# SUMMARY OF IPC/O's PHIPA DECISIONS (current to April 3, 2023)

**The orders and decisions are colour-coded by main theme of case/complaint:**

**Blue** – Vendor issues **Yellow** – Snooping or rogue employees **Grey** – Closing a practice **Green** – Access and Correction **Pink** – Collection

**Purple** – Information management practices **Orange** – Deceased person's records **Red** – Unauthorized Use or Disclosure **White** – Recipient rules

| # and year | Allegations/Facts | IPC Decision |
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| H0-001<br><br>2005<br><br>**Independent Health Facility** | IPC notified by a reporter that X-ray and ultrasound records were raining from skies on a 9-11 film shoot in Toronto. Health records had been sent for recycling instead of shredding by a Toronto health clinic (independent health facility) after a mix up with the driver taking extra boxes away (outside usual shredding bins). Shredding company was also a recycling company – they sold records to a film crew as scrap paper. | The HIC was ordered to review its information practices to ensure compliance with PHIPA and to enter into written contracts with its agent(s) to ensure the secure destruction of PHI, which is the irreversible destruction of the records.<br><br>The agent paper disposal company was ordered to enter into written contracts with any third parties who are HICs to ensure compliance with PHIPA and to ensure that records containing PHI are kept separate from records that are designated for recycling.<br><br>Notice to affected patients was through a public post at the clinic. |
| H0-002 (same hospital as H0-010)<br><br>2006<br><br>**Hospital** | A patient notified a hospital in Ottawa that her ex-husband and his new girlfriend worked at the hospital and she didn't want them to know about her admission. The girlfriend was a nurse and was not providing care to the patient. The emergency department staff did not take steps to formally secure the electronic record. The nurse looked at the records 10 times and disclosed the patient's PHI to the patient's estranged husband. 3 of those viewings happened even after a VIP privacy notice was put on the electronic record after the patient's initial privacy complaint. The estranged husband phoned the patient and raised the issue of her chronic heart condition. | The HIC was ordered to:<br><br>- Review and revise its practices, procedures and protocols relating to PHI and privacy, and those relating to human resources, including the implementation of a protocol to ensure that immediate steps are taken upon notification of an actual or potential breach to prevent unauthorized access to, use and disclosure of PHI.<br>- Ensure that its agents are informed of their duties under PHIPA and their obligations to comply with the revised information practices of the HIC.<br><br>The HIC was urged to issue an apology to the patient.<br><br>The IPC commented that privacy policies are not enough – staff must be trained. |

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| H0-003<br><br>2006<br><br>**Medical Clinic** | CPSO called the IPC because health records containing PHI were abandoned by a walk in medical and rehabilitation clinic in Etobicoke when it closed its practice. This included physio, massage therapy records and finance and sign-in sheets. | The HIC, who abandoned the records, was ordered to:<br><br>- Retain, transfer or dispose of the records in a secure manner, to enter into a written contract if a storage company is used to ensure the secure retention, transfer and disposal of the records and to ensure that access is provided to the affected individuals.<br>- If operating a group of health care practitioners now or in the future, to put practices and procedures in place to safeguard records of PHI, to designate a contact person to facilitate compliance with PHIPA, to enter into written contracts with its health care practitioners setting out the obligations of both parties regarding records of PHI and to make available to patients, in the event of a closure, how the records of PHI will be retained or disposed of and how to obtain access to those records. |
| H0-004<br><br>2007<br><br>**Hospital** | Hospital physician researcher in Toronto left a hospital laptop in his car and covered it with a blanket. The car was broken into and the laptop was stolen. The laptop was unencrypted and contained the PHI of nearly 2900 current and former hospital patients. | HIC ordered to:<br><br>- Develop or revise and implement policies and procedures to ensure that records of PHI are safeguarded and that its information practices comply with PHIPA.<br>- Develop "a comprehensive corporate policy that, to the extent possible and without hindering the provision of health care, prohibits the removal of identifiable PHI in any form from the hospital premises. To the extent that PHI in identifiable form must be removed in electronic form, it must be encrypted."<br>- Develop an encryption policy for mobile computing devices, a policy relating to the use of virtual private networks, a privacy breach policy, and to educate staff regarding the policies how to secure the information contained on mobile computing devices.<br>- Review and revise its research protocols and applications to comply with PHIPA (use of PHI for research purposes). |
| H0-005<br><br>2007 | An individual notified a reporter that he had viewed an image of a toilet in a washroom on his vehicle's back up camera while driving by a clinic. The reporter hired an investigator to confirm. They parked near the | The HIC:<br><br>- Contained the privacy breach by immediately turning off the wireless system and replacing it with a more secure wired system. |

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| **Medical Clinic** | clinic and saw a video image of a patient using a toilet. Patient was attending a methadone clinic in Sudbury and the image had been accessed by the wireless mobile rear-assist parking device ("back up camera"). The clinic had a wireless surveillance camera in the washroom to ensure that the urine samples provided for drug testing were from the correct source without tampering. The wireless camera footage was being beamed out and was intercepted by this back up camera wireless device. | - Posted a notice to advise patients of the privacy breach.<br>- Notified the CPSO.<br>- The HIC was ordered to conduct an annual security and privacy review of its PHI handling systems and procedures to ensure continued compliance with the Act. |
| H0-006<br><br>2009<br><br>**Medical Clinic** | A member of the media notified the IPC that records containing PHI were found scattered on the street outside a medical centre housing a medical laboratory in Ottawa. A parking attendant who was working in the adjacent lot noticed that records had fallen out of a recycling truck as it was leaving the premises. Records included laboratory reports and patient receipts affecting 10 patients. Included patient names, physician names, health care numbers and clinical test results. | The HIC was ordered to:<br><br>- Implement its plan to place cross-cut shredders in every location.<br>- Ensure that all contracts or agreements in place with third party shredding companies comply with the requirements set out in HO-001, binding the shredding company to the requirements of PHIPA and its contractual agreement with the HIC. Including secure disposal and not recycling. |
| H0-007<br><br>2010<br><br>**Public Health** | An unencrypted USB memory stick containing PHI was lost by a public health nurse employed by a regional municipality in Durham on her way from an immunization clinic. More than 80,000 individuals were affected. The information included names, addresses, phone numbers, dates of birth, health card numbers, health history and H1N1 vaccination information. | The HIC was ordered to:<br><br>- Ensure that records of PHI are safeguarded at all times, specifically by ensuring that any PHI stored on any mobile devices (e.g. laptops, memory sticks), is strongly encrypted.<br>- Revise its written information practices in order to comply with and incorporate the requirements of PHIPA and its regulations.<br>- Take the necessary administrative steps to ensure that H1N1 immunization clinics cease collection of the health card numbers of individuals attending these clinics, as well as PHI pertaining to priority group status. (They were collecting too much information) |

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| | | - Take the necessary administrative steps to ensure that health card numbers collected from individuals who have attended H1N1 immunization clinics are securely destroyed as well as any PHI relating to priority status collected from individuals after the H1N1 vaccine was made widely available to the general public.<br><br>The IPC recommended that the Ministry of Health and Long-Term Care with the Chief Medical Officer of Health request all public health units to review the encryption of their mobile devices and receive an attestation from each public health unit that no unencrypted health information is transported on mobile devices.<br><br>The public was notified through public advertisements in newspapers. |
| H0-008<br><br>2010<br><br>**Hospital** | Hospital nurse in Toronto left an unencrypted hospital laptop in her car and it was stolen. More than 20,000 patients affected. The laptop had PHI saved on the hard drive including information about hospital incident reports, operating room lists, research data sets, class lists for patient education sessions, patient names, medical record numbers, types and dates of surgeries and physician information. | The HIC was ordered to:<br><br>- Immediately develop and implement practices to ensure the records of PHI stored on mobile devices ae safeguarded at all times.<br>- Enhance education and awareness programs, and to develop and implement comprehensive, ongoing, role-based privacy and security training pertaining to the risks posed by the deployment and use of mobile devices.<br>- Develop and implement a comprehensive corporate policy and accompanying procedures relating to the secure retention of records of PHI on all mobile devices (e.g. laptops, memory sticks, PDA's).<br>  o Any PHI on a mobile device must be strongly encrypted<br>  o The Information Management Department is to be charged with the responsibility to ensure encryption software on mobile devices is properly deployed before issuing devices to staff.<br>  o CIO has the responsibility to receive immediate notice of any encryption error message and investigate same.<br>  o Guidelines must exist for staff receiving new mobile devices. Staff must review and purge all PI and PHI to be transferred to new device.<br>- Conduct a review of all hospital policies to ensure that clear direction is provided when records of PHI are being removed from its premises on mobile devices. |

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| | | - Enhance education and awareness programs, and to develop and implement comprehensive, ongoing, role-based privacy and security training pertaining to the risks posed by the deployment and use of mobile devices.<br><br>The IPC stated "sever all personal identifiers or encrypt the data on mobile devices – Full Stop." |
| H0-009<br><br>2010<br><br>**Medical Clinic** | Patient requested copies of 34 pages of her psychological therapy notes from her physician in private practice. Doctor agreed to provide patient with access to her records on the condition that she pay a fee of $125, which he calculated using the Ontario Medical Association Guide. | IPC concluded that the fee charged by the doctor for access to the complainant's records of PHI exceeds "reasonable cost recovery".<br><br>IPC also concluded that the OMA Guide was unreasonable and used the calculations from a proposed regulation for fees.<br><br>Doctor was ordered to reduce his fee of $125 to $33.50, which represents a "reasonable cost recovery". He did not have to waive the fee. |
| H0-010 (same hospital as H0-002)<br><br>2010<br><br>**Hospital** | A patient of a hospital in Ottawa complained that a Diagnostic Imaging Technologist (technologist) who was not providing care to the patient accessed her records. The technologist was the patient's husband's ex-wife. She looked at the patient's record 6 times over 9 months including viewing screens with "Sensitive Warning Flags" (although on one occasion she did not go past the sensitive warning flag). | The HIC was ordered to:<br><br>- Review and revise its policies, procedures and information practices relating to PHI to ensure that they comply with the requirements of PHIPA and its regulations<br>- Amend its Process for Investigating Privacy Breaches and/or Complaints to add a provision requiring an agent who has contravened PHIPA to sign a confidentiality undertaking and non-disclosure agreement<br>- Provide a written report of the privacy breach and a copy of the Order to the technologist's professional college<br>- Issue a communiqué to all agents regarding Orders 2 and 10 which must include a message that the hospital views breaches of this nature seriously, that action will be taken to discipline agents who are found to have breached PHIPA, and that their professional regulatory college will be provided written reports setting out the circumstances of the breach<br>- Include a discussion of Orders 2 and 10 in all future training programs<br>- Conduct privacy retraining for all agents in the technologist's department, as required by the hospital's policy<br>- Amend its written public statement to include a description of the "VIP Warning Flag" system, to indicate how an individual may request one and |

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| | | to identify the employee(s) of the hospital to whom the request may be directed<br>- Ensure that the "VIP Warning Flag" may be applied in all electronic information systems that include PHI<br>- Until role-based functionality is instituted, implement a notice that automatically displays whenever an agent logs into a database containing records of PHI and reminds them that they may only access PHI on a need-to-know basis, that access will be tracked, and that failure to comply may result in termination. With a "accept" or "cancel" option for staff to choose.<br><br>The IPC recommended that the hospital:<br><br>- Conduct a review of existing technological safeguards and solutions that are currently available on the market to facilitate role-based access and audit<br>- Review the audit functionality on all systems employed at the hospital and take steps to ensure that the audit capability is "turned on" |
| H0-011<br><br>2011<br><br>**Cancer Care Ontario** | Cancer Care Ontario couriered screening reports for the Colon Cancer Check program via Canada Post's Xpresspost courier service for delivery to the physicians of individuals who were participating or were eligible to participate in the program. 3 physicians did not receive their screening reports – related to 2,388 patients. The reports were believed to have been lost by Canada Post. | CCO is not a HIC but is subject to the Act as a prescribed person.<br><br>IPC determined that CCO had not taken the steps that were reasonable in the circumstances to ensure the secure transfer of the records of PHI contained in the Screening Reports. The IPC found that CCO had available to it more secure, electronic options for the transfer of the screening reports to physicians. Thus, the alternative, of sending the screening reports to physicians in paper format, was unacceptable.<br><br>CCO proposed to develop a secure online web portal to delivery screening reports.<br><br>CCO was ordered to:<br><br>- Discontinue the practice of transferring screening reports containing PHI to primary care physicians in paper format |

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| | | - Provide a full report on the advantages and disadvantages of transferring the screening reports in electronic format via the OntarioMD web portal, as compared to the proposed CCO web portal<br>- Review the *CCC Privacy Breach Management Procedure* and any related policies and procedures to clarify and ensure that those having an employment, contractual or other relationship with CCO are fully aware of their responsibility to immediately report any privacy breaches, suspected privacy breaches and/or privacy risks to appropriate individuals at CCO with responsibility for privacy issues; and<br>- Conduct additional training with those having an employment, contractual or other relationship with CCO to ensure that they are fully aware of their duties and responsibilities under the *CCC Privacy Breach Management Procedure.* |
| H0-012<br><br>2014<br><br>**Chiropody Clinic** | Complaint from two patients that a chiropody clinic did not respond to a request for access to health records. | IPC concluded that the HIC refused the complainants' request for access.<br><br>HIC was ordered to provide a response to the request for access to records of PHI and without recourse to a time extension. |
| H0-013<br><br>2014<br><br>**Hospital** | A hospital in Scarborough reported two breaches of patient privacy involving allegations that hospital employees used and disclosed the PHI of mothers who had recently given birth at the hospital for the purposes of selling or marketing Registered Education Savings Plans (RESPs). Affected more than 14,000 patients. | The HIC was ordered to:<br><br>- In relation to all of the hospital's electronic information systems, implement the measures necessary to ensure that the hospital is able to audit all instances where agents access PHI on its electronic information systems, including the selection of patient names on the patient index of its Meditech system.<br>- In relation to the Meditech system:<br>o Work with the Hospital's Hosting Provider to review and amend the service level agreement between the Hospital and the Hosting Provider to clarify the responsibility for the creation, maintenance and archiving of user activity logs generated by the Hospital's use of its Meditech system, and ensure that the user activity logs are available to the Hospital for audit purposes.<br>o Work with Meditech or another software provider to develop a solution that will limit the search capabilities and search functionalities of the Hospital's Meditech system so that agents are unable to perform open-ended searches for PHI about |

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| | | individuals, including newborns and/or their mothers, and can only perform searches based on the following criteria: health number, medical record number, encounter number, or exact first name, last name and date of birth.<br>- Review and revise its Privacy Audits policy, the Pledge of Confidentiality policy and the Pledge of Confidentiality, and the Privacy Advisory and take steps to ensure that it complies with the Privacy Audits policy.<br>- Develop a Privacy Training Program policy, a Privacy Awareness Program policy, and a Privacy Breach Management policy.<br>- Immediately review and revise its privacy training tools and materials.<br>- Using the privacy training materials developed in accordance with Order provision 5:<br>o immediately conduct privacy training for all agents in clerical positions in the Hospital; and<br>o conduct privacy training for all other agents by June 16, 2015. |
| H0-14<br>2015<br>**Hospital** | Hospital charged a lawyer $117 for a copy of the lawyer's client's 112-page health record. Hospital originally wanted to charge $200. Patient said fee was excessive. | The IPC concluded that HICs are only entitled to charge "reasonable cost recovery" and $117 was excessive. It does not matter if the request relates to "access" or "disclosure" – the issue is reasonable cost recovery. Allowed to charge $53. |
| Decision 15<br>2015<br>**Psychologist** | A psychologist was asked to make a correction to a Custody and Access Assessment Report prepared at the request of legal counsel for parents of a child. Complainant was a parent. Psychologist said he was an independent assessor and not a HIC in this case. | The IPC concluded the psychologist was not a HIC in this case. Therefore, no right to request correction. |
| Decision 16 (related to Decision 68)<br>2015<br>**Physician** | A physician's former spouse made a complaint to both the CPSO and IPC about his conduct. Privacy concern was that physician had looked at his ex-spouse's medical records without consent and used against her in a court proceeding. Physician requested a deferral | IPC confirmed that the privacy complaint would go forward without further delay and would not wait for CPSO conclusion. |

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| | of IPC review of complaint until CPSO resolved companion complaint. | |
| Decision 17 (includes an order)<br><br>2015<br><br>**Hospital** | A hospital received a request for access to records relating to the birth and death of an infant and the care given to the mother and child at the hospital. The complainant was the father of the infant (who had his wife's permission to act for her as well). The request involved both a PHIPA access request and a freedom of information (FIPPA) access request to all records including anything outside the traditional health records of the infant and mother and about him as a complainant (including management of his complaint to the hospital and response to lawsuit, email communications by staff, minutes of board meetings, letters and memos of employment-related matters involving staff, documents sent to the CPSO, CNO and coroner as well as quality of care information reports and solicitor client privileged documents). | IPC determined that most of the records at issue were "records of personal health information" or records of personal information to which the individuals had a right of access subject to exceptions. However, IPC upheld many of the hospital's decisions to refuse access on the basis of exclusions and exemptions under FIPPA. The public interest override did not apply.<br><br>The IPC ordered the hospital to reduce the fees charged (did not require a fee waiver) and ordered the hospital to provide access to some records the hospital wished to withhold. |
| Decision 18<br><br>2015<br><br>**Hospital** | A hospital received a request for records relating to the complainant's son, who had died as a result of a motor vehicle accident. The hospital provided responsive records but the complainant believed there should be additional records (such as urine tests and urine analyses) that the hospital had not provided. The hospital replied that they could not find any further records. | IPC required the hospital to provide an affidavit explaining the searches performed and steps taken to locate responsive records. IPC concluded that the hospital had completed a "reasonable search". |

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| Decision 19 (reviewed in Decision 25)<br><br>2016<br><br>**MoHLTC** | A complainant made a request to the MoHLTC for his deceased brother's medical records. He wanted a list of the names of the medical practitioners who submitted OHIP claims for his deceased brother prior to his death by apparent suicide. | "Access" is different than "disclosure". On death, the right of "access" is exercised by an estate trustee or a person who has assumed responsibility for the administration of the deceased's estate. The complainant was neither. The estate trustee had not given consent to disclose the information to the complainant.<br>A HIC has discretion under PHIPA to disclose PHI about a deceased person under certain circumstances (s. 38(4)). When asked to disclose records to someone other than the estate trustee, a HIC must consider whether it will exercise its discretion and in so doing must base its decision on proper considerations and not in bad faith or for an improper purpose. Individuals can file complaints with the IPC if they are denied information when a HIC decides not to exercise its discretion in s. 38(4) and the IPC will consider whether the HIC relied on proper considerations.<br>In this case, the MoHLTC acted reasonably in exercising its discretion not to disclose PHI. |
| Decision 20 (this is likely the same family as Decision 19)<br><br>2016<br><br>**Hospital** | A complainant made a request to a hospital for PHI about his deceased brother. The complainant wanted the hospital to release the information to him in order to make decisions about his own need for care. Complainant was not the estate trustee and did not have the consent of the estate trustee. The hospital did not disclose records. The hospital directed the complainant to obtain the estate trustee's permission. | See Decision 19.<br><br>IPC concluded that the complainant had not provided sufficient information to the hospital to establish that he "reasonably required" the PHI to make decisions about his own health care. The hospital offered to have the complainant work with his doctor to explain why he needed the deceased brothers' health information. |
| Decision 21 (includes an order)<br><br>2016<br><br>**Hospital** | A complainant asked for disclosure by a hospital for PHI of his deceased sister. He wanted records for when she received treatment for mental illness at the hospital. Complainant was not the estate trustee and did not have the consent of the estate trustee.<br><br>The hospital declined to disclose to the complainant. It did not think the psychiatric records would be | See Decision 19.<br><br>IPC concluded that the hospital did not properly exercise its discretion to disclose under s. 38(4). The hospital was ordered to re-consider.<br><br>The IPC concluded that the hospital took an unduly narrow approach to s. 38(4)(c). The section does not only relate to "specimens". Information about mental illness could be "reasonably required" by a family member. The IPC |

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| | helpful for the complainant to make decisions about his own health care because psychiatric records could not be used for purposes of analysis of biological, pathological or DNA samples to be genetically mapped and analysed for familial traits and epidemiological tracking. | recommended that the complainant and other family members provide additional details as to why the mental health information was reasonably required by them in order to make their own health care decisions. |
| Decision 22 (includes an order)<br><br>2016<br><br>**CCAC** | A complainant asked for disclosure by a CCAC of PHI of her deceased mother. Complainant asked for the mother's health records for the last 7 months of her life. She wanted access on compassionate basis as she needed to cope with her grief. Parts of the record were verbally read to the complainant. She had been a contact for her mother before her mother's death. Complainant was not the estate trustee and did not have the consent of the estate trustee.<br><br>The CCAC declined to disclose further information to the complainant. | See Decision 19.<br><br>IPC concluded that the CCAC did not properly exercise its discretion to disclose under s. 38(4). The CCAC was ordered to re-consider its discretion to disclose under s. 38(4)(b)(ii) and (c). Compassionate disclosure of details of the circumstances of death is reasonable under that section. However, the IPC did not think that the mother's medical conditions in the 7 months leading to her death is all related to the "circumstances of death". The IPC recommended that the complainant provide additional details as to why the mental health information was reasonably required by her in order to make her own health care decisions.<br><br>Consent to act as a contact person prior to death did not give the complainant any right to her mother's information after death. |
| Decision 23 (includes an order and see Decision 28 for resolution)<br><br>2016<br><br>**Medical Clinic** | A group of health care providers went bankrupt and abandoned their practices and their records. The landlord was left with abandoned health records on its premises. | The IPC issued an interim order directing the landlord of the premises holding the abandoned records to ensure the security of the records for 2 months (until the IPC completed a review). |
| Decision 24 (includes an order) | Request to the City of Ottawa for PHI from the health unit. Request under PHIPA and MFIPPA. Request for access to client intake discharge forms, public health | There was some confusion over who is the custodian with respect to a municipal public health unit. |

