

Information and Privacy Commissioner,  
Ontario, Canada



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

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## PHIPA DECISION 331

Complaint HA23-00026

Spencer House Orillia

March 18, 2026

**Summary:** The complainant, acting as attorney for personal care for a resident of Spencer House Orillia, requested access to records relating to the resident's care. The complainant was not satisfied with the records provided, believing additional responsive records should exist. The adjudicator finds that Spencer House Orillia has satisfied its obligations under the *Personal Health Information Protection Act, 2004* to conduct a reasonable search for responsive records. She dismisses the complaint.

**Statutes Considered:** *Personal Health Information Protection Act, 2004*, c. 3. Sch A (As amended), sections 53 and 54.

**Decisions Considered:** PHIPA Decisions 17 and 18.

### BACKGROUND:

[1] This order addresses whether Spencer House Orillia, a long-term care home (the custodian or care home), conducted a reasonable search for records relating to one of its residents under the *Personal Health Information Protection Act (PHIPA or the Act)*.

[2] The request was made on behalf of a resident of the care home by a family member acting as the resident's attorney for personal care.<sup>1</sup> For ease of reference, I will

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<sup>1</sup> Under a Power of Attorney for Personal Care.

refer to the resident's attorney for personal care as the complainant in this decision.

[3] The request, after some clarification, was for the names of employees who assisted the resident with meals during a specified period in 2022,<sup>2</sup> as well as records of assessments or evaluations conducted by an occupational therapist (OT) in connection with wheelchair recommendations.

[4] The custodian issued a decision declining to provide the names of employees who assisted the resident with meals. As for OT assessments and evaluations, the custodian explained that information concerning those assessments was recorded in progress notes prepared at the time the assessments were completed. The custodian stated that it had already provided those progress notes to the complainant, together with an Assistive Devices Application Form, and that the underlying assessments or evaluations were not separately documented in the resident's health record.

[5] The complainant was dissatisfied with the custodian's response and filed a complaint with the Office of the Information and Privacy Commissioner of Ontario (IPC). A mediator was appointed to explore resolution with the parties.

[6] The complainant clarified her request during mediation. By the end of mediation, she indicated that she was seeking all progress notes, Nursing Rehab/Restorative Care Referral records, and any other records relating to evaluations or assessments concerning the resident's mobility and posture from April 22, 2022 onward.

[7] In response to the complainant's clarifications, the custodian conducted further searches, provided additional records, and issued revised decisions explaining its recordkeeping practices. It advised that staff document residents' meal consumption, but not the identity of the person who physically feeds a resident, and that certain temporary staff assignment records are not retained. The custodian reiterated that information relating to occupational therapy and other clinical assessments is recorded in progress notes in its electronic documentation system, and that the relevant progress notes had already been disclosed.

[8] The complainant remained dissatisfied and took the position that additional responsive records should exist.

[9] As mediation did not resolve the complaint, the matter proceeded to the adjudication stage of the review process on the sole issue of the reasonableness of the custodian's search for responsive records. An adjudicator began a review and received representations from the parties. The file was later transferred to me to complete the review. After reviewing the complaint materials and the parties' representations, I determined I did not need further representations to complete this review.

[10] In this decision, I find that the custodian has satisfied its obligations under *PHIPA*

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<sup>2</sup> Between July 14 and September 18, 2022.

to conduct a reasonable search for responsive records. I uphold the search and dismiss the complaint.

## **DISCUSSION:**

[11] Where a requester claims that additional records exist beyond those identified by a custodian, the issue to be decided is whether the custodian has conducted a reasonable search for records as required by sections 53 and 54 of *PHIPA*. These provisions require the custodian to make reasonable efforts to identify and locate requested records. If I am satisfied that the search carried out was reasonable in the circumstances, the custodian's decision will be upheld. If I am not satisfied, I may order further searches.

[12] The IPC has considered the issue of reasonable search in numerous orders issued under the *Freedom of Information and Protection of Privacy Act (FIPPA)* and the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*, and has applied those principles in the *PHIPA* context. In *PHIPA* Decisions 17 and 18, and later decisions,<sup>3</sup> the IPC confirmed that the principles developed in reasonable search decisions under *FIPPA* and *MFIPPA* are relevant in determining whether a health information custodian has conducted a reasonable search under *PHIPA*.

