01 of the *Code*.¹

The complainant's request for reconsideration

[10] The complainant does not specify which ground of section 27.01 of the Code he is relying on in making his reconsideration request.

[11] Instead, the complainant states that he wishes to provide "new material evidence that was not before [the adjudicator] during the original proceeding." The complainant's position is that this evidence demonstrates that the doctor who wrote the Consultation Notes made contradictory and misleading statements that undermine my finding that the observations and opinions present in the Consultation Notes were made in good faith.

[12] The complainant provided an email from the hospital, which included the statement that "it has been confirmed for me that [the doctor] does not receive funding from the NIH." The complainant also provided what he described as an excerpt from a decision letter of the College of Physicians and Surgeons of Ontario (the CPSO), which read as follows:

[The doctor] advised [the CPSO] that it would be unreasonable for him to disclose the hundreds of granting agencies he has some relation to before going into a patient's room and before taking any history. The Committee finds this response to be reasonable.

[13] Finally, the complainant also provided information from an NIH database search indicating that a specified university received NIH funding for HIV-related research. As was noted in PHIPA Decision 310, the doctor is a department chair within the university department that received this funding. The complainant notes that these database results show that NIH funding goes to institutions, not individuals, and argues that this demonstrates that the doctor's statement that he does not receive NIH funding was therefore misleading.

¹ See *Chandler v. Alberta Assn. of Architects*, 1989 CanLII 41 (SCC), as discussed in PHIPA Decision 25 and others.

Analysis and findings

[14] Before addressing the specific grounds of reconsideration suggested by the complainant's submissions, I start by observing that the IPC's reconsideration power is not intended to provide an opportunity for a party to re-argue their position. In PHIPA Decision 25, former Assistant Commissioner Sherry Liang reviewed the IPC's approach to reconsideration requests in the context of the *Freedom of Information and Protection of Privacy Act* 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.² As Justice Sopinka commented in *Chandler v. Alberta Association of Architects*,³ "there is a sound policy basis for recognizing the finality of proceedings before administrative tribunals."

[15] I agree with the approach taken by the former Assistant Commissioner and will bear this reasoning in mind in my review of the reconsideration request.

[16] The complainant's reasons for seeking reconsideration are that he has new evidence that he submits should change my finding that the doctor's professional opinions or observations were made in good faith. The complainant does not allege that there was a fundamental defect in the adjudication process (s. 27.01(a)), a jurisdictional defect in the decision (s. 27.01(b)), or that the decision contains a clerical error, accidental error or omission or other similar error (s. 27.01(c)). Rather, it appears that the complainant takes the position that the new evidence may establish grounds for reconsideration under section 27.01(d) of the *Code*.

Section 27.01(d) – new facts relating to an Order come to the IPC's attention or there is a material change in circumstances relating to the Order

[17] The ground for reconsideration in section 27.01(d) mirrors the power given to the IPC under section 64(1) of *PHIPA*, which provides for reconsideration of orders made after a review.⁴ Section 64(1) states:

After conducting a review under section 57 or 58 and making an order under subsection 61(1), the Commissioner may rescind or vary the order or may make a further order under that subsection if new facts relating to the

² 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*.

³ *Supra* note 1.

⁴ PHIPA Decisions 146 and 161.

subject-matter of the review come to the Commissioner's attention or if there is a material change in the circumstances relating to the subject-matter of the review. [emphasis added]

[18] Under section 27.01(d) of the *Code* and section 64(1) of *PHIPA*, reconsideration of a decision on the basis of new facts or a material change in circumstances is only available where an order has been made under section 61(1) of *PHIPA*. PHIPA Decision 310 did not make any orders under section 61(1). Therefore, section 27.01(d) of the *Code* and section 64(1) of *PHIPA* do not apply in this matter.

[19] Moreover, I note that the evidence provided by the complainant does not raise new facts or a material change in circumstances. Rather, the complainant provided additional evidence indicating that the university department that the doctor chairs received NIH funding. The complainant asserted this during the review of the complaint, together with his position that such funding equates to the doctor receiving NIH funding. The information that the complainant included with his reconsideration request may serve to buttress his previous argument, but it does not raise new facts or a material change in circumstances, and therefore does not provide grounds for reconsideration under section 27.01(d)

[20] Regardless, even if the section 27.01(d) ground was available to the complainant, the complainant's evidence does not affect my finding that the hospital had no duty under section 55(8) to make the requested corrections.

[21] 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.

[22] 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.⁵ 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.

⁵ 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."

[23] As set out in PHIPA Decision 310, the information that the complainant requested correction of fell into two categories. The majority were professional opinions or observations relating to the complainant's medical condition, and the remainder was the doctor's statement that he has not received NIH funding.

[24] 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 statements regarding the complainant's medical conditions were his professional opinions or observations, but the complainant argued that those opinions or observations were made in bad faith. The basis for his position was that the doctor received NIH funding grants and was therefore compromised.

[25] I found in PHIPA Decision 310 that the evidence that the complainant provided was not sufficient to displace the presumption of those opinions and observations having been made in 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.

[26] PHIPA Decision 310 did not include a finding that the doctor did not receive NIH funding. Rather, I found that that regardless of the matter of such funding, the complainant had not met the burden of showing that the doctor's observations or opinions were made in bad faith. The complainant's new evidence addressing funding received by a university department that the doctor is affiliated with likewise does not demonstrate that the doctor acted with malice, intent to harm, serious carelessness, or recklessness. Even with the additional information, the complainant has failed to dislodge the presumption that the doctor's professional opinions and observations were made in good faith, and therefore fall within the exception to the duty to correct set out in section 55(9)(b).

[27] As to the remaining part of the request, I found in PHIPA Decision 310 that the hospital had no duty to correct the statement in the Consultation Notes that the doctor did not receive NIH funding. I made this finding based on the duty to correct in section 55(8), which states that a request for correction shall be granted "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" [emphasis

added]. In my view, the hospital's use of the Consultation Notes was limited to the provision of health care to the complainant. The statement regarding NIH funding was raised by the complainant's speculation during the consultation and is irrelevant to the hospital's use of those notes for the purpose of providing health care to the complainant. On that basis, I found in PHIPA Decision 310 that the hospital had no duty to correct that statement under section 55(8) of the *Act*.

[28] The reasons that the complainant provided in his request for reconsideration further set out his reasons for his position that the doctor receives NIH funding. They do not affect my view that the hospital's use of the Correction Notes is limited to the provision of care, and that the statement regarding NIH funding was not relevant for that purpose. Given this, the complainant's reasons for requesting reconsideration of that statement do not affect my finding that the hospital had no duty under section 55(8) to correct that statement relating to funding.

[29] I find that the complainant has not established grounds for reconsideration under section 27.01(d) of the *Code*.

Conclusion

[30] I find that the complainant has not established that there are new facts relating to an order or a material change in circumstances relating to an order for the purpose of section 27.01(d) of the *Code*. Consequently, I find that the complainant has not established grounds for reconsideration of PHIPA Decision 310.

[31] For the foregoing reasons, I deny the complainant's request for reconsideration of PHIPA Decision 310.

NO RECONSIDERATION:

The reconsideration request is denied.

Original Signed by: _____

Jennifer Olijnyk
Adjudicator

December 23, 2025 _____