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| 2016<br><br>**Public Health** | nurse notes, email correspondence and hospital mobile crisis team referral. The public health unit gave the majority of the records but withheld portions. | Some records were rightly withheld because of solicitor-client privilege and to protect the identity of a confidential source. A few records did not meet the test to protect the identify of a confidential source and the HIC was ordered to grant access to certain records and portions of other records on that basis. |
| Decision 25 (review of Decision 19)<br><br>2016<br><br>**MoHLTC** | MoHLTC objected to the IPC's jurisdiction over complaints about the refusal to disclose PHI of deceased family members. | IPC concluded there were no grounds for reconsideration of the IPC's jurisdiction to receive complaints about the wrongful exercise of the discretionary power to disclose. |
| Decision 26<br><br>2016<br><br>**Physician** | A patient objected to paying a doctor $825 for a 141-page "medical-legal report". The patient wanted to pay only the $65 copying fee. | The IPC concluded that a fee charged for creating a medical-legal report is not a fee governed by PHIPA. The doctor was able to charge whatever fee he wanted. Creating a medical-legal report is not the same as providing a "straight copy" of a medical record, which fee would have been governed by the Act. |
| Decision 27<br><br>2016<br><br>**Municipality 9-1-1** | A woman made a 911 call for medical assistance for her uncle (who since died). She wanted a copy of the audio recording of her call. She asked the Toronto Police Services and then the Toronto Paramedic Services (of the City of Toronto). The city denied the request. This was an MFIPPA and PHIPA complaint. | The record of the 911 call was a record of PHI. But, the complainant was not the estate trustee and therefore did not have a right to access the record. The record of the call was not the complainant's information. Making a call or supplying information to a HIC does not entitle a third person to access that information at a later date. There was not enough PI of the complainant in the call to justify severing the record to provide the PI content to her under MFIPPA. |
| Decision 28 (continuation of Decision 23)<br><br>2016<br><br>**Medical Clinic** | All patient files abandoned by the three bankrupt corporations had been secured. Steps had been taken to ensure all individuals will be able to access their records | The interim order of Decision 23 concluded. New HICs took over the vast majority of abandoned records. Regulatory Colleges retrieved the remaining records and will protect them. The landlord was no longer required to store and protect the records. |

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| Decision 29<br><br>2016<br><br>**Physician** | Former patient of a deceased doctor did not want his records sent or kept by a medical records storage company and did not want the records converted from paper files to electronic files. Complainant alleged that the storage company was holding the records "ransom" because there was a fee to have a copy of the records. | When a physician dies, the physician's estate trustee becomes the HIC. The estate trustee is allowed to engage a medical records storage company to keep the records – but the medical records storage company does not become the HIC. The storage company is allowed to convert paper records to electronic copies and does not have to keep the original paper records. |
| Decision 30 (same family as Decision 33)<br><br>2016<br><br>**Hospital** | A hospital received a request for access to PHI by the deceased patient's daughter for records of a meeting. The hospital denied access to two records on the basis of solicitor-client privilege. | The IPC concluded that the records were records of PHI – but access was rightly denied on the basis of solicitor-client privilege. |
| Decision 31 (includes an order)<br><br>2016<br><br>**Physician** | Physician received a request for access to PHI by deceased patient's son. 5 months later, the physician had not responded to the request. The physician did not respond to the IPC's requests for a response (over an 8-month period). | Although there was no estate trustee, the requester was one of four people who had taken over administration of the estate of the deceased and the other 3 consented to the access. IPC ordered physician to provide a response to the requester (and with no further time extension) within one week. |
| Decision 32 (same family as Decisions 38 and 45)<br><br>2016<br><br>**Hospital** | A hospital received a request for access to a child's health records. The parents made a complaint to the IPC that the hospital did not respond to the request within the 30-day required timeframe. The actual timing of viewing the records happened 36 days after the request for access. | IPC concluded there were no grounds for a review by the IPC. The hospital's response was sufficient because the hospital sent a letter within the 30-day period to set up a meeting to view the record. The parents had an opportunity to view the record. This decision provides details about when the 30-day period starts and what kind of communications count as providing a response. |
| Decision 33 (same family as Decision 30 – includes an order)<br><br>2016 | A hospital received a request for access to PHI by deceased patient's daughter (and for her own information). This involved both a FIPPA and PHIPA request. Daughter had initiated a lawsuit against the hospital. Daughter had also initiated complaints to | IPC ordered HIC to disclose parts of two records but generally upheld hospital's refusal to grant access records. Hospital rightly did not provide access to:<br>- Records of quality of care information under QCIPA<br>- Records protected by solicitor-client and litigation privilege including communications about the various legal proceedings commenced by the |

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| **Hospital** | regulatory Colleges, MoHLTC, Accreditation Canada and Ombudsman's office. Daughter was joint estate trustee and had consent of other estate trustee. | daughter, draft correspondence to the daughter and outside regulatory bodies circulated for review and comment, internal summary of legal advice, updates on various litigation matters, patient relations office documents including chronology of events and compilation of concerns raised by complainant<br>But hospital had to release parts of records of internal communications between hospital staff on preparing responses to the complainant (most of which had already been shared) |
| Decision 34<br>2016<br>**Mental Health Facility** | A mental health facility received a request for access to PHI. The notes included an interdisciplinary progress note and case conference note totally approximately 113 pages. The facility refused to provide access on the grounds of risk of harm to his nursing staff. | HIC must demonstrate a risk of harm that is well beyond the merely possible or speculative (but a HIC does not have to prove that disclosure will result in harm). This mental health facility was allowed to deny access based on a risk of harm based on the patient's treating psychiatrist's opinion that the patient would likely misinterpret the records and incorporate the content into his delusional beliefs which could affect nursing staff and result in possible violence against the nursing staff who had authored the records. |
| Decision 35<br>2016<br>**Physician** | The daughters of a deceased patient lodged a complaint to the CPSO against their mother's physician about his prescribing practices. Six months after the death, the physician asked a pharmacy for a copy of the prescription summary for the mother and the pharmacy sent a summary of the prescriptions issued by the doctor. Both the pharmacy and the physician were aware of the patient's death. The daughters complained to the IPC that the pharmacy could not send the information to the physician and the physician could not receive information from the pharmacy. | HICs cannot have consent of a patient to share information after the patient's death. There is no circle of care after death.<br>But sharing of PHI after death between a physician and pharmacist was allowed without consent of the estate trustees for reasons of quality of care and to disclose information to a regulatory College. Because there was a CPSO review of the physician, it was reasonable for the pharmacy to disclose information to the physician in furtherance of quality of care considerations. |
| Decision 36<br>2016 | A patient asked a hospital to make 66 corrections to a 9-page psychological report prepared 15 years before by a physician. Patient asked for changes related to | Hospital agreed to correct the date of birth. |

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| **Hospital** | number of admissions to hospital, name of program of study, reasons and duration of psychological testing, description, duration and impact of medical episodes of psychiatric history, reasons for hospitalization, timing of specific events in patient's parents' relationship and type of abuse suffered; and other requests. | IPC concluded that the psychological report was not inaccurate or incomplete and contained professional opinion or observation made in good faith. No additional corrections were required. |
| Decision 37<br><br>2016<br><br>**Hospital** | A hospital received a correction request to make 10 changes to a psychiatrist's 1-page discharge summary. Patient requested changes to diagnosis and presenting problems. The record related to a stay 20 years earlier. | Hospital agreed to change the incorrect date of birth.<br><br>IPC concluded that the discharge summary contained the physician's good faith professional opinions or observations and the hospital did not have to make additional changes to correct the record. |
| Decision 38 (same family as Decisions 32 and 45)<br><br>2016<br><br>**Hospital** | A hospital received privacy complaints about the hospital's information practices from parents of a patient. 9 incidents were raised: (1) staff collected information about the patient in a hallway within earshot of others; (2) hospital did not charge the parents for a copy of the daughter's health record and hospital did not give mother a copy of an administrative form; (3 and 4) hospital staff left the mother in a diagnostic imaging room unattended and disclosed the patient's records to the father after he produced only the patient's health card and the records were unencrypted when provided to the parents; (5) hospital Health Records staff discussed the parents' request for a copy of health records in a small office where others could overhear the conversation and staff used white out correction fluid to make a change to a document on an authorization form and did not ask parents for daughter's consent | IPC concluded there was nothing to investigate or review.<br><br>The hospital admitted in the case of issues 3 and 4 that hospital staff should have followed the hospital's identification authorization practices and agreed to tighten their processes. In the case of issue 5, the hospital agreed to remind staff not to use white out correction fluid on authorization forms. The IPC stated that in issue 5 the release of information to the parents could have been a technical breach of privacy but for the fact that the daughter had given her parents permission to pursue issues with the hospital on her behalf and the hospital had had many dealings with the parents on this file prior to the daughter turning 16 and the parents had not raised the issue at the time. With respect to issue 6, the hospital agreed that in future the Access to Information and Privacy Officer would close his door during meetings. |

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| | to release information to them; (6) the Access to Information and Privacy Officer left the door open when speaking with the parents and did not ask to see the parents' identification before speaking with the; (7) an electronic signature on an electrocardiogram demonstrates that a physician viewed the record without authorization; (8 and 9) multiple copies of the diagnostic imaging disks were made and distributed to third parties and the parents were able to access confidential documentation of the hospital demonstrating that hospital staff were not careful with information. | |
| Decision 39<br><br>2017<br><br>**Hospital** | A hospital received a correction request for a 2-page discharge summary written 20 years ago by a psychiatrist. The request related to: date of birth; description of living arrangements; description of the reason for the admission to hospital; mental state and history for two weeks prior and two years prior to admission; the author's physical examination notes; description of the medical testing and medicine administered during hospitalization; and diagnosis. | The hospital agreed to change the date of birth and description of the complainant's living arrangements. The hospital's decision not to correct the rest of the record was upheld because the record reflects the author's professional opinion made in good faith. |
| Decision 40<br><br>2017<br><br>**Physician** | A physician received a correction request to change 26 portions in four letters he sent to the complainant about the termination of the doctor-patient relationship. The issue was whether the statements were actually the physician's "opinion" or whether they were factual information. | The letters terminating the relationship were found to be records of personal health information. The physician's decision to not correct the records was upheld. The complainant was not able to prove the information was inaccurate for the purposes for which the custodian uses the information. |
| Decision 41 | A hospital received a correction request to change the date of a record of a visit to the emergency department. The complainant states he went to a | The hospital's decision to not correct the record was upheld. The record was automatically electronically date stamped and there had been no tampering. The hospital was able to provide additional information to prove the patient |

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| 2017<br><br>**Hospital** | walk-in clinic on a specific date and was told to go to emerg. He says he went to emerg that date and not six days later which is the date indicated on the record at issue. He provided evidence (emails and voice messages) that he told others he had gone to emerg on the same date as the walk-in clinic visit. He wanted the hospital to produce back up tapes to the electronic system to find his attendance. He states the hospital maliciously switched his records with another patient's information. | had been there on the date stamped by the electronic system. The complainant was not able to prove the record was inaccurate or incomplete for the purposes for which the information is used. |
| Decision 42 (same physician as HA11-55) (includes an order)<br><br>2017<br><br>**Physician** | A physician received an access request but did not respond and did not provide a notice of an extension of time. IPC was involved to mediate. Requests for access dated back five and six years (with no response). Patient made a new request because timeframe within which to complain had expired. Physician still did not provide access. The physician was no longer practicing. | IPC ordered the no-longer practising physician to provide a response to the request for access.<br><br>Physicians do not cease to be a HIC until complete transfer of custody and control of records to another person legally authorized to hold the record. |
| Decision 43<br><br>2017<br><br>**Hospital** | A hospital received a correction request to change a consultant's report by adding information about his overnight stay, changing a family member's history of addiction to present tense, change a description of the individual's appearance and behaviour, change the description of the individual's cognitive function and challenge the diagnosis. The hospital agreed to change a small portion of the report but not all the requested changes because the record reflected professional opinion made in good faith. Patient also complained that the hospital failed to locate a fax | The hospital's decision to not correct the record was upheld. The hospital had conducted a reasonable search for the missing fax from the family physician. |

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| | from his family physician and claimed the hospital failed to execute a "reasonable search". | |
| Decision 44 (includes an order)<br><br>2017<br><br>**Hospital** | A patient of a hospital (who was also a physician working in the radiology department) alleged that his work colleagues used and disclosed his health information without his permission and without lawful authority. He alleged they looked at his radiology images in the PACS system for personal interest and not as part of providing him with care. Audits showed that colleagues had scrolled through his images as part of reviewing their worksheets. The hospital responded that scrolling activity was not a "use" or viewing of the records. | The IPC concluded that the allegations were unsubstantiated, with one exception where one physician colleague of the complainant was found to have used more information than was necessary for the purpose. The hospital was ordered to improve its privacy training about not using more personal health information than necessary (s. 30). The IPC also recommended that the hospital (1) improve its auditing capabilities to distinguish between scrolling through radiology worklists and viewing reports in the PACS system; (2) investigate whether they could log print commands of PACS; and (3) investigate automatic timed logout in PACS to prevent unauthorized access. |
| Decision 45 (same family as Decisions 32 and 38)<br><br>2017<br><br>**Hospital** | A hospital received a correction request from parents of a patient. There were multiple corrections requested of a record relating to a single visit at the hospital which lasted one hour. The hospital made four changes but refused to make the remaining requested corrections on the basis that the record was accurate and complete and consisted of professional opinions or observations made in good faith. The additional correction requests had to do with clinical notations in the record such as references to "tearing chest pain" and "thoracic pain" among others. Among other concerns, the parents stated their daughter had not experienced the symptoms listed in the records and the parents alleged the hospital committed fraud by intentionally including incorrect information in the record. The parents also alleged that relevant clinical information was not | The hospital's decision not to make further corrections to the record was upheld. The IPC concluded that some of the allegations did not raise issues of incompleteness or inaccuracy.<br><br>The IPC stated that some of the allegations made by the parents fell outside the jurisdiction of the IPC (including issues of failure to meet standards of practice and treatment as well as the allegations of fraud).<br><br>The IPC also responded to the parents' concerns that the IPC was biased in favour of the hospital. |

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| | noted in the records – information that would have showed the hospital did not provide proper care (such as missing notations of failure to keep their daughter well hydrated). | |
| Decision 46<br><br>2017<br><br>**Physician** | A physician received a correction request to change two entries in clinical notes. The physician made some changes but denied the other correction requests. Physician felt the requested changes reflected a disagreement about the use of pronouns and syntax. Physician felt the additional requests were frivolous or vexatious or that the complainant had not established that the records were incomplete or inaccurate. | The physician's decision not to correct the record was upheld. IPC discussed the meaning of "frivolous" and "vexatious". IPC found that the request was not frivolous or vexatious (burden on custodian to prove). But concluded that the complainant had not proven that the records were incomplete or inaccurate. |
| Decision 47<br><br>2017<br><br>**Hospital** | A hospital received a correction request to change references in two consultation reports to specific diagnoses and medication compliance because they were "no longer true". Complainant acknowledged they had been true at the time the diagnoses and notes of medication compliance were recorded. The hospital denied the correction request. | IPC concluded that a review was not warranted. The complainant did not establish that the records were incomplete or inaccurate. |
| Decision 48<br><br>2017<br><br>**Hospital** | A hospital received a request for access to records. The hospital provided the complainant with a full copy of his health records but the complainant believed there should be additional records (specifically letters from a social worker) that the hospital had not provided. The complainant had copies of the letters the social worker had written and wanted confirmation that the hospital had those letters in its records. The social worker had since retired from the | IPC required the hospital to provide affidavits explaining the searches performed and steps taken to locate responsive records. IPC concluded that the hospital had completed a "reasonable search" and was convinced the hospital did not have copies of the social worker letters. |

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| | hospital. The hospital searched for those records, but could not find them. | |
| Decision 49 (includes an order)<br><br>2017<br><br>**Physician** | After a clinical appointment, a patient took a photograph of a physician's computer screen. The image captured the health information of 71 other patients. The patient was upset that the physician had left the computer unlocked with his and other people's information on the screen. He wanted to pursue a legal claim against the physician and was threatening to make the image public or share the image with his lawyer in order to file a lawsuit against the physician or both. Once notified of the photograph, the physician asked the patient to securely destroy it because he was not authorized to have the other patients' information. The patient refused. The physician notified the 71 patients of the privacy breach. And worked with the IPC. The IPC will review the physician's practices separately. | IPC concluded that the photograph was a record of personal health information and that the physician had disclosed personal health information to the patient by not protecting the information on the computer screen. The disclosure was not authorized by PHIPA.<br><br>IPC found that the patient was a "recipient" of personal health information under PHIPA. As such, the IPC had the authority to and ordered the patient to destroy the image and all copies because the patient had or intended to contravene PHIPA. Because the patient had not yet initiated legal action against the physician many months later, the IPC refrained from deciding whether the patient would have been entitled to use the image for the purposes of litigation.<br><br>The hospital undertook to maintain a copy of the image in case of future litigation. |
| Decision 50<br><br>2017<br><br>**Medical Clinic** | A group medical clinic and a departing physician had a dispute over who was the health information custodian and whether an EMR service provider should have allowed the departing physician to extract his patients' health records. The matter went to court and resulted in a consent order granting the physician ongoing access to his patients' records held by the clinic. The clinic complained to the IPC that the EMR service provider improperly transferred patient files to the departing physician. | The IPC decided not to engage in a review. The court had been involved and the parties agreed to a consent motion. The IPC did not need to be involved and any ongoing issues of dispute should be managed through the court process.<br><br>However, the IPC commented on the importance of proactively establishing who is the health information custodian in multi-party relationships like group medical clinics. The IPC referred to its document "How to Avoid Abandoned Records" and referenced the responsibility to clearly identify the custodian. The IPC also advised that agreements with EMR service providers should clarify who is the custodian and who can authorize record extractions. |

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| Decision 51<br><br>2017<br><br>**Registry** | An individual complained that a registry (prescribed person under PHIPA) sent her a letter with another person's laboratory results. A mix up occurred with laboratory results relating to two individuals with the same first name and last name and date of birth. | The IPC decided a review was not warranted. In conducting its investigation, the IPC concluded the mistake was not a labeling error by the referring physician. Instead, it was a rare matching error (linking logic) by the registry (because one of the two individuals did not have an OHIP number). The registry was encouraged to look for opportunities to prevent this rare mistake from happening again. |
| Decision 52 (includes an order)<br><br>2017<br><br>**Hospital** | A hospital received an access request to all the "underlying electronic data about him held by the hospital, in its native, industry-standard electronic format, including data files produced by diagnostic equipment". The hospital provided copies of the patient's records producible through available queries – but objected to having to create new systems to provide native format raw data.<br><br>The hospital raised objections at the possible cost implications of having to provide raw source data in native format to all patients.<br><br>The patient also questioned whether the hospital conducted a "reasonable search". | The IPC concluded that the complainant was not entitled to access data in the hospital's electronic systems, devices or archives that could not be extracted through custom queries against reporting views available to the hospital. There was no obligation to produce patient data in its "native format".<br><br>The IPC discussed the difference between "data" and "information" and concluded that patients' rights of access apply to both. But, the IPC concluded that the electronic databases in which the patient's information was found were not dedicated primarily to his information. Each database pooled information together with other patients. And this patient's information was not easily severable from the other patients' data. The IPC concluded some of the data requested was not even reasonably available to the hospital.<br><br>In citing *McInerney v. McDonald*, the IPC stated that a patient has a right to access the same information viewed by or available to those providing health care. Not more data/information that the hospital itself could not reasonably utilize through reporting views available to it.<br><br>On the topic of the "reasonable search" the IPC supported the hospital's search practices and acknowledged that this case was "novel".<br><br>The hospital was ordered to (1) issue or confirm a fee estimate and (2) provide information available in one database and (3) do a further search of its "billing" records. |

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| Decision 53 (includes an order)<br><br>2017<br><br>**MoHLTC** | The Ministry of Health and Long-Term Care received a request for access to records about coverage for a procedure performed outside Canada. It was a mixed request under FIPPA and PHIPA.<br><br>The Ministry provided all the FIPPA requested records (general information about the program) but refused access to some of the PHIPA health records based on proceedings and solicitor-client privilege.<br><br>The records included email communications between Ministry staff and others. | The IPC ordered the Ministry to disclose one record. But upheld the Ministry's decision to withhold two other records.<br><br>The IPC discussed the issue of whether certain records were "primarily dedicated to the complainant's personal health information". |
| Decision 54 (includes an order)<br><br>2017<br><br>**Physician** | Patient alleged her doctor disclosed more information than she agreed to when sending records to another physician relying on her express consent. The patient had subsequently sent emails changing the nature of her express consent. The patient alleged that the physician ultimately shared too much information with the recipient physician. | The IPC analyzed the "scope" of the patient's consent to disclose information to another physician and discussed what constitutes a "withdrawal" of consent to disclose.<br><br>The IPC concluded that while the physician had generally responded within scope, there were a few records provided to another physician outside the scope of the patient's consent when the patient withdrew consent.<br><br>The IPC ordered the physician to develop a written information practice that addresses how consents from patients to the disclosure of their PHI are to be processed, documented and clarified and to ensure that this written information practice includes a requirement for clarifying consent in situations of potential ambiguity or where there are conflicting instructions.<br><br>The IPC commented generally that custodians need to be able to recreate packages of materials which are sent to other clinicians. This physician's office was able to do so. |
| Decision 55<br><br>2017 | A chiropractor received an access request from a father for PHI of his child about a single appointment. The chiropractor provided the records. The father | The IPC found the chiropractor had conducted a "reasonable search" and that there was no reason to conduct a review in this case. |

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| **Chiropractor** | challenged the chiropractor's search as not being sufficiently thorough – he thought there should be additional records including for example consent for treatment records, a copy of a report provided to his former spouse and notes of telephone calls. | The IPC reiterated the test to be applied to determine a "reasonable search":<br><br>1. The custodian must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.<br>2. 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.<br>3. Although a requester will rarely be in a position to indicate precisely which records the custodian has not identified, the requester must still provide a reasonable basis for concluding that such records exist. |
| Decision 56<br><br>2017<br><br>**MoHLTC** | The Ministry of Health and Long-Term Care notified the IPC about a criminal fraud ring and concerns about the collection of health card numbers by an insurance company. The IPC was asked to review whether the insurance company should collect health card numbers for processing applications for supplementary health insurance plans (such as travel insurance and emergency medical travel insurance). The insurance company confirmed it collected health card numbers to be reimbursed for provincially insured services. | The insurance company agreed to stop collecting health card numbers as part of its application process. Instead the insurance company will collect health card numbers if there is a claim in order to be reimbursed for provincially insured services. Because the insurance company agreed to change its practices, a review by the IPC was not warranted. |
| Decision 57<br><br>2017<br><br>**Hospital** | A patient made an access request at a hospital. The patient wanted to know why he was being told by physicians at the hospital to seek care somewhere else and why the chiropodist refused to see him. In particular, he wondered "what's on my medical record that is the basis for telling me to go back to the other hospital". The hospital gave the patient access to his emergency records and other visits. He believed there should be additional records. After the | The IPC supported the decision of the hospital.<br><br>The records related to emails between hospital staff and contained health information about the complainant. The IPC considered the test for whether a record is "dedicated primarily to the PHI of the complainant". The records were not dedicated primarily to the PHI of the patient. And there was PHI of other individuals. The hospital was right to withhold those records. |