[13] These decisions establish that *PHIPA* does not require a custodian to prove with absolute certainty that additional records do not exist. Rather, the custodian must provide sufficient evidence to demonstrate that it made a reasonable effort to identify and locate responsive records.<sup>4</sup> To be responsive, a record must be "reasonably related" to the request.<sup>5</sup> 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 that are reasonably related to the request.<sup>6</sup>

## **Representations**

### ***The custodian's representations***

[14] The custodian provided representations supported by an affidavit sworn by its Director of Care. It submits that it worked with the complainant over several months, including during mediation, to clarify the nature of the request, and provided additional records as the request was clarified.

[15] The custodian states that it conducted multiple searches for responsive records, including in December 2022, March 2023 and May 2023. It submits that after the request was clarified to include all progress notes, Nursing Rehab/Restorative Care Referral

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<sup>3</sup> See also, for example, *PHIPA* Decisions 43, 48, 52 and 57.

<sup>4</sup> Orders P-624 and PO-2559. See also *PHIPA* Decisions 17 and 18.

<sup>5</sup> Order PO-2554.

<sup>6</sup> Orders M-909, PO-2469 and PO-2592.

records, and any other records relating to the resident's mobility and posture, it conducted another search that located further records, including physiotherapy and other referrals, which were provided to the complainant.

[16] According to the custodian's affidavit, its electronic documentation system is the only repository for the requested resident records, and paper copies are not maintained. The custodian states that searches of the electronic system located responsive records for the relevant period, which were provided to the complainant. It also states that it provided physiotherapy and assessment records extending beyond the request period.

[17] The custodian further explains that therapists' handwritten notes made during assessments are not retained once the relevant information has been entered into the electronic system. It states that the substance of those assessments is reflected in the electronic progress notes that were provided to the complainant.

[18] The custodian submits that, given its description of recordkeeping practice and the searches conducted, it has made reasonable efforts to identify and locate all records responsive to the complainant's original and clarified requests.

### ***The complainant's representations***

[19] The complainant submits that she has concerns about the custodian's transparency and recordkeeping practices, which she says make it difficult for her to determine whether all relevant records have been identified.

[20] She comments on the records that have been provided to her and submits that they are difficult to interpret. In particular, she says it is not always clear how referrals, assessments, and progress notes correspond with one another or when particular assessments were conducted.

[21] The complainant questions aspects of the custodian's explanation of its recordkeeping practices, including how assessments are documented and entered into the electronic system. She also questions why handwritten notes made during assessments were not retained after she made her request.

[22] The complainant maintains that additional records relating to the resident's mobility and posture should exist. However, she acknowledges that she does not know whether further records actually exist. She submits that determining whether all relevant records have been identified would require a careful review of the referrals, assessments and progress notes relating to the resident's care, a task she says should be undertaken by the custodian rather than by her.

[23] The complainant's representations also address broader concerns about the care provided to the resident and the custodian's recordkeeping practices more generally. As these matters are not before me and do not relate to the issue of whether the custodian conducted a reasonable search for responsive records, I have not summarized those

submissions here.

### **Analysis and findings**

[24] As noted above, the sole issue in this complaint is whether the custodian conducted a reasonable search for records responsive to the complainant's request.

[25] On the materials before me, including the parties' representations, the history of their communications about the request, and the affidavit evidence provided by the custodian, I am satisfied that the custodian conducted reasonable searches for responsive records. The evidence before me shows that the custodian worked with the complainant over an extended period, including during mediation, to clarify the nature of her request and conducted additional searches of its electronic documentation system as the request evolved, locating and disclosing further records.

[26] The custodian's evidence also explains how records relating to the resident's mobility and posture are created and maintained, including how assessments are documented in the electronic system and reflected in progress notes generated within that system.

[27] Based on the custodian's affidavit evidence, I am satisfied that the searches were carried out by experienced staff knowledgeable about the care home's recordkeeping practices and the resident's records, and that reasonable efforts were made to identify and locate responsive records.

[28] While I acknowledge the complainant's concerns, including about the records she received, they do not provide a basis for concluding that additional responsive records exist or that further searches would likely locate additional records.

[29] As noted above, the custodian is not required to prove with absolute certainty that further records do not exist. Rather, the issue is whether the custodian made reasonable efforts to identify and locate responsive records. In the circumstances of this complaint, I find that the custodian did so.

[30] For these reasons, I find that the custodian conducted a reasonable search for responsive records and I dismiss this complaint.

### **ORDER:**

I uphold the search as reasonable and dismiss this complaint.

Original Signed by: \_\_\_\_\_  
Jessica Kowalski  
Adjudicator

\_\_\_\_\_ March 18, 2026