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| | IPC became involved, the hospital agreed to do a further search and found there were no records of one episode and produced a copy of previously released notes. He wanted any notes, emails or letters generated during a particular time period in the Out Patient Clinic. The hospital did a further search and notified the patient that they were withholding certain records because they were not dedicated primarily to the PHI of the complainant and included PHI about others. | The IPC considered whether the hospital completed a "reasonable search" and concluded it had. |
| Decision 58<br><br>2017<br><br>**Hospital** | On behalf of herself and other siblings, a sister asked a hospital for a copy of her deceased brother's health records. The brother's death was "unexpected". The hospital declined because they were not authorized to release. After the IPC got involved, the hospital reconsidered its discretion under s. 38(4)(b) and (c) and released some records about the circumstances of death and to assist them to make decisions about their own care. The sister wanted more detailed information. | The IPC upheld the decision of the hospital.<br><br>The disclosure of a deceased person's records under s. 38(4)(b) and (c) is discretionary and not mandatory. The IPC considered the meaning of "circumstances of death" and concluded that the hospital fulfilled its statutory requirements under s. 38(4)(b) and did not have to release additional information to the sister that went beyond information relating to the circumstances of death. The IPC also concluded that the hospital had fulfilled its obligations to consider its discretion under s. 38(4)(c). The sister was unable to establish that she and her siblings reasonably required the additional information to make decisions about their own care. |
| Decision 59<br><br>2017<br><br>**Hospital** | A hospital received a correction request to make 5 changes to 3 Progress notes written by different clinicians. The hospital denied the correction requests stating that the entries reflected the professional opinions of its clinicians, made in good faith. The patient said the entries are a "fraud against his good character". | The IPC upheld the hospital's decision. The IPC concluded that the patient's requests reflected his desire to have the notes better explain what he was intending to communicate to the clinicians who authored the notes. But, the complainant did not establish that the records were inaccurate or incomplete for the purposes for which the hospital uses the information. |

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| Decision 60<br><br>2017<br><br>**Physician** | A physician received a correction request to change two records: a 15-page patient/profile report and a 5-page subjective objective assessment plan (SOAP). The physician agreed to make 5 changes to the SOAP report reflecting typographical errors and incomplete sentences but refused to make the other changes. | The IPC upheld the physician's decision. The complainant did not establish that the records were inaccurate or incomplete for the purposes for which the physician uses the information. |
| Decision 61<br><br>2017<br><br>**Physician** | A physician received a request for access to all records relating to the complainant's deceased son. The complainant believed additional records should exist. The physician said he did not have additional records documenting contact with two other physicians – he had not spoken to the patient about these physicians and had not referred the patient to them. The complainant was looking for email communications between the physician and other physicians. The physician was not the deceased's primary physician. The physician had been a consultant. | The IPC concluded the physician conducted a "reasonable search" and dismissed the complaint.<br><br>The physician was able to describe how he reviewed his email systems and the IPC believed the physician completed the searches and found no additional records. |
| Decision 62<br><br>2017<br><br>**Physician** | A physician accessed health records of two related individuals without authorization in a group practice. One individual patient was deceased and the other related person was alive. The patients did not authorize the physician to view their records. It was alleged the physician then shared the information with his relative.<br><br>Two corporate entities were involved. The physician was a shareholder in a medical corporation affiliated with the health centre. Both the health centre and the physician corporation were operating as health information custodians. The physician was an agent of the medical corporation. The health centre owned the | The IPC found that the lack of documentation of the relationship between the health centre, the medical corporation and the physician caused unnecessary confusion in this case.<br><br>The IPC concluded that the health centre was the health information custodian (not both the health centre and the medical corporation). The IPC focused on the fact that the health centre owned the EMR and controlled access by the physicians to the EMR and was responsible for the security of the EMR. Since the incident, the two corporations have concluded that the health centre is the health information custodian. |

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| | electronic medical record (EMR) the physician used as part of his shareholder position. | The IPC concluded the physician used the information of the two patients without authorization. There was no information to find that the physician had disclosed the information to his relative.<br><br>The IPC concluded the health centre had not met its obligations under section 12(1) at the time of the events. The group practice had since taken sufficient action so that no orders were required. The steps included:<br><br>• Formalizing the relationship with the medical corporation<br>• Ensuring all physicians were trained in privacy<br>• Creating a joint privacy committee of both health centre members and physicians<br>• Clarifying how discipline of physicians would be addressed in future |
| Decision 63<br><br>2017<br><br>**CCAC** | A CCAC received a request to correct diagnostic or risk codes in the complainant's health record. One of the risk codes was amended, three other codes were removed from the "active" health record and a statement of disagreement was added. The CCAC was not able to "expunge" because of its duty to keep a copy of any changes made to the record. Through mediation, only one issue remained for one diagnostic code relating to a diagnosis received from a referring primary care physician. | The IPC upheld the CCAC's decisions.<br><br>The complainant was not able to prove the information held by the CCAC was inaccurate or incomplete. The IPC acknowledged the CCAC made the disputed information "inactive" and a statement of disagreement was included in the record. |
| Decision 64<br><br>2017<br><br>**Hospital** | A hospital reported a breach involving a registration clerk accessing health records of a media-attracting patient and 443 other patients without authorization. The hospital discovered the breach through a proactive audit. | This file was referred to the Attorney General. The registration clerk pled guilty to contravening PHIPA and was fined $10,000.<br><br>The IPC concluded that the hospital had taken sufficient steps to safeguard information specifically through: updating its privacy policies to include greater detail about the disciplinary consequences of privacy breaches; annual confidentiality agreements for all staff; privacy warning on electronic health records systems; training and sending an email to all staff re privacy |

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| | | and snooping; and through its auditing practices. The IPC concluded that hospitals should be able to audit the "type" of information viewed through auditing and highly encouraged the hospital to include such criteria for auditing when looking for a new electronic health record provider. |
| Decision 65<br><br>2018<br><br>**Hospital** | A hospital received a request for access to all records relating to the complainant's deceased mother. The complainant was the deceased's estate trustee. The hospital provided a copy of the deceased's record. The complainant believed additional records should exist. The hospital found additional records that had been inadvertently overlooked and provided those to the complainant. The complainant believed there should be even more records based on a referral from a physician and notes from another physician. | The IPC concluded the hospital conducted a "reasonable search" and dismissed the complaint.<br><br>The hospital was asked to provide a sworn affidavit by the person who conducted the search outlining the steps they took to locate responsive records. The IPC was satisfied that the hospital made a reasonable effort to locate additional records and did not find any. |
| Decision 66<br><br>2018<br><br>**Community Health Centre** | A community health centre received a correction request to make six changes to the complainant's health record relating to two visits. After some negotiation, the CHC agreed to make all requested corrections. The complainant had additional concerns and was invited to file a new complaint. The complaint included that the file contained typos and subtle inaccuracies but did not specify what the inaccuracies were or how they related to the decision to grant all the corrections previously itemized. | The IPC declined to conduct a review.<br><br>The complainant did not provide sufficient detail or clarification about her requests for correction. The IPC found the CHC had already responded to earlier requests. The complainant also refused to provide her consent to the IPC to have access to her personal health information – so the IPC did not have a copy of the records at issue. |
| Decision 67<br><br>2018<br><br>**LHIN** | A Local Health Integration Network received a 62-part correction request. The LHIN was formerly a Community Care Access Centre (CCAC). The requests mainly related to a Resident Assessment Instrument Assessment. The LHIN agreed to make two corrections but denied the rest. The LHIN agreed to | The IPC upheld the decision of the LHIN. The IPC concluded that the complainant failed to establish a right of correction for some of the information at issue and that the LHIN rightly denied correcting the other information because that information constituted "good faith professional opinion or observations". |

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| | allow a statement of disagreement to be attached to the record. | |
| Decision 68 (related to Decision 16)<br><br>2018<br><br>**Physician, Clinic and Pharmacy** | A patient complained that her former spouse (a physician) was given her health information from her physician's office, a pharmacy and a hospital. The spouse was a former physician of the clinic where the patient's doctor worked. The spouse asked the clinic's administrative person to assist him to have copies of his ex-wife's health information saying that he had the patient's physician's permission. Through this request, the spouse also accessed information at a pharmacy.<br><br>The spouse used the health information against the patient in court proceedings related to their children. He said to the IPC he needed the information in order to prevent serious harm that the patient posed to herself and their children.<br><br>There were allegations that the former spouse forged a letter from the physician about the patient and shared with the courts and CAS. The matter did not need to be confirmed by the IPC.<br><br>The former spouse also forged the patient's signature to have information from the hospital sent back to the patient's physician. This issue fell outside the IPC's review since he did not keep a copy of the consent form or receive the hospital records requested. | The IPC found:<br>• The clinic was responsible for disclosing the patient's information to the spouse without authorization. The administrative employee did so under a mistaken understanding the patient's physician agreed to it and the IPC found the admin person assisted the spouse and should have prevented the disclosure.<br>• The patient's physician, an employee of the clinic, was not responsible because the physician was not a health information custodian.<br>• While the spouse asked the hospital for additional information (by using the physician's letterhead) – the records came to the clinic afterward and there was no evidence that the spouse was given the follow up documentation.<br>• The pharmacy released information to the spouse based on mistaken belief it was sharing to a physician within the circle of care.<br>• The spouse to be a "recipient" and that he misused and disclosed the patient's information for unauthorized purposes.<br><br>The IPC concluded that the clinic failed to take reasonable steps to protect the patient's health information in three ways: (1) lack of adequate training of staff; (2) no agreements with physicians who are acting as agents and (3) lax rules on sharing passwords for eMR access. |
| Decision 69<br><br>2018 | A former hospital employee (registered health professional who was employed as a Research Coordinator) removed 15 health records, 36 research | This was an issue of inappropriate access and loss of health records.<br><br>There was no evidence of intentional theft. The records were lost. |

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| **Hospital** | files and 2 data collection sheets from the hospital's premises without authorization. The hospital notified police – although the hospital did not believe the former employee was acting with malice. The former employee said she didn't remember taking the records off site and in any event no longer had them. | IPC concluded that the hospital took adequate steps to respond to the situation by: following its privacy breach protocol, adequately containing the situation, notifying affected individuals, conducting an investigation and updating their practices with respect to annual confidentiality agreements, privacy training, implementing tighter control over health records, anonymizing research files, implementing sign out protocols and updating its policies for departing employees. |
| Decision 70<br><br>2018<br><br>**Long-Term Care Home** | A long-term care home employee took files home and lost records relating to two prospective residents. The information included community care access centre (CCAC) files including names, addresses, medical diagnosis, medical history, contact information, treating physician names and health card numbers. The home notified the affected individuals. The home did not permit staff to take patient files home with them. The employee had done so due to workload issues and inexperience. | IPC concluded that the long-term care home had not done enough to prevent the breach. The home's policies and confidentiality agreement should have prohibited the removal of files of identifiable health information from the facility.<br><br>IPC document "What to do when faced with a privacy breach" was identified as a source for reminders how to prevent privacy breaches.<br><br>In response to the breach, the home updated its policies to prohibit removal of identifiable health information from the facility and updated its staff training accordingly. The home met with employee and provided time management training and retraining on privacy. |
| Decision 71<br><br>2018<br><br>**Hospital** | A hospital received a correction request relating to four records (six pages) of information documented in the emergency room. The information was used by physicians to report the patient to the Ministry of Transportation which led to a driver's license suspension. The patient disputed the cause of the medical event (which the physicians had attributed to a personal habit he denies) and he asked for the cause to be removed. He said the physicians did not test him for the real cause – they relied on inaccurate | The IPC upheld the hospital's decision not to make the requested corrections and supported the hospital's assertion of the good faith professional opinion exception.<br><br>In this decision the IPC upholds the interpretation of "opinion" to mean "a belief or assessment based on grounds short of proof; a view held as probable." And "observation" to mean a "comment based on something one has seen, heard or noticed, and the action or process of closely observing or monitoring". And evidence 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." There is a presumption of good faith |

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| | historical data and made assumptions instead of professional opinion. | and the burden of proof for bad faith (or not good faith) rests with the complainant. |
| Decision 72<br><br>2018<br><br>**Medical Clinic** | A medical clinic received a correction request asking that a specific reference prepared by a physician be removed. The author physician had died. The clinic refused the request. The physician's one-page handwritten note related to the patient's visit three years earlier. The patient specifically wanted reference to a hospital stay removed as it was hampering her legal claim. The clinic agreed not to release the note to third parties without the patient's express consent. | The IPC concluded there were no reasonable grounds for a review.<br><br>The patient had not provided the clinic with enough information to enable the clinic to correct the record. She did not provide information to demonstrate the notation about the hospital stay was wrong or made in error. The medical clinic did not need to make the correction. |
| Decision 73 (includes an order)<br><br>2018<br><br>**Hospital** | A family member requester asked for access to records of communication between the hospital and external parties about a relative who had been a patient at the hospital and about the related internal reviews and actions taken by the hospital in response to complaints made by the requester.<br><br>The hospital granted access in part under both PHIPA an FIPPA. The hospital denied access to 5 records of communication with its insurer, HIROC, and other written communications with external parties. The requester appealed to the IPC. | This decision explains a number of key access concepts including (1) records "dedicated primarily to the personal health information of the individual"; (2) the exception for "records created for use in a proceeding"; (3) FIPPA exception for "advice or recommendations" and "reasonable search".<br><br>The hospital was ordered to provide the requester with access to one record of communication with its insurer, HIROC. The other documents were covered by exemptions particular to the facts of the case. It is noteworthy that this case reviewed the interactivity of PHIPA and FIPPA and some of the exemptions utilized by the hospital would not be available to health care organizations that are not subject to FIPPA – especially related to communications with HIROC. |
| Decision 74<br><br>2018<br><br>**Hospital** | A physician used a hospital's electronic health record system to look at the records of a patient numerous times without authorization. The physician was related to the patient by marriage and was not providing care to the individual. | There was no order issued.<br><br>The IPC concluded that the hospital did not perform an adequate initial investigation of the complaint and because of that did not uncover the physician's inappropriate access. Once discovered, the IPC concluded the hospital did take adequate steps including: (1) installing a new auditing |

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| | The hospital was criticized for not adequately investigating the initial privacy complaint and for not imposing sufficient disciplinary consequences on the physician. | program to detect unauthorized access; (2) updating its policies; (3) implementing a yearly electronic privacy training program; and (4) strengthening the privacy warning system on its electronic system to tell users there will be disciplinary action for misuse.<br><br>The IPC concluded that the disciplinary consequences for the physician were sufficient in the circumstances including: a three-month suspension of hospital privileges and the requirement to deliver presentations on the topic of privacy to colleagues at the hospital. |
| Decision 75<br><br>2018<br><br>**Long-Term Care Home** | A son of a deceased resident in a long-term care home contacted the home to receive a copy of his father's health records. The will identified the son as one of two of the father's estate trustees. The will did not state that either co-estate trustee could operate independently or "severally" as that legal term is used. The home operator denied the son a copy of the father's health record because the will required the consent of both estate trustees. The second son who was also the estate trustee refused to allow his brother access to their father's health records. | The IPC upheld the decision of the long-term care home operator.<br><br>On death, an individual's right of access may only be exercised by the estate trustee (or other person who has assumed responsibility for the administration of the deceased's estate, if there is no estate trustee).<br><br>Relying on case law in other estate contexts, the IPC concluded that if there are several estate trustees or executors, one alone is not allowed to act on behalf of the others, and to act their decisions must be unanimous. |
| Decision 76<br><br>2018<br><br>**Physician** | A patient requested access to her health record held by her doctor. The doctor kept paper records. The doctor found the patient's record and copied it in its entirety. The patient felt the record was incomplete and made an access complaint. The patient alleged that her record was incomplete because there were missing pages and felt the doctor should have additional records. | The IPC dismissed the complaint and concluded that the physician had completed a reasonable search. The IPC did not require the physician to take any further action and confirmed the physician had acted appropriately. |

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| | The physician explained that certain additional pages mentioned in the health record for specific documents would not have been included in the chart if they did not contain health information (such as cover page to faxes or second or third pages of external documents that did not include any relevant information). The physician checked her new electronic medical record to see if there was a record for the patient, although the patient had not received care from the doctor after the physician switched to the new system. There was not an electronic record. | |
| Decision 77 (includes an order)<br><br>2018<br><br>**Medical Clinic** | On July 31, a woman sought access to the health records of her late husband held by his doctor's office. That physician had left the group practice. On September 20, the woman sent a deemed refusal complaint to the IPC having not heard back from the group practice about her request.<br><br>The IPC contacted the group practice a number of times in October and November. Although leadership did speak by phone, the clinic did not provide a response to the IPC. The IPC felt compelled to issue an order. | The IPC issued an order for the group practice to respond to the complainant's request for access within ten (10) days.<br><br>The IPC concluded that the group practice is a "person who operates a group practice of health care practitioners" and is therefore a health information custodian. Even though the physician had left, the IPC concluded the complainant was entitled to suspect that the group practice had custody or control of the deceased's records.<br><br>The IPC concluded the group practice had not responded to a request for access within the requisite 30 days. The custodian is deemed to have refused the request having failed to answer.<br><br>The IPC also noted the group practice had failed to communicate with the IPC. |
| Decision 78<br><br>2018<br><br>**Hospital** | A man asked a hospital for access to video footage taken of him outside the hospital's emergency department including an interaction he had with police. The hospital conducted a review of all its video footage and provided the man with access to a video. The man believed there should be more footage and | The IPC concluded the hospital had done enough and dismissed the review.<br><br>The IPC concluded the hospital had performed a reasonable search for responsive records and had complied with PHIPA. The hospital was able to explain how they had searched for records and how their video surveillance system was set up. The hospital was also able to prove it installed new cameras after the incident that would have captured the location of the |

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| | that the hospital had edited the video to which he had been given access. He thought the interaction with police should have been caught on the hospital's video surveillance. He complained to the IPC. As part of the mediation, the hospital confirmed there were six video recordings (to one of which they had given the complaint access). They gave him access to the additional five videos even though none of them showed the interaction the complainant wanted to see. The man thought there should still be more video recordings. The hospital explained the limits to the scope of their video surveillance cameras. | interaction – but that those cameras were not installed at the time. The hospital did not have to undertake any additional action. |
| Decision 79 (includes an order)<br><br>2018<br><br>**Physician** | On June 18, a man made an access request to a doctor's office for the health records of his twin boys. The office initially responded that he would receive the files as soon as possible. But in August received an email to have his lawyer send in a new request. The IPC became involved. The IPC still had not received cooperation by December. | The IPC ordered the physician to provide a written response to the request for access within 18 days and required verification to be sent to the IPC.<br><br>The IPC also noted the physician had failed to communicate with the IPC. |

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| Decision 80<br><br>2019<br><br>**Physician and Hospital** | The wife of a deceased patient was concerned that a hospital doctor wrongly shared her husband's health information by speaking to a third party about the care he received and that the hospital failed to meet its privacy obligations. These concerns were raised with the IPC as well as the College of Physicians and Surgeons of Ontario (which decision of the Inquiries, Complaints and Reports Committee decision was further appealed to the Health Professions Appeal and Review Board). The IPC declined to review the complaint having found it had been adequately addressed in another proceeding and concluded that the hospital took adequate steps to respond to the complaint. | The IPC concluded the doctor had disclosed information to the roommate's wife and that such disclosure was subject to PHIPA. However, the IPC also concluded that the matter had been adequately addressed by another proceeding through the CPSO and chose not to review the matter again. The IPC concluded it was not necessary to review the complaint because of judicial finality, economy and fairness to the parties. The decision also addresses the legal issue of the IPC taking notice of the proceedings of the CPSO. |
| Decision 81<br><br>2019<br><br>**Hospital** | A hospital was asked to make a correction to a discharge summary. The complainant wanted it written into the discharge summary "I am going home into the care of my parents' because I live in [their] house" to reflect what his parents' had been told. The doctor who wrote the note disagreed with the complainant's version of the instructions and felt the record was accurate. The hospital declined to make the requested correction. | The IPC upheld the decision of the hospital not to make the correction request as the complainant was not able to demonstrate the record was inaccurate. The IPC also said inconsequential bits of information do not have to be added to health records through correction request disputes. |
| Decision 82<br><br>2019<br><br>**Hospital** | A patient of a hospital died. The family members of the deceased patient were concerned about the care provided by the hospital and made complaints which involved a hearing before the Health Professions Appeal and Review Board (HPARB). The media were interested in the story and the hospital spoke to the media. The family complained to the IPC that the | The IPC concluded that the hospital's statements to the media contained personal health information even though (for the most part) the deceased patient's name was not used. There was enough information available in the public sphere to identify the patient in question. However, so long as the hospital did not disclose more information than had been shared in the public HPARB decision – the hospital did not violate PHIPA. PHIPA should not be |

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| | hospital disclosed personal health information to the media. | interpreted to prohibit repetition of facts and evidence in public court or tribunal decisions. Repetition of such facts is not a "disclosure" under PHIPA.<br><br>In this case, the hospital went beyond repeating facts of the HPARB case in two ways: (1) When the hospital mentioned the patient's name to the media – when HPARB had only referred to the patient by initials; and (2) when a hospital representative made statements to the media about the patient's general health condition.<br><br>The IPC also found the hospital's privacy policies to be confusing. The hospital's media policy failed to address a situation where an unnamed patient was at issue. The hospital's policies needed to make clear that information about a patient, even without a name, can be identifying information. The hospital was directed to amend its policies. |
| Decision 83<br><br>2019<br><br>**Community service for children, youth and families** | A parent asked for access to his son's records held by the agency. His request was denied. The son was capable of making his own treatment and privacy decisions and instructed the agency not to share his health record with his father. The father appealed the agency's decision to the IPC. The father claimed his son's health record included information about him and that he had a right of access to that information as a service recipient. | The IPC upheld the agency's decision not to provide access.<br><br>The father was **not** receiving services from the agency. The only record the agency had was the son's record. Any information about the father in the son's record was the son's personal health information – not the father's. In this case, the record did not include information about the father's physical or mental health. The father's involvement was ancillary to providing care to the son. The son was capable of making his own information decisions as well as treatment and counseling decisions and he had expressly instructed the agency **not** to share his information with his father.<br><br>Decision 128 reconsiders this decision. |
| Decision 84<br><br>2019<br><br>**Hospital** | A patient of a hospital was concerned that hospital staff inappropriately viewed her record. The hospital conducted an audit and then additional audits on request. The patient asked for the results of the audit and asked for a "lockbox" for her record. The hospital provided the patient with a copy of the audit results | The IPC found the hospital acted in accordance with the privacy legislation. The hospital responded to the access request for copies of the audit results. The complainant's health information was used appropriately by the hospital and was not improperly disclosed. The complaint was dismissed. |

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| | and implemented the lockbox directive. The patient complained to the IPC. | Decision 94 dismissed a request for reconsideration of this decision. |
| Decision 85<br><br>2019<br><br>**Hospital** | A hospital received a correction request from the daughter of a deceased patient relating to 4 pages including: physician orders, progress notes, medication administration record and Critical Care Response Team Consultation Record. The complainant believed her mother's death resulted from the aspiration of an improperly administered medication (an iron capsule). The hospital declined the correction. The complainant contacted the IPC. In mediation, the hospital issued a new record as a late entry note to provide further detail of the initial progress note. The complainant was not satisfied. | The IPC upheld the hospital's decision not to make the requested corrections because the complaint had not established that the records were inaccurate or incomplete. No order was issued.<br><br>The IPC also acknowledged that because the patient had died, the hospital would not require the records for ongoing care. |
| Decision 86<br><br>2019<br><br>**Hospital** | A woman contacted a hospital to have access to her deceased son's health records. The hospital provided part of the record but notified the requester that part of the paper record was missing. The requester made a complaint to the IPC. During mediation, the hospital issued an apology for losing the records and explained how they had followed their breach management protocol. The files were believed to be permanently lost – but there was no reason to believe they were improperly accessed or disclosed. | The IPC decided not to review the complaint. The IPC found the hospital had adequately:<br>• Searched for the records<br>• Fulfilled its information management practices<br>• Followed its privacy breach protocol<br>• Notified the complainant and the IPC of the lost records<br>• Updated its practices to prevent future similar incidents<br>• Consulted with its third party vendor responsible for scanning paper records to prevent future similar incidents |

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| Decision 87 (includes an order)<br><br>2019<br><br>**Foot Clinic** | A foot clinic refused to give a copy of a "biomechanical assessment" report to a patient alleging the patient had engaged in bad faith (for not paying his bill and because he didn't intend to use the custom orthotics) and claiming that if a copy of the report was given to the patient there was a risk of serious harm (if the patient gave it to an unregulated person to dispense orthotics). | The IPC ordered the foot clinic to give the patient a copy of the biomechanical assessment report.<br><br>This decision explains what has to be proven to show a request for access to health records is made in "bad faith". That test was not met in this case.<br><br>This decision also explains what is required to deny a right of access based on a risk of serious harm. In this case, the risk of harm to the patient was determined to be at best speculative and at worst unlikely. |
| Decision 88<br><br>(Does not exist) | | |
| Decision 89<br><br>2019<br><br>**LHIN** | A complainant asked a community care access centre (CCAC) for access to his deceased wife's complete health record. He was given a copy of the CCAC's file. He thought there should be more records from the agencies that delivered the services on behalf of the CCAC. He complained to the IPC. (The CCAC then transitioned to services delivered by a Local Health Integration Network – LHIN). The LHIN contacted the service providers and provided the complainant with 420 pages of health records. The complainant thought there should be even more – especially a copy of his wife's will and copies of communications he had with the LHIN and CCAC. | The IPC focused on whether the LHIN completed a "reasonable search" for health records and concluded the LHIN had done so. The complaint was dismissed.<br><br>The complainant was concerned that the LHIN had not looked for administrative documents like communications between him and the LHIN when he asked for his wife's "complete health record". The IPC concluded it was reasonable for the LHIN to assume that a request for a complete health record related to the traditional health record and not a wider range of records such as administrative communications. The IPC also concluded the LHIN had rightly sought the health records from the agencies where it coordinated those services to the patient. |
| Decision 90 (includes an order)<br><br>2019 | An individual sought a copy of his full file from the Canadian Red Cross home care services. The Red Cross provided a copy of the file but redacted the names of the workers who had come to his home. The Red Cross relied on section 52(1)(e)(i) of PHIPA that to | The IPC ordered the Red Cross to provide the individual with the full names of the workers.<br><br>The IPC considered the test under section 52(1)(e)(i). The Red Cross was not able to prove a risk of harm that was well beyond merely possible or speculation. The IPC followed precedents from freedom of information cases |

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| **Canadian Red Cross** | provide him with their names would put the workers at risk of harm. The Red Cross said he had been verbally abusive towards the workers and had expressed prejudicial views about their intelligence and the skills of women. The Red Cross said it owed a duty of safety to its staff and to provide their names to this individual would cause them distress and a risk that he would contact them at home. The individual said he was entitled to know who had provided him with health services. | that there must be "clear and direct evidence that the behaviour in question is tied to the records at issue in a particular case such that a reasonable expectation of harm is established."<br><br>In this case, the individual had not made any direct threats to staff. On the facts, the risk of harm to staff was merely speculative. |
| Decision 91<br><br>2019<br><br>**Hospital** | A patient at a hospital made numerous access and correction requests regarding health records. Eventually, the hospital declared it had answered all the requests it could and would no longer respond to additional requests. The patient complained to the IPC.<br><br>The patient provided hundreds of pages of documents to the IPC, but did not explain the nature of the most recent requests. | The IPC concluded no review was warranted. The patient failed to clarify the details for the most recent complaint. |
| Decision 92<br><br>2019<br><br>**Laboratory** | A patient of a laboratory asked for access to her records. The lab provided a copy. The patient believed there should be more information and in particular notations or instructions for the process to be followed for multiple requisitions. The lab advised the patient she had received her entire record and there were no additional notes. The patient complained that the lab failed to complete an adequate search. An additional fee complaint was dropped during mediation. | The IPC concluded that the lab had completed a reasonable search and dismissed the complaint. |

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| Decision 93<br><br>2019<br><br>**Hospital** | A patient complained to the IPC about the fees charged by a hospital for access to health records. The hospital required a non-refundable fee of $100 to do a search for records and $200 for photocopying costs for a record of up to 25 pages. | The IPC concluded that the fees exceeded "reasonable cost recovery". The hospital agreed to change its practices to follow the IPC's fee guidelines.<br><br>The IPC also commented about the hospital's practices in processing requests for access to records. The IPC found that the hospital was inappropriately dismissing access requests as "incomplete" if they were not (1) witnessed; (2) dated within 3 months; or (3) inclusive of the purpose for the request. The hospital agreed to change its practices. |
| Decision 94 (same case as 84)<br><br>2019<br><br>**Hospital** | Complainant asked the IPC to revisit Decision 84 where the IPC dismissed the complainant's concerns against the hospital. The complainant did not specify on what grounds the IPC should reconsider its decision and merely re-argued the initial complaint. | The IPC dismissed the reconsideration. |
| Decision 95<br><br>Does not exist | | |
| Decision 96 (includes an order)<br><br>2019<br><br>**Family Services Agency** | A father with access-only rights to his children (the children were over the age of 16) asked a family services agency for information about services his children may have received. The agency would not confirm or deny that the children received services there. He was not a custodial parent and the children were capable to make their own decisions. | The IPC ordered the family services agency to reconsider its decision whether information could be disclosed to the father and provide the father with reasons for its decision.<br><br>The IPC would not confirm or deny that the children received services. The IPC concluded the information requested by the father would be personal health information. The IPC stated if there was such information, as an access-only parent, the father did not have a right to "access" under PHIPA. However, IPC decided the family services agency had an obligation to consider the father's request for disclosure of the children's health records, and in particular whether the *Children's Law Reform Act* or *Divorce Act* gave him entitlements to information or whether the agency had consent to disclose information to the father. |

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| Decision 97<br><br>2019<br><br>**Physician in a Medical Clinic** | A patient asked a physician for his medical record. The physician provided 52 pages (and then another 5 pages of handwritten notes). The patient thought there should be more information from when he was at an affiliated walk-in clinic from 12-13 years before. The physician stated he did not have records from the historic period. The patient made a complaint to the IPC about the delay in providing access and about reasonable search. In the mediation process, the complaint became only about the reasonable search. | The IPC concluded not to review the complaint. The IPC concluded the physician had completed a reasonable search for records. The physician was not required to prove with absolute certainty that further records did not exist (for the historic period). The physician had to show he made a reasonable effort to identify and locate responsive records. The IPC restated its position that a reasonable search is one "in which an experienced employee who is knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request." The physician had done enough to respond to the access request. |
| Decision 98<br><br>2019<br><br>**Medical Clinic** | A media outlet notified the IPC that a cosmetic surgery clinic was using surveillance cameras in examination rooms.<br><br>The clinic had 24 security cameras recording continuously 24 hrs a day. Cameras were in examination rooms, operating room, pre-operative room, reception, hallways, administrative offices, computer workroom and staff kitchen. Patients would undress in the rooms under surveillance. The purpose for the cameras was security not healthcare. Patients were not asked to consent to be recorded. There were video surveillance notice posters up in the clinic and the cameras were visible. | The IPC concluded that the clinic's use of surveillance cameras violated PHIPA. The clinic had been collecting personal health information without authority because of the extensive network of cameras and in particular the placement of the cameras in examination rooms. However, because the clinic undertook the following steps, a review was not warranted:<br><br>1. The clinic ceased its recordings immediately when notified by the IPC.<br>2. Only 2 cameras remain: at 2 reception desks and entrance<br>3. The 2 cameras are only recording after office hours<br>4. The clinic put up new signs to alert "For security, these premises are under closed circuit audio/video security surveillance"<br>5. The clinic destroyed old recordings<br>6. The clinic updated its privacy policies and consent forms<br><br>The IPC also examined the clinic's use of social media. The clinic had been using some patient information beyond its educational purposes and for its marketing through social media. |
| Decision 99<br><br>2019 | A patient asked her physician for a copy of her record which was provided to her. She then asked her physician to make corrections to historic records (5 years old) to address her recollection of what she was | The IPC dismissed the complaint. The physician's search for records was "reasonable". The complainant was not able to prove the physician's records were inaccurate or incomplete for the purposes for which the physician uses the records. The physician was not required to correct the records. This case |

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| **Doctor** | told at the time, her feelings about pain and other reflections after the procedures including satisfaction with the results. The physician disagreed with the requested corrections but offered to allow the patient to include her view (her own narrative) in the physician's records. The patient also believed the physician should have additional records not provided to her regarding adverse event reporting. She complained to the IPC that the physician had refused her correction requests and had not completed a "reasonable search" for additional records. | explains the interpretation of "professional opinion" and "professional observation".<br><br>Decision 173 dismissed a request for reconsideration of this decision. |
| Decision 100<br><br>2019<br><br>**Psychotherapist** | A former patient of a psychotherapist requested all of his medical records for the time that he was treated (approximately two years), as well as notations in his file that were made following the termination of the therapeutic relationship. The psychotherapist denied access on the basis of risk of serious harm.<br><br>Decision 113 dismisses a request for reconsideration of this decision.<br><br>Decision 187 declines to review a complaint based on a new access request made immediately after Decision 113 was released. | The IPC upheld the denial of access because of risk of serious harm to patient or others. There was ample evidence of the complainant's history of threatening behaviour directed toward himself and others, including the custodian. This included evidence of the complainant misinterpreting communications as threatening and an attack on his health, safety, and well-being. The IPC was satisfied that the complainant had acted in harmful ways against himself and others as a result of communications relating to his past treatment with the custodian, and that there was a reasonable prospect that reviewing the records might result in similar harm.<br><br>The IPC accepted that the records could not reasonably be severed, and upheld the custodian's decision to deny access to the records in their entirety.<br><br>The decision addresses the IPC's jurisdiction and related proceedings before the regulatory college and HPARB. The IPC also considered the admissibility of evidence used in those proceedings and found certain letters and emails inadmissible because they were prepared for or relied upon during those proceedings under *RHPA*. |

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| Decision 101<br>(includes an order)<br><br>2019<br><br>**Hospital** | A patient of a hospital requested under PHIPA and FIPPA access to records relating to another patient's allegations against him of inappropriate behaviour. The hospital found responsive records (a notation in the other patient's records and an email between staff). The hospital denied the request for access. The patient also complained the hospital had not completed a reasonable search for records. | The IPC concluded:<br><br>• The information requested was personal health information<br>• The request for access would proceed first under PHIPA and second under FIPPA<br>• The records at issue were not "dedicated primarily to" the personal health information of the requester<br>• There was personal health information about the requester in the email record that could be reasonably severed from the rest of the record to give to the requester<br>• BUT, because the email between staff was subject to solicitor-client privilege, the hospital was justified under FIPPA and PHIPA in not providing any part of it to the requester (the hospital was not required to produce the record)<br><br>However, the IPC also concluded the hospital failed to demonstrate that it had undertaken a reasonable search for records and ordered the hospital to do so and provide evidence of its efforts. |
| Decision 102<br><br>2019<br><br>**Hospitals** | The IPC received six separate breach reports involving four hospitals of unauthorized access to information contained in a shared electronic patient information system. The circumstances of the breaches revealed deficiencies in the hospitals' privacy practices in relation to the shared system with respect to:<br><br>1. the agreement governing the shared system<br>2. privacy breach management policies and procedures<br>3. lock-boxes<br>4. training<br>5. confidentiality agreements<br>6. privacy notices within the shared system | Although the IPC found deficiencies in the privacy practices of the hospitals in the shared system, the IPC decided not to review. The IPC found the hospitals and the larger group sharing access to the system took adequate steps to address the identified issues, including by:<br><br>1. Revising the shared information service agreement and adding an appendix that outlined the HINP's (one of the hospitals) obligations pursuant to *Ontario Regulation 329/04;*<br>2. Reviewing and updating privacy breach management policies and procedures, including to clearly delineate which health information custodian is responsible for each step in the privacy breach management process; |

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| | 7. auditing | 3. Committing to developing a new group wide policy and procedures for "lock-boxes" and creating a mechanism for flagging when a particular patient's personal health information is accessed;<br>4. Setting minimum training standards across the shared system, including privacy training for everyone (including all agents) prior to gaining access and annually; tracking of training; and training for privacy officers on the shared system's auditing capabilities;<br>5. Establishing minimum standards across the shared system applicable to confidentiality agreements, including that confidentiality agreements be signed prior to gaining access and annually; and tracking the signing of confidentiality agreements;<br>6. Implementing privacy notices that agents accessing the shared system view prior to accessing personal health information; and<br>7. Developing a minimum standard of auditing capability, including a standard for the type of data displayed and a minimum retention period for the user audit log of significantly longer than two weeks. |
| Decision 103<br><br>2019<br><br>**Hospital** | A hospital received a correction request to make changes to records relating to a patient's admission to hospital by removing references describing her as delusional or paranoid.<br><br>The records consisted of a Form 1 and Emergency Department Note prepared by the ER doctor and the Discharge Summary prepared by the hospital psychiatrist. | The IPC declined to review the complaint and found that the hospital had responded adequately.<br><br>The IPC found that the complainant did not discharge her onus of providing sufficient evidence that the "record is incomplete or inaccurate for the purposes for which the custodian uses the information."<br><br>The IPC was also satisfied that the good faith professional opinion or observation exception applied. |
| Decision 104<br><br>2019<br><br>**Hospital** | A patient asked a hospital for access to her entire medical record. The hospital provided a full copy. The patient felt there should be additional records especially from resident psychiatrists she had seen and related referral records. The hospital looked but | The IPC dismissed the complaint. The hospital's search for records was "reasonable". |

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| | did not find any additional records. The patient complained to the IPC. | |
| Decision 105<br><br>2019<br><br>**Physician** | A physician left behind records of personal health information at a property that she had been renting. The landlord destroyed most of the records but delivered three binders of health records to the College of Physicians and Surgeons of Ontario. | The IPC decided not to review the subject-matter of this IPC-initiated complaint because the physician had responded adequately by confirming that:<br><br>• she retrieved the three binders from the CPSO<br>• she transferred the binders to a secure storage facility where she keeps all the records of personal health information of her former patients<br>• all records of her former patients' personal health information that still exist are kept in this secure storage facility, and to the best of her knowledge, there are no stray records in other locations<br>• her contact details are provided to former patients who are seeking access to records of their personal health information<br><br>But note that although the IPC decided not to review, it decided to identify the physician because:<br><br>1. the incident that triggered the complaint was publicized in the media;<br>2. the IPC had issued at least one previous PHIPA decision in which it identified the same physician (see Decision 42); and<br>3. most importantly in the IPC's view, some of the physician's former patients might still be seeking access to their records of personal health information. |
| Decision 106 (same case as 101)<br><br>2020<br><br>**Hospital** | A patient requested records regarding allegations of improper conduct that were made against him by another patient. In Decision 101 the IPC upheld the hospital's decision to deny access, but ordered it to conduct a further search for records. | Complaint dismissed. The IPC upheld the reasonableness of the search conducted by the hospital in response to Decision 101. The hospital's affidavit identified which employees were asked to conduct searches of all potentially responsive documentation including notebooks, emails, electronic and paper records. |

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| Decision 107<br><br>2020<br><br>**Physician and Medical Clinic** | A father requested that his child's physician correct or remove a letter in the child's file that included information about the father that he alleged was false.<br><br>The father shared joint custody of the seven-year-old child with the child's mother, from whom he was separated.<br><br>The doctor refused the correction request on various grounds including that:<br><br>• the record was not a record of the complainant's own personal health information; and<br>• the child's mother objected to the father's correction request. | The IPC dismissed the father's complaint about the physician's refusal of the correction request.<br><br>The IPC found that:<br><br>• the record at issue was a record of personal health information of the complainant's daughter, and not of the complainant; and<br>• in the circumstances, the complainant did not have authority under PHIPA to act as an independent substitute decision-maker for the child because<br>  ○ as joint custodial parents, the father and the mother were equally ranked substitute decision-makers for the child under PHIPA ; and<br>  ○ whether or not the child is mentally "capable" within the meaning of PHIPA , in view of the mother's objection to the father's request, the father could not act as an independent substitute decision-maker for the child in order to request correction to the child's record. |
| Decision 108<br><br>2020<br><br>**Hospital** | A patient made a correction request with respect to a record relating to his past admission to the hospital.<br><br>The record in question was a Form 1 Application by Physician for Psychiatric Assessment under the *Mental Health Act* filled out in 1994. The patient believed that the record contained false statements. The complainant also requested that the record not be disclosed or used without his express consent.<br><br>The hospital denied the correction request because the Form 1 contained a professional opinion and observation that a physician made in good faith. | The IPC found that no review was warranted because there were no reasonable grounds for a review.<br><br>The IPC found that the information that the complainant sought to correct was the good faith professional opinion or observation of the physician who prepared the record.<br><br>The IPC noted that the hospital responded adequately by advising the complainant of the entitlement to have a statement of disagreement attached to the record. |

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| | The hospital advised the complainant that he could have a statement of disagreement attached to the record. | |
| Decision 109<br>(includes an order)<br><br>2020<br><br>**Former employee of a family health clinic** | The IPC reviewed whether a former employee of a family health clinic used and/or retained personal health information in contravention of PHIPA in the following three circumstances:<br><br>1. Accesses to the clinic's EMR as set out in audit logs provided to the IPC by the clinic when it reported a privacy breach (the audits followed a patient's complaint to her physician that she suspected the employee had improperly accessed her personal health information);<br><br>2. A telephone discussion between the former employee and a current clinic employee in which she asked the current employee to access the patient's information; and<br><br>3. The retention of personal health information of clinic patients in the former employee's personal email accounts after the end of her employment with the clinic.<br><br>The former employee argued that her access to personal health information was within her role at the clinic. | The IPC ordered:<br><br>1. The former employee not use or disclose any personal health information, whether in oral or recorded form, in whatever medium this may be maintained, that she obtained and/or has knowledge of through her role as an agent of the clinic, including the personal health information of the patient.<br><br>2. Order provision 1 does not restrict uses or disclosures of personal health information by the respondent as required by law or pursuant to section 7 of O. Reg.329/04.<br><br>The IPC found that the former employee's accesses to the patient's personal health information were unauthorized uses of personal health information. The accesses were not for the purposes of providing or assisting in the provision of health care and were not permitted by the clinic.<br><br>The IPC found that the telephone call was relevant to whether the remote accesses to the patient's personal health information were unauthorized, but was arguably not itself a use of personal health information.<br><br>The former employee's retention of records (emails in her personal account with patient medication lists) for over two years, from the time when her employment at the clinic ended to the time the records were destroyed, was a contravention of section 17 of the Act. |
| Decision 110<br><br>2020 | The IPC received two privacy breach reports from a multi-site hospital. Each incident involved remote (off-site) accesses to the hospital's EMR system from the | The IPC found that the confidentiality of personal health information in the hospital's EMR was breached through numerous instances of snooping by the physicians' private practice employees. |

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| **Hospital and Physicians** | private practice office of a physician with privileges at the hospital.<br><br>In each case, the accesses at issue were made by, or under the EMR credentials of, an employee of the physician's private practice who had been granted permission by the hospital to access the hospital's EMR for the purpose of assisting in the provision of health care to the physician's private practice patients.<br><br>(The decision, through its summary of the hospital's representations in relation to its analysis of audit results, gets at some of the nuances involved in determining whether accesses to an EMR over a lengthy historical period are authorized, inadvertent/ accidental, or unauthorized.) | The IPC concluded that the hospital and the two physicians involved are each health information custodians in relation to the EMR transactions under review, and, accordingly, that each had responsibilities under PHIPA to safeguard the personal health information at issue.<br><br>The IPC found that while the hospital is the health information custodian with custody or control of the personal health information in its EMR, physicians are also health information custodians when they access patient information in the hospital's EMR for the purpose of providing health care to their private practice patients.<br><br>When an employee of a physician accesses the hospital's EMR on behalf of the employer physician, in order to assist the physician in the provision of health care to his private practice patients, the employee is acting as an agent of that physician within the meaning of PHIPA (and not an agent of the hospital).<br><br>With respect to accesses to the EMR, the IPC found the following to be in contravention of PHIPA:<br><br>• "credential-sharing", even if done for health care purposes; and<br>• accesses to the personal health information of the employees' family members and acquaintances, where those accesses were made for purposes unrelated to the provision of health care to those individuals as private practice patients of the physicians, including in cases where the patients had consented to the access.<br><br>The IPC concluded that the hospital and physicians had taken reasonable steps to contain and to respond to the privacy breaches, and to implement changes to their information practices to comply with their obligations under PHIPA including:<br><br>• privacy training and education for their private practice employees; |

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| | | • the implementation of confidentiality agreements as a condition of employment; and<br>• introducing limitations on (or altogether prohibiting) their private practice employees' access to the hospital's EMR.<br><br>The IPC also advised the physicians to:<br><br>• expressly prohibit credential- sharing among their agents, both in the context of EMR access (in the event the physicians decide to re-apply for employee access to the hospital's EMR) and in the context of the physicians' own information systems;<br>• take reasonable steps to ensure that their own information systems used to connect to the hospital's EMR are adequately secure to protect the personal health information in it; and<br>• ensure that all their information practices are set out in writing, and are available to their employees as well as to members of the public.<br><br>The steps taken by the hospital included:<br><br>• making changes to its policies and practices, particularly those addressing professional staff who operate private practices, including by updating its EMR user application process for private practice physicians seeking EMR access for their employees;<br>• introducing new policies to confirm the identity of specific agent users of its EMR and to prohibit the sharing of EMR user credentials;<br>• e-educating existing professional staff with private practice offices of their privacy protection obligations;<br>• updating other aspects of its privacy training and education for professional staff more generally;<br>• separate privacy refresher training to the physicians involved;<br>• a new privacy warning that appears on the EMR log-in screen, and that is seen by (and must be accepted by) all EMR users each time they log into the hospital's EMR; and |

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| | | • exploring new role-based system of EMR access.<br><br>The IPC concluded the hospital would be responsible for patient notification, except in certain circumstances where the physicians would be better to do so. |
| Decision 111<br><br>2020<br><br>**City – Long-Term Care Homes and Services** | A daughter, acting as estate trustee, made a request to the City of Toronto, Long- Term Care Homes and Services under PHIPA for access to her deceased mother's personal health information records.<br><br>Her mother had been a resident at a city-run long-term care home for over 18 years. The custodian granted access to the over 3,000 pages of records that made up the mother's Resident Health Care Record, subject to the payment of a fee that it estimated at $3,960.<br><br>The daughter requested a review of the custodian's fee estimate. | The IPC found that the fee estimate of $3,960 exceeded the amount of "reasonable cost recovery" under section 54(11) of PHIPA. (The custodian's initial fee estimate of $7,673.30 had been reduced during mediation.)<br><br>The IPC found that the custodian is entitled to charge photocopy fees for records that need to be scanned to be put onto CD and upheld the manner in which it calculated those fees. However, photocopy fees should not be charged for any records available in electronic form that do not require severances and are transferrable onto CD.<br><br>"Reasonable cost recovery" does not permit a custodian to charge an individual requesting access to their own personal health information for training staff, legal consultations or conducting "environmental scans."<br><br>Time estimates for record review should distinguish between those records requiring only a straightforward review and those requiring a more detailed review. With respect to records that require a straightforward review, the IPC established the time for review should be calculated at five seconds per page. With respect to records that require a more detailed review, the IPC established that the time for review should be calculated at two minutes per page. The IPC also confirmed that the fee for review should be calculated at the rate set out in the 2006 framework for fees, $45 for every 15 minutes of review, after the first 15 minutes.<br><br>Based on the principles set out in the decision, the IPC reduced the custodian's fee estimate to $2,831. |

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| Decision 112<br><br>2020<br><br>**Hospital** | A patient made a correction request with respect to records relating to her past admission to the hospital.<br><br>The records in question were an Emergency Department Note completed by an emergency room doctor and a Consultation Note/Discharge Summary completed by a psychiatrist. The patient believed that the record contained inaccurate statements.<br><br>The hospital denied the correction request because the records contained a professional opinion or observation that a physician made in good faith.<br><br>The hospital advised the complainant that it would attach a statement of disagreement to the record and provided her with a blank form on which to write that statement. | The IPC found that no review was warranted because there were no reasonable grounds for a review.<br><br>The complainant failed to establish that the records were incomplete or inaccurate for the purposes for which the hospital uses the information. In any event, the information that the complainant sought to correct was the good faith professional opinion or observation of the physicians who prepared the records. |
| Decision 113 (same case as 100)<br><br>2020<br><br>**Psychotherapist** | Complainant asked the IPC to revisit Decision 100 where the IPC upheld psychotherapist's denial of access because of risk of serious harm to patient or others. | The IPC dismissed the reconsideration request. The IPC found that the complainant's representations largely amounted to him disagreeing with findings, re- arguing issues, or raising new issues which he could have, but did not, raise during the IPC's initial review. The complainant's submissions did not establish that there was a fundamental defect in the adjudication process, an error or omission in the decision, or a material change in circumstances relating to the decision. The complainant also did not establish a reasonable apprehension of bias. |
| Decision 114<br>(includes an order)<br><br>2020<br><br>**LifeLabs** | The IPC commenced an investigation into the cyberattack on LifeLabs. In response to a letter asking questions about the circumstances of the breach and ordering LifeLabs to produce documents, LifeLabs asserted solicitor-client and/or litigation privilege over: a penetration test conducted by CrowdStrike (a | The IPC issued an interim order requiring LifeLabs to perform its duty to assist the IPC with its review of the breach and to produce documents relevant to the investigation. The IPC found that LifeLabs failed to provide sufficient evidence to support their claims of legal privilege. |

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| | third party cybersecurity firm) after the breach occurred; the communications between the attacker and Cytelligence (a firm that LifeLabs engaged to communicate with the cyberattackers regarding the ransom demand); and "other requested communications, reports, summaries, analyses and briefing materials related to the [breach]." | With respect to litigation privilege, LifeLabs failed to demonstrate that the documents at issue were created for the dominant purpose of litigation.<br><br>With respect to solicitor-client privilege, LifeLabs only indicated that its external counsel had retained the third parties, an assertion insufficient to establish the basis for the privilege. |
| Decision 115<br>(includes an order)<br><br>2020<br><br>**Registered Massage Therapist** | On March 23, 2017, a woman sent an email requesting a legible copy of her entire file, after having been provided with an illegible copy. She repeated her request on October 26, 2017 and also requested separate records indicating the "Fee" and "Session" duration (i.e. 1/2 hour or 1 hour) for all treatments that she received.<br><br>On March 28, 2018 the woman told the IPC that she had not received a response to her request for the fee and session duration records. This decision and order relate to the fee and session duration records.<br><br>Between June 22, 2018 and May 26, 2019, an IPC analyst tried unsuccessfully to contact the custodian. The IPC sent a Notice of Review in summer 2019. The custodian did not respond. The IPC tried to contact the custodian by phone several times in September and October, without success.<br><br>The IPC contacted the College of Massage Therapy of Ontario (CMTO), which then informed the custodian that the IPC had been attempting to contact him. | The IPC issued an order for the custodian to provide a written response to the complainant regarding her request for access in accordance with PHIPA and without recourse to a time extension within ten (10) days.<br><br>The IPC found unacceptable the lack of response from the custodian to the written request for access of the complainant which was made over two years ago, on October 26, 2017. This was exacerbated by the lack of response from the custodian to attempts made by the IPC to contact him.<br><br>In light of the custodian's continued failure to respond to the complainant's request for access and to adequately respond to the attempts made by the IPC to resolve this matter without recourse to a formal order, the IPC found that the custodian was deemed to have refused the complainant's request for access. |

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| | On November 6, 2019, the custodian sent the IPC an email advising he had received its letters, emails and voicemails, but had not read or listened to them. On November 15, 2019, the custodian spoke with the IPC analyst and said that preparing a decision would take some time. The custodian did not issue a decision. | |
| Decision 116<br><br>2020<br><br>**Slimband Weight Loss Clinic** | A former patient submitted a request for her complete file to Slimband Weight Loss Clinic. The clinic issued a decision granting access to the records that it identified as responsive to the request.<br><br>The requester filed a complaint with the IPC maintaining that additional records should exist. | The IPC dismissed the complaint. The clinic's search was reasonable. The IPC was satisfied that an experienced employee had made a reasonable effort to identify and locate records reasonably related to the complainant's request. The fact that the clinic did not locate records matching the description provided by the complainant did not undermine the reasonableness of its search.<br><br>Note that the IPC stated in the decision that it "assume[d], without deciding, that the clinic is a "health information custodian", and that the records sought by the complainant are her records of "personal health information", as defined in [PHIPA]". |
| Decision 117<br>(includes an order)<br><br>2020<br><br>**Hospital** | A patient made an access request for hospital medical records in relation to a hospital visit and video surveillance footage depicting his exit from the hospital. He sought only his own image in the footage, and not the images of any other individuals. The complainant submitted to the IPC that his only motivation was to obtain a contemporaneous record of his condition at the time he was inappropriately discharged from the emergency department and that the video depicts him crawling on his hands and knees as he was escorted out of the emergency department. | The IPC ordered:<br><br>1. The hospital is to provide the complainant with access to the three video clips at issue. A copy of each record in its entirety is to be provided to him, except images of all individuals other than the complainant are to be obscured.<br>2. If the hospital decides to charge a fee for access, it is to give the complainant an estimate of the fee in accordance with section 54(10) of PHIPA.<br>3. For the purposes of order provisions 1 and 2, the date of this decision should be treated as the date of the access request.<br>4. The timelines referred to in order provision 3 may be extended if the hospital is unable to comply in light of the current COVID-19 situation. |

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| | The hospital denied access to the severed footage on the basis that the complainant might attempt to reverse the obscuring technology applied to it. | The IPC found that PHIPA applied to the complainant's request. The video records at issue were PHI of the complainant. Video footage depicting the complainant in a hallway of the hospital, and then near and just outside the hospital's exit reveals that the complainant was a patient of the hospital, which qualifies as identifying information about the complainant that relates to the providing of health care to him.<br><br>The IPC agreed with the hospital that none of the records is dedicated primarily to the complainant's personal health information. The IPC accepted the hospital's submission that the purpose of the records' creation was the security objective of maintaining safety for patients and staff. The complainant therefore has a right of access only to his reasonably severable personal health information.<br><br>The IPC would not order the complainant to sign any undertaking, nor would it order him to refrain from disseminating the footage or attempting to reverse the severing applied to it.<br><br>The IPC found that the risk that the obscuring technology the hospital chooses to apply to the video will be reversed is far too remote to justify withholding the entirety of the footage from the complainant.<br><br>The IPC held that it is reasonable to allow a health information custodian to claim costs, representing reasonable cost recovery, of the services of a third party for severing a record of personal health information for the purpose of granting access to the remainder. However, "reasonable cost recovery" does not mean actual recovery of all the costs borne by a health information custodian. Should the hospital choose to engage a third party to manipulate the video footage beyond what is reasonably necessary to protect the privacy of the individuals whose images are obscured, or if the third party's costs are otherwise excessive, the hospital may not be permitted under PHIPA to recover the full cost of the fee charged to it by the third party. As noted |

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| | | above, the fee charged by the custodian (including any component of the fee based on third party charges to the custodian) may be the subject of a complaint to, and reviewed by, the IPC. |
| Decision 118<br><br>2020<br><br>**Hospital**<br><br>(Submissions also made by the CMPA; the Ontario Pharmacists Association; the Canadian Society of Hospital Pharmacists (Ontario Branch); the Institute for Safe Medication Practices Canada; the Canadian Patient Safety Institute; and HIROC) | A patient alleged that the inclusion of excessive personal health information on hospital-issued electronically generated prescriptions violates the privacy of patients. The complainant identified particular concerns with the inclusion of her OHIP number and her Medical Record Number (MRN).<br><br>As part of its response to the complaint, the hospital concluded that it could remove from its prescriptions MRN, as well as OHIP number, except for prescriptions for controlled substances—e.g., narcotics, benzodiazepines—when OHIP number is required.<br><br>The hospital decided to remove the patient's "sex" data element from its aEPR prescriptions but not from its Family Practice EMR prescriptions, because that system is provided to the hospital by a third-party vendor and hosted by another custodian on behalf of the hospital and a number of other hospitals. Any modification to the hospital's EMR-generated prescriptions would require greater consultation with the vendor, the hosting services provider and potentially other bodies, including the Ministry of Health and OntarioMD, and could not be accomplished by the hospital alone.<br><br>The hospital maintained its position that patient sex is a relevant factor in dosing decisions, as well as for | The IPC dismissed the complaint.<br><br>The IPC concluded that the hospital's transmission of patient personal health information to a pharmacy through a hospital-issued prescription is an authorized disclosure of that information, made on the basis of a patient's assumed implied consent, and that the disclosure in that context of the particular personal health information at issue (patient first and last name; address; telephone number; date of birth; OHIP number (only for prescriptions for controlled substances—e.g., narcotics, benzodiazepines); and sex (as an element on Family Practice EMR prescriptions only)) complies with PHIPA.<br><br>The IPC was satisfied that the hospital has in place a process to address a patient's withholding or withdrawal of consent in respect of the disclosure of personal health information through a hospital-issued prescription. The hospital agreed to standardize this process and put it in writing and to review its privacy training materials to ensure that its staff are educated about its obligation under s. 20(3). In addition, the IPC recommended that the hospital adopt a standard approach to documenting any refusals of patient consent and any resulting notifications given under s. 20(3), and to consider adopting a standard form of notice under s. 20(3). |

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| | patient identification purposes. As such, the hospital is assessing the effects of the removal of this data element from its aEPR prescriptions, and will consider any effects before recommending removal of sex from its Family Practice EMR prescriptions. | |
| Decision 119<br><br>2020<br><br>**Pain Management Clinic** | A patient of a pain management clinic sought a copy of his medical records.<br><br>The clinic issued a decision providing access. The patient believed that additional records should exist, specifically images and discharge papers that were referenced in the documents that he received.<br><br>The clinic explained that the images were not saved or recorded because of an ultrasound machine malfunction and the discharge papers were not completed because the patient experienced a medical emergency during his appointment.<br><br>The patient filed a complaint with the IPC challenging the reasonableness of the clinic's search for records. | The IPC upheld the clinic's search as reasonable and dismissed the complaint.<br><br>The complainant did not provide sufficient evidence to establish a reasonable basis for his belief that additional responsive records exist.<br><br>The clinic gave a sufficient explanation for why it was unable to locate and provide the complainant with the images and discharge papers.<br><br>Decision 121 dismissed a request for reconsideration of this decision. |
| Decision 120<br>(includes an order)<br><br>2020<br><br>**Hospital** | A patient sought access under FIPPA to all hospital video surveillance footage taken of him during two days he was a patient at the hospital.<br><br>The hospital found video taken on one of the two days and issued a fee estimate of $2,316.50 for an external service provider to obscure images of non-hospital staff in the video.<br><br>The video was composed of four recordings from three different hospital cameras. It was compiled by | The IPC ordered the hospital to grant access to most of the video, excluding 12 seconds of images of two other patients to be obscured.<br><br>The IPC concluded the video surveillance footage included PHI. The IPC concluded that images of the requester and images of hospital staff and police officers interacting with him at the hospital were his PHI. However, the IPC also held that the video images of other patients and images of hospital staff, police officers and firefighters who do not interact with the complainant were not the complainant's PHI. |

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| | the hospital at the request of the Crown Attorney's office for use in a law enforcement proceeding.<br><br>Although the hospital and the complainant treated it as an access request and appeal under FIPPA, the IPC treated as a complaint under PHIPA. | The IPC concluded the video recordings were not "dedicated primarily to the complainant's personal health information", even though most of the video contained the complainant's PHI. The video surveillance footage was recorded for security purposes and the video that was compiled from the footage was created for a legal proceeding.<br><br>The complainant only had a right of access to his PHI in the video that could be severed from the rest of the video.<br><br>The IPC concluded that images of hospital staff assisting other patients are not the personal information of those staff. Similarly, the police officers and firefighters appear in the video in a professional capacity, and not a personal one; therefore, images of them in the video do not qualify as their personal information under FIPPA. The hospital was required to disclose those remaining portions of the video to the complainant under FIPPA (i.e. parts of the video in which he does not appear but hospital staff, police officers, and firefighters do).<br><br>The IPC upheld the hospital's search for records as reasonable.<br><br>This decision also discusses fees. The fees were analyzed under PHIPA and not FIPPA. The hospital was able to charge a $100 fee for reviewing the video and providing it on a CD and charge for obscuring 12 seconds of the video. |
| Decision 121 (same case as 119)<br><br>2020<br><br>**Pain Management Clinic** | Complainant in Decision 119 made a request to the IPC for reconsideration. | The IPC denied the reconsideration request.<br><br>The complainant alleged but did not establish a fundamental defect in the adjudication process or a clerical error, accidental error or omission or other similar error in the Decision. |
| Decision 122 | | |

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| Does not exist | | |
| Decision 123 (includes an order)<br><br>2020<br><br>**Hospital**<br><br>(See also Decision 161) | A patient requested video recordings of events leading up to, and including, his restraint and placement in a seclusion room by hospital staff.<br><br>The hospital is the province's only high security forensic mental health program for clients served by both the mental health and justice systems. | The IPC concluded that the video recordings contained the requestor's PHI. The IPC ordered the hospital to grant the complainant access to the portions of the complainant's PHI that were not subject to an exemption and could be severed. The hospital was not required to grant access to video recordings or details of the high security facility's physical layout and video surveillance system. The IPC found that most of the video footage containing the complainant's PHI could be severed by using obscuring technology to withhold the background portions that revealed information about the facility's physical layout and video surveillance system. However, the IPC identified two portions of video to be withheld that could not reasonably be severed.<br><br>This decision discusses the test for records that are "dedicated primarily to" the requestor's PHI.<br><br>This decision also discusses the test when granting access to records could give rise to a risk of serious harm. The complainant was aware of the circumstances of his restraint and placement in a seclusion room, including identifying information about the individuals against whom he filed a complaint, who were the same staff members that the hospital suggested were most at risk of the harm. The hospital's evidence did not demonstrate a risk of harm well beyond the merely possible or speculative. |
| Decision 124<br><br>2020<br><br>**Rehabilitation Clinic** | A rehabilitation clinic reported two breaches:<br><br>1. the estranged spouse of a clinic employee had access to PHI of clinic clients stored on personal computing devices that were in the possession of the spouse (inadvertently downloaded by the employee); and | The clinic confirmed that the spouse returned the devices and that he deleted the emails, had not made any copies of, retained or shared the emails or any other PHI of clients of the employee or the clinic.<br><br>The clinic revised its Clinician Agreement, Privacy Policy and Confidentiality Agreement to teach staff that: |

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| | 2. the spouse reported discovering emails in his account that contained additional PHI of clinic clients (sent by the employee to her spouse for printing). | • printing a document may create a copy in a computer's temporary downloads file and it is necessary to delete the temporary downloads folder daily or set up automatic deletion<br>• they are not permitted to send PHI to a personal email address<br>• they may only send, download, or store PHI in very limited circumstances; namely, where remote access is not available and the records cannot be viewed from an encrypted device<br>• they may not leave confidential information exposed for others to view."<br><br>The clinic also instituted annual privacy training for all employees and specific instructions and training to all staff in response to the breaches.<br><br>The IPC concluded the clinic's response was sufficient and no order was required. |
| Decision 125<br><br>2020<br><br>**Hospital** | A patient requested correction of records of his personal health information that contained a cancer diagnosis because he disagreed with the diagnosis.<br><br>The hospital responded that it could not correct records that it did not create, and for those that it did create, the information was accurate and complete for the purposes for which it was collected and used. The hospital invited the patient to prepare a Statement of Disagreement to accompany his records going forward. | The IPC found no review of the complaint was warranted because there were no reasonable grounds for review.<br><br>The patient did not establish that the hospital had a duty to correct the record and the hospital responded adequately to the complaint. |
| Decision 126<br><br>2020<br><br>**Social worker** | An individual received marriage counselling from a social worker. A couple of years later he received court-mandated "co-parenting counselling sessions" from the same social worker after separating from his spouse. He sought access to the social worker's | In relation to the marriage counselling sessions, the IPC found:<br><br>• they were for a health-care purpose and so the social worker is a HIC and the records related to marriage counselling are covered by PHIPA; |

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| | records in relation to both the marriage and co-parenting counselling. | • the respondent conducted a reasonable search for records; and<br>• as the complainant's right of access to the notes of joint counselling sessions affect the interests of his former spouse, the IPC will notify her and give her an opportunity to provide representations on the issues raised by his request for those records.<br><br>Note though that the IPC said that not all marriage counselling will necessarily qualify as health care and the facts of a particular case must be taken into consideration.<br><br>In relation to the co-parenting sessions, the IPC found that they were not health care and so the social worker is not a HIC and records related to them are not covered by PHIPA. The IPC therefore made no determination on the issues raised with respect to those records.<br><br>The IPC acknowledged that the same Consent and Disclosure form was used at the outset of both the marriage counselling and the co-parenting sessions but in relation to the co-parenting sessions placed greater weight on the terms of the court order requiring them, which described the purpose as assisting the parents in managing parenting style differences, anticipated that the parents would each receive their own separate individual counselling, and emphasized the welfare of the children rather than the parents.<br><br>Decision 146 dismissed a request for reconsideration of this decision. |
| Decision 127<br>(includes an order)<br><br>2020<br><br>**Hospital** | The complainant sought access to his PHI on the hospital's electronic systems including underlying electronic data. Decision 52 determined that the complainant was entitled to access data in the hospital's electronic systems, devices or archives that could be extracted through custom software queries to the available reporting views identified by the hospital. | The IPC found that $900 of the hospital's fee (beyond the initial $30 fee) to execute custom queries to extract the PHI requested did not represent "reasonable cost recovery" under PHIPA.<br><br>The hospital was ordered to issue a revised fee estimate if it seeks to recover the third party costs. The revised fee estimate should describe the nature of the work the third party provider is to complete and include information from |

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| | The hospital subsequently issued a fee estimate in the amount of $940 to the complainant for full access to the records, including $10 for a CD (no longer an issue at adjudication) and $30 initial fee.<br><br>The complainant sought a review of the hospital's $900 fee for programming costs to be paid to a third party to extract the requested information. | the third party as to how long it estimates the work will take based on the specific request.<br><br>The IPC accepted that despite the absence of any reference in the 2006 framework to "programming costs," the hospital was entitled to reasonable cost recovery for its efforts to provide access to the complainant's records through the development and application of custom software queries. However, the IPC found that the hospital's evidence fell short of the type of evidence required to support the reasonableness of the programming costs. A time estimate of 12 hours was given without information as to why that amount of time was required. And the $75 hourly rate for the 12 hours was said to be the "average contract rate" without any additional evidence as to why this was "average" or "reasonable."<br><br>Although an invoice from a service provider is not required, information describing the exact nature of the work to be completed along with the estimated time the third party claims it will take to complete the work should accompany a HIC's fee estimate.<br><br>And, "reasonable cost recovery" does not mean actual recovery of all the costs borne by the custodian. Accordingly, in this case the hospital may not be permitted under PHIPA to recover the full costs of completing the request, even if it submits an invoiced amount with its fee estimate. |
| Decision 128 (Reconsideration of Decision 83)<br><br>2020<br><br>**Community service for children, youth and families** | In Decision 83, the IPC upheld the agency's decision not to provide access to a parent who asked for access to his son's counselling records. The son was capable of making his own treatment and privacy decisions and instructed the agency not to share his health record with his father.<br><br>The complainant applied for a judicial review of PHIPA Decision 83. Upon being notified of the application for | In this Reconsideration Decision, the IPC found that it had failed to address the appellant's arguments relating to the provisions of PHIPA giving health information custodians discretion to disclose personal health information.<br><br>The IPC found though that in denying the complainant's request, the agency not only considered his right of access under PHIPA but also considered the potential application of the relevant discretionary disclosure provisions in PHIPA. The IPC accepted that the complainant's motives for making the request were relevant to the agency's consideration of the "best interests of |

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| | judicial review, the IPC decided to reconsider Decision 83 on its own initiative to address matters the adjudicator failed to consider that amounted to fundamental defects in the adjudication process under section 27.01(a) of the IPC *Code of Procedure from Matters under the Personal Health Information Protection Act, 2004*. | the child" when exercising its discretion under section 41(3)(h) of PHIPA. The IPC found that the agency's decision not to disclose the requested information was properly made.<br><br>The IPC found that while it had failed to consider the complainant's arguments regarding the paramountcy of the *Divorce Act* over PHIPA, these arguments did not provide grounds for reconsideration.<br><br>No order issued. |
| Decision 129<br><br>2020<br><br>**Community children's mental health agency** | A father filed a complaint against a counselling centre's decision to deny him access to records containing the PHI of his three children.<br><br>Access was denied on the basis of the risk of harm exemption. | The IPC found that the father (a joint custodial parent) did not have an independent right of access to his children's PHI under *PHIPA*, given the children's mother's objection, and dismissed his complaint. Because the father did not have an independent right of access, the IPC did not consider the application of the risk of harm exemption.<br><br>However, the IPC found that the father's evidence raised the potential application of sections 41(1)(d)(i) (court order) and 43(1)(h) (other statute) of PHIPA which may permit disclosure without consent of the other parent. The IPC made no order but recommended that the custodian turn its mind to the discretionary disclosure provisions under PHIPA and notify the father of its decision. The IPC highlighted that it cannot order disclosure but can review the custodian's exercise of discretion.<br><br>Decision 149 dismissed a reconsideration request of this decision. |
| Decision 130<br>(includes an order)<br><br>2020<br><br>**Hospital** | A patient requested from hospital all medical records including, but not limited to, all test results, handwritten office notes, and consultations, for a period of two years and four months. The patient enclosed $30 cheque with request. | Hospital is entitled to charge a fee of $399, being reasonable cost recovery, for access to 1652 pages of electronic records. The IPC did not uphold the hospital's fee of $438 and ordered it to provide a refund to the complainant of the difference between $399 and the amount already paid.<br><br>The 2006 framework provides the best framework for determining the amount of "reasonable cost recovery" under PHIPA. PHIPA Decision 111 confirmed the principle that a HIC responding to a request for access to |

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| | The hospital issued an invoice for an additional payment of $443.<br><br>A complaint was filed disputing the fee. | records of PHI is entitled to review the records before granting access, and to charge fees for its review. This decision follows the Decision 111 guidance that:<br><br>• For records requiring only a "straightforward review", five seconds per page is reasonable.<br>• For records requiring more detailed review, two minutes per page is reasonable.<br><br>Hospital charged $180/hour for review, which IPC did not question. |
| Decision 131<br><br>2020<br><br>**Hospital** | A patient submitted a correction request to a hospital regarding a 4-page Psychiatry Consultation Report related to her visit to the hospital's emergency room.<br><br>The hospital denied the complainant's request to strike out the terms "psychosis or pre-psychosis" on the basis that the "professional opinion or observation" exception in section 55(9)(b) applied. The hospital agreed to attach a Statement of Disagreement to the record. | The IPC upheld the hospital's decision not to make the requested corrections to the doctors' professional opinions or observations.<br><br>In addition, the complainant failed to establish that the remaining information at issue was inaccurate or incomplete for the purpose for which the information is used.<br><br>As a result, the hospital is not required to correct any of the record and no order is issued. |
| Decision 132<br>(includes an order)<br><br>2020<br><br>**Family Health Team** | A lawyer submitted a request for access to his client's PHI. The Family Health Team (the custodian) issued a decision granting complete access to the records with a fee of $150.<br><br>The custodian advised that the review of the complainant's client's medical chart by his physician took 45 minutes but that it was only charging for 30 minutes which, at the physician's hourly rate, came to $65. The custodian also advised that it had calculated | The IPC found that the fee of $150 exceeds the amount of "reasonable cost recovery" under section 54(11) of PHIPA and ordered that the fee be reduced to $58.50. Also ordered that if any of the responsive records are available electronically and are transferrable without being scanned, the custodian must reduce its fee by $0.25 per page.<br><br>The IPC also found that although the custodian failed to provide a fee estimate as required by section 54(10) of PHIPA, no useful purpose would be served by requiring the custodian to provide the complainant with a fee estimate as the appropriateness of the custodian's fee was resolved by the decision. |

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| | $66.10 for photocopying and $19 for postage and administration.<br><br>The lawyer (now the complainant) filed a complaint with the IPC about the custodian's fee. | The IPC said the custodian could charge $30 (flat fee for 15 min of review, 20 pages of photocopies, packing and mailing the records, and admin tasks) + $28.50 for photocopies after the first 20 pages (114 x $0.25) = $58.50.<br><br>Although a custodian must review records prior to granting access, even if a fee is in keeping with the 2006 framework, it must also represent "reasonable cost recovery". Was it reasonable for the custodian to take 45 minutes to review 134 pages of responsive records? No evidence that the records required more than straightforward review. Reasonable amount of time therefore would be 11 minutes (using five seconds per page guideline from Decision 111), which is within the 15 minutes accounted for in the $30 set fee.<br><br>Absent additional information the amount for "postage and administration" is not allowed as it is subsumed within the $30. |
| Decision 133 (includes an order)<br><br>2020<br><br>**Doctor** | A lawyer submitted a request for access to his client's personal health information. Dr. John Stronks (the custodian) issued a decision granting complete access to the requested records with a fee of $216.75.<br><br>The lawyer (now the complainant) filed a complaint with the IPC about the custodian's fee. | The IPC found that that the custodian's fee of $216.75 exceeds the amount of "reasonable cost recovery" under section 54(11) of PHIPA and ordered that the fee be reduced to $31.75. Also ordered that if any of the responsive records are available electronically and are transferrable without being scanned, the custodian must reduce its fee by $0.25 per page<br><br>The IPC also found that although the custodian failed to provide a fee estimate as required by section 54(10) of PHIPA, no useful purpose would be served by requiring the custodian to provide the complainant with a fee estimate as the appropriateness of the custodian's fee was resolved by the decision.<br><br>The IPC said the custodian could charge $30 (flat fee for 15 min of review, 20 pages of photocopies, packing and mailing the records, and admin tasks) + $1.75 for photocopies after the first 20 pages (7 x $0.25) = $31.75.<br><br>Although a custodian must review records prior to granting access, even if a fee is in keeping with the 2006 framework, it must also represent "reasonable |

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| | | cost recovery". Was it reasonable for the custodian to take 45 minutes to review 27 pages of responsive records? No evidence that the records required more than straightforward review. Reasonable amount of time therefore would be 2-3 minutes (using five seconds per page guideline from Decision 111), which is within the 15 minutes accounted for in the $30 set fee.<br><br>"Postage & handling" of $35 not allowed. Should be included within the $30 set fee. |
| Decision 134<br><br>2020<br><br>**Developmental services provider**<br><br>See also Decision 139 | Service Coordination for People with Developmental Disabilities (now called Service Coordination Support, or SCS) received a request for access under PHIPA. SCS located responsive records and granted partial access.<br><br>The complainant filed a complaint with the IPC on the basis of her belief that additional records should exist. | The IPC found that SCS is not a HIC under PHIPA, and dismissed the complaint.<br><br>SCS serves adults with developmental disabilities and children who have a confirmed diagnosis of a developmental disability or autism spectrum disorder in accordance with specified clinical criteria. SCS operates as a "service agency," as defined in the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008* (SIPDDA).<br><br>The IPC found that it is not SCS' primary purpose to provide health care.<br><br>The requirement to have policies and procedures regarding health-related matters is not determinative of whether the primary purpose of SCS is to deliver health care.<br><br>What is common to each of the six services offered by SCS is SCS' role as a coordinator for, or link to, a wide range of services offered by third parties to individuals with developmental disabilities and/or autism. The effect of the individuals' participation in those third-party programs may be that it enhances their health, but that does not transform SCS' role into one that has a primary purpose of providing health care.<br><br>Given that SCS is not a HIC under PHIPA, there is no basis to review SCS' search for records. |

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| Decision 135<br><br>2020<br><br>**Hospital** | A hospital received a correction request under PHIPA asking that the hospital make 23 corrections to a consultation note prepared by a psychiatrist following two appointments for a mental health assessment.<br><br>The hospital fully refused to make the requested corrections and informed the complainant of her right to have a statement of disagreement attached to the consultation note. After further requests from the complainant to make the corrections, the hospital attached her signed correction letter to a statement of disagreement and added it to her health record.<br><br>The complainant filed a complaint with the IPC.<br><br>During the IPC's review, both the complainant and the hospital claimed, for different reasons, that the hospital may not be the "health information custodian" under PHIPA with respect to the consultation note. | The IPC dismissed the complaint, finding that:<br><br>• the hospital is the "health information custodian" as defined in section 3(1), with respect to the consultation note<br>  ○ the psychiatrist was acting as the hospital's "agent" under PHIPA with respect to the complainant's personal health information<br>  ○ although the complainant's goal was to obtain a record of her personal health information showing that she was not suffering from a psychiatric illness and to possibly use it to support her position in a court proceeding, the primary purpose of her visits to the psychiatrist was to obtain a mental health diagnosis – the psychiatrist thus provided "health care" to the complainant and prepared the consultation note for a "health-related purpose"<br>• the hospital is not required to correct some of the complainant's personal health information in the consultation note because it consists of professional opinions or observations that the psychiatrist made in good faith<br>• the hospital does not have a duty under section 55(8) to correct other personal health information in the consultation note because it is not incomplete or inaccurate<br>  ○ the test in section 55(8) is intended to address whether a health information custodian or agent completely and accurately recorded personal health information from a patient at the time they collected the information; in most circumstances, it is not meant to give patients the right to correct a record of their personal health information after the fact if they failed to provide a health information custodian with complete and accurate information at the time that information was collected and recorded |

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| | | • whether the hospital's decision to attach a statement of disagreement to the consultation note complies with the requirements in section 55(11) is moot because the hospital agreed to remove it |
| Decision 136 (includes an order) (same complainant as Decision 91)<br><br>2020<br><br>**Hospitals, Community Care Access Centres, Medical Clinics, Paramedic Services, Physicians, Physiotherapists and others** | The complainant began filing complaints with the IPC in 2014 and has initiated 29 access and/or correction complaints against various health information custodians.<br><br>She sent the IPC voluminous correspondence that the IPC characterizes as repetitive and incoherent and says could not reasonably be reviewed by IPC staff (the complaint files contain 5,000-6,000 pages of correspondence and an additional 4,000 pages of correspondence have been received by the IPC from the complainant). | The IPC found that the complainant meets the criteria for being a vexatious litigant. The IPC dismissed all of her complaints as being frivolous, vexatious and/or an abuse of process and ordered that she not be permitted to file any new complaints under PHIPA without first seeking permission in writing from the IPC. The IPC said that such a decision and order should only be made sparingly, with the greatest of care and in the clearest of cases.<br><br>The IPC named the complainant, finding the value to the health care sector of being put on notice that the complainant has been declared a vexatious litigant before the IPC outweighs the complainant's interest in not being identified. A decision that contains her name in full will be made available to all of the named respondents in her multiple complaints, as well as any other health care provider with a legitimate interest.<br><br>The IPC found that the complainant's conduct bears the hallmarks of that of a vexatious litigant and also amounts to an abuse of the IPC's process:<br><br>1. Most of the complainant's complaints do not identify the complainant's access or correction request, or the decision of the custodian that the complainant is complaining about.<br>2. The vast majority of her complaints – her allegations that the respondents are stealing and/or altering her records, that her diagnostic imaging or other laboratory reports relate to someone else's body, and that all the diagnoses she has received are incorrect – are bald allegations that cannot succeed.<br>3. At least some of the complainant's complaints are a clear attempt to revisit matters that were addressed in now-closed complaint files. |

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| | | 4. The complainant's conduct in sending the IPC thousands of pages of repetitive, disorganized, incoherent, and/or freeform correspondence is burdening the IPC and straining its resources.<br>5. The complainant is bringing proceedings in multiple forums against the same custodians, and these proceedings all relate to her belief that her diagnoses are wrong and her medical records are being altered. And one of these forums (the Superior Court of Justice) has declared the complainant a vexatious litigant in that forum. |
| Decision 137 (includes an order)<br><br>2020<br><br>**Royal Centre of Plastic Surgery** | A lawyer submitted a request for access to records of his client's personal health information from the Royal Centre of Plastic Surgery (the custodian).<br><br>The custodian issued a decision granting access to eight pages of records upon payment of a $141 fee. The complainant, through his lawyer, filed a complaint with the IPC regarding that fee. | The IPC found that the custodian's fee exceeds the amount of "reasonable cost recovery" under section 54(11) of PHIPA and ordered that the fee be reduced to $30.00.<br><br>Physician spent 30 minutes reviewing eight pages of responsive records and charged their hourly rate for 15 minutes of the 30 minutes.<br><br>The IPC found it reasonable to conclude that the eight pages of responsive records would require a straightforward review by the custodian, which could be completed at a rate of five seconds per page. Accordingly, a reasonable amount of review time would fall within the 15 minutes accounted for in the set $30 fee under section 25.1(1) of the 2006 framework. In the circumstances, this amounts to "reasonable cost recovery" as required by section 54(11) of PHIPA. |
| Decision 138<br><br>2021<br><br>**Doctor** | A patient made a number of correction requests to his family physician.<br><br>The physician agreed to make some but not all of the corrections so the patient filed a complaint with the IPC. | The IPC found that the physician did not have a duty to correct because the PHI consisted of the physician's professional opinions or observations, made in good faith. The IPC upheld the physician's decision not to make the requested corrections and dismissed the complaint with no order.<br><br>The complainant was advised that he was entitled to submit a statement of disagreement to be included in his records of personal health information. |

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| Decision 139<br><br>2021<br><br>**Developmental services provider**<br><br>See also Decision 134 | Service Coordination for People with Developmental Disabilities (now called Service Coordination Support, or SCS) received a request for access to records under PHIPA relating to the requestor's son.<br><br>SCS located responsive records and granted partial access to them. The parent filed a complaint with the IPC. | The IPC found that no review of the complaint was warranted because there were no reasonable grounds for a review, given that it was already decided in PHIPA Decision 134 that SCS is not a health information custodian. |
| Decision 140<br><br>2021<br><br>**LHIN** | On behalf of his child, a parent made a request to the LHIN under PHIPA for access to all of his child's formal assessments or case notes authored by various Community Care Access Centre (CCAC) case coordinators since 2010.<br><br>The LHIN provided several records to the parent. Unsatisfied with the LHIN's response and believing that additional records ought to exist, the parent complained to the IPC. | The IPC determined that no review of the complaint was warranted and dismissed the complaint.<br><br>The IPC found the complainant's expectation that the records ought to exist logical and reasonable, but concluded that the LHIN conducted a reasonable search and that further searches would not yield the records. |
| Decision 141<br><br>2021<br><br>**Hospital**<br><br>(See also Decision 201) | A patient made an access request for records containing her personal health information related to a 2007 surgery.<br><br>The hospital granted access. The patient complained to the IPC alleging that the hospital's search for records was not reasonable. | The IPC found that the hospital conducted a reasonable search for records responsive to the complainant's main concerns and dismissed the complaint.<br><br>The hospital's search for electronic records was reasonable; its search was coordinated and completed by experienced individuals knowledgeable in the subject matter of the request who made a reasonable effort to identify and locate responsive records.<br><br>The complainant failed to establish a reasonable basis for her belief that additional electronic records related to her surgery and recovery exist. |
| Decision 142<br>(includes an order) | A hospital received a request for access to video surveillance recording. The hospital took the request as a freedom of information request (under FIPPA) | The IPC found:<br><br>1. The hospital should have responded under PHIPA first. |

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| 2021<br><br>**Hospital** | and not a personal health information request (under PHIPA). The video surveillance related to a hospital security intervention not a clinical recording. The hospital issued a fee quote to release the recordings after they were edited by a third party to remove other patients' identifiers. The requester objected to the framing under FIPPA and the fees. | 2. The video surveillance recordings were records of PHI.<br>3. The images of hospital staff and security should not be redacted but the images of other patients should be redacted.<br>4. The video recordings were not dedicated primarily to the patient – so the patient's information would be separated from the rest of the content.<br>5. There were no exemptions to the right of access.<br>6. The hospital was allowed to hire an external company to redact the recordings.<br>7. The fees for access should be determined under PHIPA not FIPPA.<br>8. The hospital had to reconsider its fee quote. |
| Decision 143<br><br>2021<br><br>**Medical centre** | A patient made an access request for her own chart and her son's chart from a medical centre for the purpose of transferring the charts to their physician's new practice.<br><br>The medical centre initially invoiced fees of $82 for the patient's chart (188 pages) and $53.25 for her son's (73 pages), itemized as photocopy costs at 25 cents per page plus an "administration fee" of $10.<br><br>The patient complained to the IPC about the medical centre's fees, in particular because she had requested the records on a USB. | During adjudication of the complaint, the medical centre revised its fee to $40 for each chart, itemized as $30 for the electronic transfer of the medical records and a $10 administration fee for providing a USB flash drive.<br><br>The IPC upheld the custodian's revised fee and dismissed the complaints, referring to past decisions dealing with fees and to the 2006 framework. The IPC agreed with the custodian that it was entitled to insist on using its own USB devices for chart transfers, for security reasons, rather than use a device supplied by the patient. |
| Decision 144<br><br>2021<br><br>**Hospital** | A patient spoke with the hospital's Privacy Officer and requested restrictions on the use of her personal health information. Although the hospital was not capable of locking the patient's electronic health record (EHR), it implemented a warning flag. It also | The IPC found that the hospital failed to take reasonable steps to implement the complainant's lockbox request after it received the lockbox request form and, as a result, certain hospital caregivers used the complainant's personal health information without consent or other authority:<br><br>• With respect to the initial request prior to submitting the form, although a conversation could be sufficient to communicate the |

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| (See also Decision 148) | sent her a lockbox request form, which she did not return.<br><br>Three years later the patient submitted a lockbox request form to the hospital after requesting an audit of her EHR and learning that hospital personnel had accessed her information contrary to what she had requested.<br><br>The patient filed a complaint with the IPC alleging unauthorized access to her records after her initial attempt to put a lockbox in place and that the hospital was incapable of implementing her direction.<br><br>After the complaint, the hospital put into place a newly worded consent directive warning flag on the patient's EHR.<br><br>A couple of years after the IPC complaint was filed, the hospital implemented a new electronic medical record system with a new way to implement consent directives. | terms of a consent directive, the IPC was unable to find on the evidence that the conversation with the Privacy Officer amounted to a consent directive to which the hospital was required to give effect.<br>• The initial EHR warning flag was not adequate to ensure compliance with the lockbox request or with PHIPA – it told caregivers to proceed to the record if they had patient consent or were part of her circle of care, when the patient's request was that they not rely on assumed implied consent.<br>• The updated consent directive warning flag was also insufficient because it did not alert users to the existence of a consent directive on the specific patient's health record. In addition, the flag only showed up when records were searched by medical record number or name and not when accessed from a roster of patients.<br><br>The IPC rejected the complainant's assertions that the personal health information that is reasonably necessary to provide health care is limited only to information about the specific medical issue which is the subject of a health care consultation.<br><br>With the introduction of a new electronic medical records system, the hospital remedied the deficiencies in its procedures for implementation of consent directives:<br><br>• The hospital's "consent directive flag" that advises users seeking to access records that they must have either the express consent of the patient, or be acting for a purpose authorized without consent, is part of reasonable steps taken by the hospital to implement consent directives.<br>• The flag requires the user to document the consent, the authorized purpose, and then enter their password. The flag can be applied to records relating to a single encounter (which was the complainant's original concern), a specific user, or the entire record. In addition, |

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| | | users are told that accesses beyond the flag are monitored by the hospital's privacy office.<br>• The IPC accepted the hospital's rationale for the implementation of a seven-day "window" following consent to access a patient's records.<br><br>The IPC made one recommendation to improve the directions given to users of the hospital's electronic medical records. The hospital's directions combined a list of purposes that require consent with other purposes that do not. "Direct patient care" (which requires consent) is listed alongside "billing" (which does not require consent). While the hospital's newsletter introducing the new directions was clear, the directions within the EHR itself were less clear and could lead to confusion. The IPC recommended that the hospital amend the instructions to enhance clarity about which listed reasons permit access to records without consent, and which require consent.<br><br>The IPC agreed with the hospital that PHIPA does not require it to ensure compliance with a patient's lockbox request through imposition of a technological barrier to access in its EHR.<br><br>The IPC stated that even if hospital caregivers gain access to a patient's records without the requires consent or other authorization (such that there is an unauthorized access within the meaning of PHIPA), such an access does not, by itself mean that the hospital has failed in its responsibilities to take reasonable steps to protect PHI under PHIPA - PHIPA does not require a health information custodian to provide absolute guarantees. |
| Decision 145<br>(includes an order)<br><br>2021<br><br>**Physician** | A patient sought access to her records of PHI from a psychiatrist who was no longer seeing patients. She received no response and made a deemed refusal complaint to the IPC. | The IPC found that the physician was deemed to have refused the request for access to medical records and ordered him to issue a response, in accordance with PHIPA, to the request within 10 days, and to provide a copy to the IPC to verify compliance. |

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| | The IPC send a Notice of Review to the complainant and the physician and sent six follow-up emails to the physician with no response. | |
| Decision 146 (same case as 126)<br><br>2021<br><br>**Social worker** | Complainant in Decision 126 made a request to the IPC for reconsideration.<br><br>Complainant also alleged discrimination against the IPC adjudicator and asked that she recuse herself. | As a preliminary matter, the adjudicator dismissed the complainant's request that she recuse herself.<br><br>The IPC dismissed the reconsideration request. The complainant did not establish grounds for reconsideration. |
| Decision 147<br><br>2021<br><br>**Hospital** | A patient went to the ER of the hospital after a motor vehicle accident. A few days later she received a telephone call from a physician. The physician identified himself and said that he worked in the emergency department of the hospital and was conducting a courtesy follow-up call to see how she was doing. He had not provided or assisted in providing health care to the patient when she was at the hospital. The physician offered to have a doctor from a physiotherapy clinic contact her. When the patient went to the physiotherapy clinic, a female lawyer was present and talked to her for 30 minutes about the lawsuit process for MVA injury victims. This lawyer was later determined to be the physician's spouse.<br><br>After this appointment, the patient began to have concerns about the physician's access and use of her PHI, given that he had not provided her care when she was at the hospital. She contacted the hospital with her concerns. | The IPC concluded that the so-called "quality audit" conducted by the physician was not an authorized use under PHIPA.<br><br>The IPC was unable to determine whether the physician disclosed PHI to his personal injury lawyer spouse.<br><br>The IPC concluded that the hospital's previously vague policies, practices and procedures regarding quality audits, and the complete lack of privacy training for physicians, did not amount to taking reasonable steps to protect PHI within the meaning of section 12(1) of PHIPA. However, the IPC found that the hospital had since remedied those issues.<br><br>The hospital created a new policy "Performing Quality Audits" in response to the breach that adequately sets out: the purpose of the policy, the process for submitting and receiving approval, and exactly what is expected and necessary for quality audits, including who needs to approve them and how.<br><br>With respect to physician training, the hospital made changes including:<br><br>• providing new credentialed staff members (physicians) with information about key policies, including the Performing Quality Audits policy, as part of the Medical Affairs onboarding process;<br>• providing policy orientations through Departments and Programs; |

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| | The hospital reported this matter to the IPC, explaining that it had looked into the patient's allegations and discovered a hospital clerk and the physician identified by the patient, both of whom were not within the patient's circle of care, had accessed her records of PHI.<br><br>The hospital reported that the clerk inappropriately accessed over 600 charts over two years, and the physician had accessed approximately 230 charts for patients that he was not providing care to.<br><br>While the clerk's employment at the hospital was terminated as a result of her actions, the physician's accesses were not immediately considered unauthorized because the physician claimed to be doing a quality audit that he had discussed with his Emergency Room Chiefs. | • requiring physicians to sign a declaration that they understand and will comply with hospital processes and policies;<br>• requiring new physicians to complete a privacy e-learning module as part of the on-boarding process; and<br>• mandatory annual privacy training for all physicians and staff, which includes a component related to quality audits.<br><br>The hospital also now conducts quarterly audits to identify inappropriate access.<br><br>The IPC review was concluded without proceeding to the adjudication stage and without an order being issued by the IPC.<br><br>The IPC included this postscript: "Hospitals, as well as other health information custodians, should be aware of the monetary value of [MVA] patients' personal health information and the related financial incentives that increase the risk of inappropriate disclosure. Accordingly, custodians should specifically turn their minds to, and carefully guard against, these risks when taking reasonable steps in the circumstances to protect personal health information in their custody or control against theft, loss and unauthorized use and disclosure." |
| Decision 148 (same case as 144)<br><br>2021<br><br>**Hospital** | Complainant in Decision 144 made a request to the IPC for reconsideration on the basis of errors of fact and "jurisdictional excess". | With one exception, the IPC found no basis for any of the grounds justifying reconsideration under section 27.01 of *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*.<br><br>The one exception was that the adjudicator found that she had omitted to fully address an allegation that a doctor (a radiation oncologist) disclosed the complainant's PHI (a clinical note containing information about the complainant's history and treatment for mental health conditions) to two other doctors (the referring physician and the complainant's "attending physician", who saw her during nine of her visits to the hospital), when it was |

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| | | not reasonably necessary for the provision of health care to the complainant (i.e. without authority).<br><br>The adjudicator reviewed this allegation and dismissed it, finding that the requirement in section 30(2) is based on "reasonable" necessity, which is a more expansive concept than the complainant's formulation of "necessary means necessary". |
| Decision 149 (same case as 129)<br><br>2021<br><br>**Community children's mental health agency** | Complainant in Decision 129 made a request to the IPC for reconsideration on the basis of a jurisdictional and/or an accidental error (or other similar error). | Reconsideration request denied. The complainant did not establish that a jurisdictional defect or accidental or other similar error relating to PHIPA Decision 129 occurred. The complainant therefore failed to establish grounds for reconsideration under the claimed grounds in ss. 27.01(b) and (c) of *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*. |
| Decision 150<br><br>2021<br><br>**Hospital** | A mother (as her child's representative/substitute decision-maker) made an access request to the hospital for psychological testing data in relation to her child, who was a patient in the hospital's Autism Program. In particular, the request was for "original [standardized psychological] test materials containing the name of the test, the date the test was administered, his [the child's] name and his [the child's] answers."<br><br>The hospital initially withheld the test, citing PHIPA s. 51(1)(c)'s exclusion for raw data. The hospital subsequently granted access to records of testing materials from one of three publishing companies that consented. (The hospital notified two others that did not respond or did not consent.) | The IPC found that the standardized test materials are records of PHI to which the right of access applies. But, the IPC found that as standardized psychological test booklets, the information is excluded by virtue of s. 51(1). And because there is no information in the records other than the raw data, there is no information that could be severed under s. 51(2).<br><br>With respect to reasonable search, the IPC found that the hospital provided sufficient evidence to show that it made a reasonable effort to identify all records responsive to the access request for all records relating to the patient. |

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| | The mother also raised whether additional records existed that she did not receive (the scope of the request broadened over time to include all records relating to the patient). | |
| Decision 151<br><br>2021<br><br>**Medical clinic** | The complaint involved a second incident in which a physician working at the clinic left a patient alone in a waiting room with a computer screen displaying the physician's schedule, which contained PHI of 35 patients.<br><br>The first incident when a patient was left alone in an internal waiting room with an unlocked computer screen displaying the physician's schedule and other patient's information led to the clinic: conducting refresher privacy training; and posting signs re privacy in all rooms; and changing the positioning of monitors. These remedial measures in response to the first incident occurred before the second incident. | The IPC found that the clinic failed to take reasonable steps to ensure the protection of the PHI against unauthorized disclosure as required by s. 12(1) of PHIPA. The IPC also found that the clinic did not notify the affected patients as is required by s. 12(2) of PHIPA. However, in light of the steps taken by the clinic to address the privacy breach, which included notifying the affected patients (three years after the incident following the IPC's recommendation), the IPC was satisfied with the clinic's response to the breach.<br><br>With respect to unlocked screens, the clinic's privacy policy requires staff and physicians to:<br><br>• always lock your screen when you are away from your computer and log out of PS;<br>• install a privacy screen over your monitor to make it difficult for casual visitors in your office to read the contents displayed; and<br>• avoid accidentally exposing sensitive information through conversations, exposed computer screens and unattended desks.<br><br>With respect to training, the clinic provided refresher privacy training to all staff and physicians after the first breach and committed to mandatory annual privacy training going forward. Since the second breach, the clinic has been conducting mandatory privacy meetings once a month with all staff.<br><br>Going forward, the clinic will require all of its staff and physicians to sign confidentiality agreements on an annual basis. |

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| | | Since the second incident, the clinic has provided training to its staff and reminded them that they are responsible for manually locking their computers when they are not in use or when stepping away from a computer.<br><br>The clinic has implemented other safeguards, including: a privacy warning screen on its EMR system; black-out privacy screens on all of its computers that blacks out screen content when viewed from the side; positioning monitors to face away from patients; sending an email every three months reminding staff to lock computers before leaving a room. |
| Decision 152<br><br>2021<br><br>**Hospital** | A father made an access request to a hospital for an audit of his son's medical record. The hospital provided the audit report with employee names redacted. The father made three further requests for an unredacted copy of the audit report and also requested an explanation for the redactions. After the complainant's third request, the hospital provided an unredacted copy of the audit report.<br><br>Although the issue was resolved, the IPC opened its own file to inquire into the hospital's practices for responding to access requests. | The IPC found that by providing redacted copies of the audit records without explaining why it refused access to the redacted portions, the hospital failed to comply with section 54(1)(c) and/or (d) of PHIPA.<br><br>In response to the issues raised in this investigation, the hospital advised that it reviewed its practices and that, going forward, when responding to an access request for audit records, it will provide access in full (without redaction of employee names), unless there is a provision under the Act that allows it not to do so. |
| Decision 153<br><br>2021<br><br>**Hospital** | The hospital reported unauthorized access by an employee to three patients' PHI. The hospital did not characterize the accesses as 'snooping' but as mistaken and not in accordance with hospital policies and processes. | The IPC found that the hospital failed in its duty to notify the affected patients of unauthorized uses of their PHI, as required by PHIPA.<br><br>Given the passage of time and the relatively benign circumstances of the privacy breaches, the IPC did not order notification. Apart from the failure to notify, the hospital responded to the breaches adequately by investigating and taking remedial action including a learning plan for the employee and auditing the employee's accesses every 2-3 months. |

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| Decision 154<br><br>2021<br><br>**Hospital** | An employee of the hospital filed a complaint with the IPC alleging that the hospital had violated PHIPA by not acting on her request to implement a lockbox on her Occupational Health Services (OHS) file to prevent the hospital from sharing the file's contents without her consent. The employee reported that the hospital shared her information in violation of her request. (The employee was never a patient of the hospital.) | Complaint dismissed. PHIPA does not apply to the hospital's handling of information in employee OHS files.<br><br>The complainant's OHS file contains identifying information about the complainant as an employee of the hospital and is maintained primarily for employment purposes, not for health care purposes, so is not PHI under PHIPA (s. 4(4)).<br><br>The IPC disagreed with the complainant that an IME (independent medical examination) assessing her fitness to return to work was "health care" under PHIPA. The IME was not done for a health-related purpose, but for the employment-related purpose of assessing the employee's workplace accommodation needs. The IPC explained that it has declined to follow the Divisional Court's 2006 *Hooper* decision in which an opposite finding was made about an OHS file and reviewed its own decisions regarding the meaning of "health care" under PHIPA. |
| Decision 155<br><br>2021<br><br>**Hospital** | A nurse at the hospital (who was also a patient) alleged that some of her colleagues (including a supervisor and a manager) accessed her PHI without authorization and, in one case, disclosed her information to another colleague. | The IPC found that the hospital breached s. 30(2) of PHIPA by using more of the complainant's health information than reasonably necessary to meet the purpose of the use; and failed to take reasonable steps to ensure that nurses fulfilling a specific role did not use PHI unnecessary to their duties. The IPC also found that an initial privacy investigation by managers who did not forward the complaint to the privacy office resulted in additional unauthorized uses of the complainant's health information.<br><br>Taking into account a second investigation, the IPC found that the hospital responded adequately to the breaches – including by formally defining the specific nurse role and its permitted accesses to patient health information and providing related training, and by changing privacy audit processes to avoid having managers involved in the investigation of privacy complaints initiated by their own staff. No orders were made. |

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| Decision 156<br><br>2021<br><br>**Health care and developmental services provider** | A mother made several requests for her children's records including a request for all records for both children.<br><br>The custodian issued a number of access decisions in which it maintained that through its various decisions, it had granted full access to all responsive records about the children.<br><br>The mother made a complaint to the IPC about the adequacy of the searches. | The IPC found that the custodian conducted a reasonable search for records and dismissed the complaint.<br><br>The fact that the custodian did not locate the specific records described by the complainant is not a reasonable basis for concluding that additional records exist. The evidence demonstrated that the custodian made reasonable efforts to identify and locate responsive records, including those that arguably went beyond the scope of the original requests. |
| Decision 157<br>(includes an order)<br><br>2021<br><br>**Mental health and addiction care facility** | A former client requested all records relating to his treatment.<br><br>The facility provided a complete copy of what it called his "official health record."<br><br>The client sought access to his counsellor's handwritten notes.<br><br>The facility provided the complainant with a copy of the counsellor's notebook, in which other clients' PHI had been withheld, and advised that the counsellor's handwritten "loose working notes" had been shredded.<br><br>The client sought verification that the facility had provided him with access to all of his PHI from the counsellor's notebook. He also took issue with the destruction of the counsellor's loose notes, which occurred after he submitted his request for access to them. | The counsellor's notebook is a record of the client's PHI, but is not dedicated primarily to his PHI. His right of access is therefore limited to his PHI that can reasonably be severed.<br><br>Upon review of the notebook, the IPC adjudicator found small portions of the client's PHI to which he had not yet been provided access. The IPC ordered the facility to provide access to those portions of the record.<br><br>The IPC accepted that the counsellor's loose notes would have contained the client's PHI; however, given that those records were destroyed, it found that no useful purpose would be served by determining the extent of the client's right of access to those loose notes.<br><br>The IPC found that the facility's destruction of the counsellor's loose notes was in accordance with its record handling and retention obligations under section 13 of PHIPA. The facility submitted that "all information" from the counsellor's loose notes was transferred to the client's "official medical record," to which he was provided full access. |

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| Decision 158 (includes an order)<br><br>2021<br><br>**Child and youth mental health centre** | A former client sought access to her "entire file, including letters to lawyers and anything else you have on me, my mother, father, and/or brother that would help me understand my childhood family dynamics."<br><br>The custodian conducted a search for records and issued a decision granting partial access to the records that it located.<br><br>The requester filed a complaint with the IPC because she believed additional responsive records existed. In addition, she challenged the agency's decision to deny access to records and to withhold portions of the records that were released. | The decision addresses a novel issue regarding the application of PHIPA to family therapy records, and therapy participants' right of access to those records. The IPC received representations from the CPSO, CPO, CRPO, OASW, OCSWSSW, and OMA.<br><br>The IPC found that:<br><br>• the PHI of an individual in family therapy records will typically belong to the individual participant to whom it relates, and not to all participants equally;<br>• a family therapy record cannot be "dedicated primarily to the PHI" of more than one individual for the purposes of section 52(3) of PHIPA; and<br>• family therapy records are generally not dedicated primarily to the PHI of any one family therapy participant, with some exceptions.<br><br>The following situations may produce records that are dedicated primarily to the PHI of one participant engaged in family therapy:<br><br>• when a family therapy session is clearly focused on one participant;<br>• where the PHI in question is contained in a "sub-file" of the family therapy records, and that sub-file relates to one participant alone.<br><br>In the context of family therapy records, examples of "communal information" that the IPC would generally regard as the PHI of each of the family therapy participants (to which each individual participant would have an independent right of access, regardless of who provided the information during therapy) include:<br><br>• information relating to family health history;<br>• reasons for the family's referral to family therapy;<br>• information about the family's history, structure, relationship, and cultural background; |

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| | | • information relating to the overall family relationship or dynamic;<br>• the practitioner's opinions regarding why certain issues were manifesting themselves in the family;<br>• an outline of the family's "treatment plan";<br>• recommendations for the family's course of therapy; and<br>• the practitioner's opinions or observations regarding the family's progress and the impact of therapy.<br><br>If a family member is deceased, the custodian may exercise its discretion to disclose that individual's PHI under s. 38(4)(c) to certain other family members, if the recipient of the information reasonably requires the information to make decisions about their own health care. In this case, where the mother's PHI appeared on its own, or is at least was reasonably severable from the PHI of the father and brother, the custodian disclosed that information to the daughter.<br><br>If a family member gives consent for their PHI to be shared with another family member, the custodian is obligated to consider whether the family member's PHI should be disclosed to the requester in accordance with s. 29(a) (discretionary disclosure) of PHIPA – is the disclosure "necessary for a lawful purpose"?<br><br>The IPC ordered the custodian to consider the issue of whether it should disclose the brother's information, and to provide the complainant with a response explaining why it decided to disclose or not to disclose the brother's PHI.<br><br>With respect to reasonable search, the IPC found that the custodian conducted a reasonable search for records responsive to the complainant's request, in accordance with its obligations under sections 53 and 54 of PHIPA. |

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| Decision 159 (includes an order)<br><br>2021<br><br>**Public Health Ontario** | A parent made three access requests to Public Health Ontario (PHO) for information relating to her and her two minor children in respect of laboratory testing for Lyme disease, including the names of staff members who accessed her and her children's electronic health record.<br><br>PHO provided audit reports showing when the health records in the Laboratory Information Management System (LIMS) electronic database were accessed, the operational role of the applicable staff member, and the reason for access, but did not include staff names in accordance with their usual practice (not because of any particular health and safety concern).<br><br>PHO argued that names of PHO staff are recorded in LIMS for quality assurance and laboratory accreditation purposes only and they are not recorded for the provision of health care and do not identify a person as a provider of health care to the complainant.<br><br>In addition to seeking the names of staff members, the complainant believed that additional records existed. | The IPC ordered PHO to provide the audit reports with staff names included.<br><br>The IPC found that:<br><br>• PHO is a health information custodian, and that the records at issue qualify as the PHI of the complainant and her children.<br>• Each of the three audit reports is "dedicated primarily" to the PHI of the individual to whom the audit report relates, within the meaning of section 52(3).<br>• The information at issue is not exempt from the right of access under sections 18(1)(c), 18(1)(d) [economic interests because of undermining ability to hire and retain medical laboratory technologists (as only lab in province that tests for Lyme disease) and possibility of being sued by employees' union] and 20 [serious threat to health or safety of an individual because of risk of harassment] of FIPPA through the flow-through provision in sections 52(1)(f)(i) and (ii)(A) of PHIPA. PHO's submissions were speculative and not substantiated by sufficient evidence.<br><br>With respect to reasonable search, the IPC upheld PHO's search for records as reasonable. |
| Decision 160<br><br>2021<br><br>**Hospital** | A joint custodial parent (the father) made an access request to a hospital for health records of his two children, both under the age of eight.<br><br>The father complained to the IPC about the hospital's partial refusal to grant access (which involved | The IPC dismissed the complaint on the basis that as one of two equally ranked substitute decision-makers for the children under PHIPA, the father did not have an independent right under PHIPA to request access to the children's health records over the objection of the children's mother (in accordance with sections 26(5)(b) and 71(4)(b) of PHIPA). |

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| | concerns about the parent's relationship with the children) and the format of the records.<br><br>The other joint custodial parent for the children (the mother) confirmed to the IPC that she did not consent to the father's access request. | In addition, given the mother's objection, the father had no right to complain to the IPC about the hospital's decisions on his request: "The authority of the requester under PHIPA is a threshold issue before deciding the extent of any right of access (and is a necessary condition to having a right to complain to the IPC about a denial of access under PHIPA)."<br><br>The IPC emphasized this statement from Decision 107: "There is no obligation in every case for a custodian faced with a request from a substitute decision-maker to canvass the views of all equally ranked substitute decision-makers, in order to satisfy itself that they all agree to the request. Section 71(4)(b) makes clear that a custodian is generally entitled to rely on an assertion by a person claiming to be the lawfully authorized decision-maker for an individual. However, where (as in this case) there is reason to believe that another equally ranked substitute decision-maker would disagree with the request, the custodian would not be entitled to rely on such an assertion. In such a case, the custodian would be entitled to refuse the request." |
| Decision 161 (reconsideration of Decision 123)<br><br>2021<br><br>**Hospital** | The hospital sought reconsideration of Decision 123 in which a patient requested video recordings of events leading up to, and including, his restraint and placement in a seclusion room by hospital staff.<br><br>The hospital is the province's only high security forensic mental health program for clients served by both the mental health and justice systems.<br><br>In Decision 123, the IPC ordered the hospital to grant the complainant access to the portions of the video footage containing his personal health information that could reasonably be severed from the exempt portions. The hospital was not required to grant access to video recordings or details of the high | The IPC accepted the hospital's argument that new facts existed and therefore found that grounds for reconsideration were established.<br><br>The new facts were that the hospital retained an external consultant to create a sample video following the release of PHIPA Decision 123. The IPC re-reviewed the requested video footage along with the hospital's new evidence and found that the redactions ordered were not sufficient to protect information that was found to qualify for an exemption.<br><br>The hospital's reconsideration request was granted in part, and the IPC varied the order in PHIPA Decision 123 by shortening the length of three of the four videos that the hospital was ordered to release. As in Decision 123, the videos are to be released with obscuring or blacking out of the background to provide the complainant with portions of the video that relate to him but without disclosing layout and security features of the facility. |

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| | security facility's physical layout and video surveillance system. | |
| Decision 162<br><br>2021<br><br>**Physician** | A patient asked a neurologist to make three corrections to an initial consultation report and two corrections to a follow-up report. | The IPC upheld the neurologist's decision not to make the requested corrections. The complainant did not prove that the information was incomplete or inaccurate for the purposes for which the neurologist uses the information. |
| Decision 163<br><br>2021<br><br>**Hospital** | A hospital reported a privacy breach involving a Clinical Records Department employee inappropriately accessing highly sensitive personal health information of a family member.<br><br>Five separate family members brought complaints of inappropriate access that were subsequently withdrawn during IPC mediation. During the hospital's investigation however, an EMR audit revealed a 55-second access to highly sensitive medical records of a sixth family member, eight years prior. The patient did not express any concern about the access to her personal health information. | In light of the steps taken by the hospital to remedy gaps in its information practices and to address the breach, the IPC found that a formal review was not warranted.<br><br>As soon as the hospital became aware of the breach, the employee was suspended, and her access to the hospital's electronic health records system was revoked. The employee was removed from the Clinical Records Department for one year and prior to her return, the department manager reviewed privacy expectations with her; the employee reviewed the privacy policies and signed an acknowledgement; she was notified that she would be subjected to targeted audits; and she re-signed and completed a privacy e-learn course.<br><br>The hospital made improvements to its electronic auditing capabilities, which included:<br><br>• implementing a new EMR and purchasing an auditing software from a third party vendor to obtain detailed audit reports and to validate user accesses;<br>• retaining the clinical records clerks' work lists in order to cross reference and validate audit results; and<br>• implementing a manual Daily Chart Access Log to account for any personal health information not captured elsewhere. |

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| | | With respect to policies, the hospital had an adequate *Access to PHI of Family/Former Family Members/Co-workers by Clinical Records Department Staff Policy*, but none of the hospital's policies and procedures included any specific guidance with respect to snooping. The hospital followed the IPC's recommendation and created a new snooping policy. |
| Decision 164 (includes an order)<br><br>2021<br><br>**Hospital** | A patient requested access to two video surveillance clips of herself (images only, no audio) during an involuntary hospitalization ordered under the *Mental Health Act*.<br><br>The hospital denied access to the records, claiming that granting access could reasonably be expected to result in a risk of serious harm to the treatment or recovery of the patient or a risk of serious bodily harm to the patient or hospital or security staff. | The IPC ordered the hospital to grant access to the requested video clips in full.<br><br>The records are comprised wholly of the complainant's personal health information. Images of security and hospital staff captured in the records relate solely to their interaction with the complainant while she was a patient. Background images appearing with the complainant's image, such as the layout of the room, hallways and furniture also constitute her PHI.<br><br>Because the videos were made for security purposes, the records are not "dedicated primarily to" the complainant's personal health information; therefore, her right of access is limited to her PHI that can reasonably be severed. But, every part of the records contains the complainant's PHI so she is entitled to access the whole records despite the records not being "dedicated primarily" to her PHI.<br><br>The risk of serious harm exemption does not apply. The IPC found there was insufficient evidence to conclude that granting the complainant access to the video clips could reasonably be expected to result in a risk of serious harm to herself, her treatment or recovery. And the hospital's evidence fell short of demonstrating a risk of harm to staff that is well beyond the merely possible or speculative. The evidence of two staff members who objected to their images being disclosed was speculative. |
| Decision 165<br><br>2021 | A medical clinic received a correction request in relation to a two-page record about a walk-in visit. The patient wanted the phrase "patient declined | The IPC upheld the clinic's refusal to correct the record. |

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| **Medical Clinic** | triage" to be removed from the record because, in his view, it did not reflect what happened during the visit. The patient said that he had been locked in a consultation room by a physician's assistant, who tried to force him to listen. | The patient did not establish that the record is incomplete or inaccurate for the purposes for which the clinic uses the information. The clinic is not required to make the requested correction.<br><br>The IPC reminded the patient that he could submit a statement of disagreement. |
| Decision 166<br><br>2021<br><br>**Ontario Health (Cancer Care Ontario)**<br><br>(same events as in Decision 167) | A patient of a regional cancer centre within a hospital alleged that Cancer Care Ontario collected and used his PHI, obtained through a cancer symptoms survey, without his consent and without legal authority.<br><br>The patient also complained that he was not told the survey was voluntary; he had to complete the survey in a public space; and a hospital volunteer stood next to him while he inputted his sensitive PHI. | Complaint dismissed. The IPC determined that Cancer Care Ontario responded adequately to the complaint and there are no reasonable grounds to conduct a review.<br><br>Cancer Care Ontario has two roles in relation to the survey:<br><br>• a health information network provider (HINP) with respect to the survey kiosks that it provides and runs and that create a production database that is under the hospital's custody and used by the hospital's cancer centre; and<br>• a prescribed entity with respect to the replication database (containing information collected and disclosed to it by the hospital) that it uses for analysis and/or compilation of statistical information.<br><br>In response to the complaint, Cancer Care Ontario:<br><br>• updated the language on the survey instruction page to clearly state that completing the survey is not mandatory;<br>• recommended that the hospital provide refresher training to staff and volunteers who assist patients with the survey;<br>• confirmed that the kiosks where patients input survey information have privacy screens; and<br>• removed the complainant's name and survey responses from the production and replication databases after the complainant asked for the removal. |

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| Decision 167<br><br>2021<br><br>**Hospital**<br><br>(same events as in Decision 166) | A patient of a regional cancer centre within a hospital alleged that the hospital collected his PHI through a cancer symptoms survey and then disclosed it to Cancer Care Ontario without his consent.<br><br>The patient also complained about the hospital's privacy practices and privacy training in respect of how hospital staff registered him for his appointment; not being told that the survey was voluntary; how a hospital volunteer assisted him with the survey; and the placement of the survey kiosks.<br><br>The complainant asked that his survey responses be removed from his health records with the hospital. | Complaint dismissed. The IPC determined that the hospital responded adequately to the complaint and there are no reasonable grounds to conduct a review.<br><br>The hospital was authorized to collect and use PHI through the survey using Cancer Care Ontario's services as a HINP and to disclose that same information to Cancer Care Ontario in its capacity as a prescribed entity.<br><br>In response to the complaint, the hospital:<br><br>• provided additional training to its staff and volunteers regarding registration procedures and assisting with the survey;<br>• added language to the survey to highlight that it was voluntary, and<br>• determined that the privacy screen software it used for the kiosks was adequate.<br><br>The hospital advised the patient that while it could not remove his survey responses from his health records because they had already been used for health care purposes, it could take steps to preclude the use of his survey responses going forward. |
| Decision 168<br><br>2021<br><br>**Hospital** | A medical resident at the hospital who was also a patient of the hospital believed that other medical residents were accessing her health records without authorization. She made a complaint to the IPC.<br><br>The IPC also initiated its own complaint to address systemic issues around the hospital's policies and procedures addressing the use of PHI for education purposes, and the hospital's training of its agents on those policies and procedures.<br><br>During the course of the IPC's investigation, the complainant became concerned about new accesses | The IPC found that there were a number of unauthorized accesses to the patient's records, made in violation of the hospital's policy and of PHIPA. The hospital failed to comply with its duty under PHIPA to take reasonable steps to protect PHI.<br><br>The IPC did not issue orders against the hospital, but made a number of recommendations to further improve its information practices governing the use of PHI by its agents for educative purposes.<br><br>While PHIPA allows use of PHI without consent for educational purposes, the hospital's policy did not; therefore, express consent was needed to use patient information for educational purposes. Where a HIC imposes a more stringent requirement than PHIPA (as in this case – requiring consent for |

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| | by her colleagues to her EHR records, in violation of the hospital's updated policy and her consent directive. | education uses of PHI), a violation of the HIC's policies or practices with respect to that requirement is also a violation of PHIPA.<br><br>The IPC's key recommendations were that the hospital:<br><br>• amend its information practices to clearly and consistently state that the hospital's approach to the use of PHI for education purposes is based on individual consent; that an individual may give, withhold, or withdraw consent, or reinstate consent, at any time; and that no education use is permitted where an individual has withheld or withdrawn consent<br>• amend its information practices to clearly and consistently state that any use of PHI for education purposes in violation of the hospital's information practices is a violation of PHIPA, and can result in consequences under PHIPA, such as notification of the affected individual and a complaint to the IPC<br>• ensure it provides timely notice to its agents of any relevant changes to its information practices<br><br>The IPC also recommended that the hospital:<br><br>• include details of the timing and procedure for future revisions to the Education Use policy (either directly in the policy itself or in a broader hospital policy) [and recommended generally that custodians revisit their privacy policies and procedures on a regular basis (at a minimum annually), and that privacy policies and procedures specify the timing and other details of the review].<br>• in its Education Use policy<br>  ○ include details of the hospital's procedure for documenting and implementing refusals of an individual's consent (including a withholding or withdrawal of consent) to the use of their PHI for education purposes; and |

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| | | ○ impose, to the extent possible, consistent approval and documentation requirements for the education use of hard copy (paper) and electronic records.<br>• routinely audit accesses made to records flagged in the EHR or in hard copy based on an individual's refusal of consent (including for the use of PHI for education purposes)<br>• add to the EHR warning flags a notice about the hospital's auditing processes, including its routine auditing of accesses to flagged records<br>• inform its agents about its auditing processes (including its routine auditing of accesses to flagged records), including in the Education Use policy and in its privacy and confidentiality training for agents |
| Decision 169<br><br>2022<br><br>**Hospital** | A daughter (estate trustee) requested records relating to her late mother's admittance at the hospital. She asked for doctor's notes, x-rays and cultures reports regarding her mother that she believed were missing from what the hospital had previously provided to her in response to access requests.<br><br>The hospital located records responsive to the request and granted complete access to them. The daughter filed a complaint to the IPC on the basis that additional records ought to exist. | Complaint dismissed. The IPC upheld the hospital's search - its efforts to find records containing the information sought by the complainant were reasonable. The hospital provided sufficient evidence to demonstrate that it made a reasonable effort to identify all responsive records within its custody and control.<br><br>The complainant did not provide a reasonable basis for the IPC to conclude that additional records relating to her mother's admittance exist, but have not yet been located. |
| Decision 170<br><br>2022<br><br>**Hospital** | A patient sought correction of a consulting doctor's one-page Holter monitor report about him because he thought it was inaccurate.<br><br>The patient wanted the phrase "to be screened for anxiety/depression" removed from the record. The doctor had instead amended the report to include an addendum stating, "Please note, some of my | The IPC upheld the hospital's decision not to make the requested correction. The PHI that the complainant sought to correct consisted of the good faith professional opinion of the doctor.<br><br>(Although the hospital had some technological difficulties in "pinning" the complainant's statement of disagreement to the report in his EHR, the IPC reviewed the format and content of the addendum to the report, and the corresponding caveat, and was satisfied that the statement of disagreement |

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| | differential [diagnosis] for palpitations listed above does not imply diagnosis." The patient provided a statement of disagreement, a note of which was added to the report in the EHR.<br><br>The hospital denied the correction request, pursuant to the exception for good faith professional opinion or observation in s. 55(9)(b) of PHIPA. | is attached to, and forms part of, the complainant's EHR, thereby meeting the hospital's obligations under PHIPA.)<br><br>Decision 172 dismissed a request for reconsideration of this decision. |
| Decision 171<br><br>2022<br><br>**Hospital** | A patient made a correction request for deletions and other changes to her records of PHI ("fully redacted and fully removed") alleging that a doctor had made an incorrect diagnosis of her in an encounter in 2013. | Complaint dismissed. No reasonable grounds for a review. The hospital responded adequately in the circumstances. The IPC cannot fairly and adequately address the complaint in the circumstances. No useful purpose would be served even if the IPC were to conduct a review. |
| Decision 172 (same case as 170)<br><br>2022<br><br>**Hospital** | Complainant in Decision 170 made a request to the IPC for reconsideration because of alleged fundamental defects. | Reconsideration request denied. The complainant failed to establish any grounds for reconsideration under s. 27.01 of the *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*. A complainant's disagreement with findings in a PHIPA Decision is not by itself a ground for reconsideration of the decision. |
| Decision 173 (same case as 99)<br><br>2022<br><br>**Doctor** | Complainant in Decision 99 made a request to the IPC for reconsideration because of alleged errors. | Reconsideration request denied. Allegation of reasonable apprehension of bias dismissed. The complainant did not establish a fundamental defect in the adjudication process, some other jurisdictional defect, or a clerical error, accidental error or omission or other similar error.<br><br>(Note: same complainant as in Decision 84 and request for reconsideration Decision 94) |
| Decision 174<br><br>2022<br><br>**Hospital** | A hospital reported to the IPC two separate privacy breaches involving unauthorized access to patient records. | In light of the steps taken by the hospital to address both breaches – making improvements to their training, processes, and EMR system capabilities – the IPC was satisfied that the hospital adequately addressed the privacy concerns raised by the breaches and declined to conduct a formal review: |

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| | 1. A patient complained that a hospital clerk had posted patient information to Facebook. Although the hospital was unable to determine whether the clerk had posted the patient's information, the hospital audited the clerk's accesses to the EMR over a 2 ½ year period and identified 83 apparently unauthorized accesses to the records of 19 individuals. The hospital terminated the clerk's employment, citing the seriousness of the breach.<br><br>2. The hospital was notified by the Privacy Officer of another hospital that a nurse had accessed her own information without authorization. The hospital audited the nurse's accesses to the EMR over a 1 ½ year period and identified 41 unauthorized accesses to 5 patients' records. The hospital determined that while the nurse's actions were inappropriate, she had no malicious intent and was remorseful. The hospital reported the breach to the College of Nurses of Ontario, and suspended her for five days without pay. The nurse received privacy training multiple times, including reviewing the confidentiality agreement and the hospital's Patient Privacy Policy. | • The IPC found the hospitals' privacy policies and adherence to them adequate. Hospital policies need to clearly state that any posting of personal health information to social media is strictly prohibited. This is in addition to setting out when accesses to personal health information are permitted, and when they are not.<br>• Physicians and employees receive privacy training upon hire and annually. The hospital also provides privacy reminders throughout the year, through presentations to departments and lunch and learns.<br>• Employees execute Confidentiality Agreements on an annual basis.<br>• The hospital put into place a warning flag on the EMR login screen prior to employees accessing any records of personal health information, not just those subject to a consent directive.<br>• The hospital committed to conducting random and scheduled audits going forward. Each month, the hospital checks for same last name searches and runs random access audits. |
| Decision 175<br><br>2022<br><br>**Medical Clinics and Related Entities** | The IPC started its own review following a 2019 Toronto Star article that reported that an EMR software company was anonymizing health data and selling it to a third party corporation. | In light of the steps taken by the respondents, the IPC determined that it was not necessary to proceed to adjudication.<br><br>The IPC concluded that the act or process of de-identifying personal health information is a "use" within the meaning of s. 2 of PHIPA, and that the use of personal health information for the purpose of de-identification is permitted without consent, where the conditions in ss. 37(1)(f) of PHIPA are met (i.e. |

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| | | that the "modifying the information in order to conceal the identity of the individual" is done "in a manner consistent with Part II" of PHIPA).<br><br>To comply with PHIPA, the health information custodian's written public statement needed to explicitly describe its practice of de-identifying personal health information and selling the information to a third party for a number of purposes, including health-related research. The IPC determined that PHIPA requires a custodian to provide "notice of routine or wide ranging practices that affect all, most or a substantial number of individuals or of a significant practice."<br><br>The custodian met its safeguarding obligations including by amending the sale agreement to include additional privacy and security controls. The Amended Sale Agreement expressly forbid the data purchaser from linking data and required its employees, consultants and sub-contractors to sign data confidentiality agreements. In addition, the purchaser was required to implement the privacy and security controls recommended in the IPC's *De-identification Guidelines for Structured Data.* |
| Decision 176 (related to Decision 177)<br><br>2022<br><br>**Hospital** | A patient received mental health care services at two hospitals before his death by suicide. After the patient's death, because of concerns about the care he had received, the patient's father asked one of the hospitals for a copy of his son's medical records. He also asked the hospital to conduct audits of accesses to the records. The audits showed some accesses by people at both hospitals that the father believed were made for unauthorized purposes, so he filed complaints with the IPC. | Complaint dismissed with no order but a recommendation that the hospital amend its information practices to clearly prohibit the sharing of EMR user credentials between its agents.<br><br>The IPC found that the accesses were made in accordance with PHIPA, generally for quality of care purposes (except for accesses #1 and #2):<br><br>• Access #1 – 5 days after death – physician with privileges at hospital failed to log out of his EMR account after using one of two shared (common) EMR terminals in the emergency department, and another hospital agent (not the doctor) accessed the patient's records, under the doctor's EMR user credentials – IPC declined to review: already dealt with by CPSO and HPARB |

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| | The records at issue in Decisions 176 and 177 are contained in a shared electronic medical records system (EMR) accessible to both hospitals. | ○ To address this breach, the hospital took steps including issuing a written caution to the doctor, which will be retained in the doctor's Medical Affairs file.<br>○ The IPC commented that whatever the unknown agent's purpose in accessing the patient's records, the access made under another user's EMR credentials, in contravention of the hospital's policy, is itself a contravention of PHIPA.<br>○ The IPC recommended that the hospital make clear to its agents that they must not share their EMR user credentials in any circumstances through amendments to its privacy policy, EMR user agreements, and other relevant information practices.<br>• Access #2 – 2 years after death – same physician as in Access #1 accessed identical records as in Access #1 to use in CPSO proceeding concerning the appropriateness of Access #1 – IPC declined to review: already dealt with by CPSO and HPARB<br>• Access #3 and #4 – 6 days after death – by Regional Vice President (responsible for patient relations and legal affairs) of hospital to records of both hospitals<br>○ Access to patient records of own hospital was an authorized use for risk management, error management or quality of care<br>○ Access to records of other hospital (a clinic record, a clinic note, and a crisis note) was an authorized collection and use for the same purposes<br>• Access #5 – several months after death – by hospital Patient Representative to records of other hospital was an authorized collection and use for same purposes<br>• Access #6 – 7 days after death – by physician with privileges at other hospital to discharge summary was an authorized disclosure for quality of care purposes |

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| Decision 177 (related to Decision 176)<br><br>2022<br><br>**Hospital** | A patient received mental health care services at two hospitals before his death by suicide. After the patient's death, because of concerns about the care he had received, the patient's father asked one of the hospitals (the hospital in Decision 176) for a copy of his son's medical records. He also asked that hospital to conduct audits of accesses to the records. The audits showed some accesses by people at both hospitals that the father believed were made for unauthorized purposes, so he filed complaints with the IPC.<br><br>The records at issue in Decisions 176 and 177 are contained in a shared electronic medical records system (EMR) accessible to both hospitals. | Complaint dismissed. The IPC encouraged the hospital to amend its policy to apply consistent requirements to all hospital agents, including physicians, to document all accesses for quality assurance purposes.<br><br>The IPC found that the accesses were made in accordance with PHIPA, generally in relation to quality of care purposes:<br><br>• Access #1 – 7 days after death – by a physician with privileges at hospital (who provided care to the patient at the hospital's crisis centre, where the physician also has a leadership role) to a discharge summary of the other hospital (same as Access #6 in Decision 176) – collection and use for authorized purposes relating to quality of care and quality improvement<br>• Access #2 – 7 days after death – by the same doctor to various hospital records (a clinical note and a crisis service note authored by another physician at the hospital; and a clinical note he himself authored) – use for authorized purposes relating to quality of care and quality improvement<br>• Access #3 – 6 days after death – by Regional Vice President of other hospital to various hospital records (a clinic record, a clinic note, and a crisis note) (same as Access #4 in Decision 176) – disclosure authorized for quality of care purposes<br>• Access #4 – several months after death – by hospital Patient Representative of other hospital to various hospital records (same as Access #5 in Decision 176) – disclosure authorized for quality of care purposes |
| Decision 178<br><br>2022 | A wife submitted a correction request on behalf of her husband who was a client of a LHIN, asking for changes to an inter-RAI home care assessment form. | The IPC upheld the LHIN's decision to not make some of the changes.<br><br>The exception to the duty to correct for a professional opinion or observation made in good faith applied. No indication of malice, intent to harm, serious carelessness or recklessness. |

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| **LHIN (Home and Community Care Support Services)** | Following the assessment, the custodian determined that the complainant was not eligible for increased hours of personal support services.<br><br>The LHIN agreed to make some changes, but not others. | |
| Decision 179<br><br>2022<br><br>**Hospital** | The IPC received a complaint regarding an alleged unauthorized use of personal health information of three patients by the Chief of Staff and two other doctors of a hospital. The complainant, a cardiologist, had sent the three patients to the hospital for cardiac testing and was subsequently asked to provide the Chief of Staff with personal health information about them. | No review warranted. The accesses by the Chief of Staff were a permitted use under s. 37(1)(d) of PHIPA to investigate concerns about the quality of care and treatment provided to the patients, and the Chief of Staff had the authority to do this as per his defined role with the hospital. The accesses by the second doctor were a permitted use of personal information under s. 37(1)(a) to assist with providing health care.<br><br>According to the audit information provided by the hospital, the third doctor did not access the patients' personal health information. |
| Decision 180<br><br>2022<br><br>**Pharmacy** | A patient complained to the IPC that pharmacy staff attempted to collect her health card number in order to fill her prescription. This was the second incident of this nature that the complainant reported to the IPC. | No formal review. The pharmacy did not collect the complainant's health card number, and therefore, did not contravene PHIPA. However, the pharmacy staff lacked education and training around the collection of health cards and failed to properly communicate the pharmacy's policy that the production of the health card was voluntary.<br><br>The pharmacy responded adequately by taking a number of steps, including amending its patient setup policy and providing training to its staff to ensure customers are advised of the reason for collecting their health card number and that it is optional. |
| Decision 181<br>(includes an order)<br><br>2022<br><br>**Hospital** | A patient made an access request to a hospital for documentation relating to his involuntary psychiatric hospitalization, including a psychological assessment, audio and video surveillance, hospital policy and process information, disclosures to specified third | The IPC upheld the hospital's decision to not make the requested corrections on the basis that the PHI (including a medical diagnosis and documentation of the patient's conduct while an in-patient at the hospital) consisted of professional opinions or observations made in good faith. |

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| | parties relating to him, and verification of destruction of his health information and implementation of lockboxes that he requested.<br><br>In response, the hospital provided a copy of the patient's hospital file.<br><br>The patient filed a complaint to the IPC saying that he did not receive a decision in relation to the majority of his request. He also said that he had requested that records characterizing his actions during his hospital admission be corrected. | With respect to the hospital's search for records, the IPC upheld the hospital's search as reasonable, with one exception, ordering the hospital to conduct a further search for a particular mental health assessment. The audit that the complainant requested indicated his records of PHI were accessed two months after his discharge with an entry stating "Mental Health Assessment." The IPC found that this audit entry established that the complainant provided a reasonable basis for believing that a mental health assessment may have been conducted at the hospital approximately two months after his discharge, and there may be a record reflecting that. |
| Decision 182<br>(includes an order)<br><br>2022<br><br>**Doctor** | A patient made an access request to a psychiatrist for all of his health records over a specified time period.<br><br>After reviewing the records provided, the patient made a complaint to the IPC on the basis that further records should exist, raising the issue of reasonable search. | The IPC found that the custodian's search for records was not reasonable and ordered the custodian to conduct a further search for records and to provide a written explanation to the complainant regarding the results of the search.<br><br>The decision includes the questions that the IPC asks a custodian in a reasonable search complaint (at p. 5-6). The custodian did not provide representations to the IPC in response to the questions or any other evidence, though he did provide information to the IPC during mediation.<br><br>The IPC found that the search for records did not meet the threshold for being "reasonable" because:<br><br>1. the complainant established a reasonable basis for concluding that further records may exist (in particular, regarding an alleged suicide attempt that was noted once, but not otherwise mentioned in the records); and<br>2. the custodian did not provide sufficient evidence to show that he made a reasonable effort to search for responsive records. |
| Decision 183 | A father, a non-custodial parent with access rights to his child, requested his child's personal health | The IPC upheld the custodian's decision and dismissed the complaint. |

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| 2022<br><br>**Doctor** | information from a doctor who had provided family counselling to the child and mother. All of the child's personal health information was contained in the patient chart for the mother.<br><br>In support of his request, the father provided a court order (stating that the father shall have "direct access" to his child's "medical" information) and a consent to disclosure of the child's information from the child's mother, who had sole custody of the child.<br><br>The custodian denied the request on the basis that the father, as a non-custodial parent, did not have a right of access to the child's PHI because he is not a lawfully authorized substitute decision-maker for the child under PHIPA.<br><br>The custodian subsequently gave the father a summary of the child's PHI and treatment, but she decided not to disclose entire records containing the child's PHI under PHIPA's discretionary disclosure. The custodian's exercise of discretion was based on her concerns about the child's best interests and the potential harm that disclosure could cause the child. | The father had no right of access to the child's PHI under PHIPA. The father was not a lawfully authorized substitute decision-maker for the child under PHIPA, and therefore could not exercise the child's right of access to the records under PHIPA.<br><br>The IPC also upheld the custodian's exercise of discretion in deciding not to disclose the records under PHIPA's discretionary disclosure provisions at sections 29(a) (consent), 41(1)(d)(i) (compliance with summons or order) and 43(1)(h) (permitted or required by law).<br><br>With respect to s. 29(a) (consent), the IPC found that the custodian did not think there was a lawful purpose for the disclosure and also considered the best interests of the child and the harm to the child that could result from disclosure.<br><br>With respect to s. 41(1)(d)(i) (compliance with summons or order), the IPC found that the custodian considered proper factors, including the complainant's arguments, the wording, significance and timing of the court order and a later consent order, and, importantly, the best interests of the child.<br><br>With respect to s. 43(1)(h) and the provisions of the *Divorce Act* and *Children's Law Reform Act* that allow disclosure to an access parent, the IPC found that the custodian exercised her discretion not to disclose properly, based, primarily, on her belief that disclosure would likely result in a serious risk of harm to the child. The custodian also took into account her disclosure of a summary of the child's PHI and treatment, in relation to the father's right to make inquiries and receive information about his child's health. |
| Decision 184<br><br>2022 | The IPC received a complaint alleging that a medical clinic had inadequate privacy practices with respect to the security and safeguarding of personal health information because: | No review warranted. Although the IPC concluded that the clinic had inadequate privacy practices and administrative and technical safeguards in place, the clinic addressed the issues raised: |

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| **Medical Clinic** | • clinic staff used their personal emails for work-related purposes;<br>• staff shared passwords for user accounts on the system;<br>• passwords were taped to desks or walls in plain sight of visitors;<br>• the clinic did not complete system security patching and had insufficient virus protection software; and<br>• some computers used Windows 7, which is no longer supported by Microsoft and therefore vulnerable to cyberattacks. | • The clinic prohibited the practice of using personal emails for work-related purposes and created business emails. It also updated its email policy and advised staff about the new policy.<br>• All staff have their own username and password and are advised of clinic policy not to share their credentials. All staff have been reminded to log out of their workstations when they walk away.<br>• The posted logins were not for the system that contains patient information but for computers (not accessible to patients) that allow the use of Word and Excel. The posted information was removed, password logins changed, and staff advised not to leave any passwords on computers.<br>• The clinic has antivirus software in place on all systems; patches are done monthly and all of its servers are fully patched, with 100% of available patches applied; and the clinic has had a manager firewall at the network level of its system, which is monitored, for approximately the last 14 years.<br>• Two computers at the clinic continue to have Windows 7 installed because there is Bone Mineral Density software installed on the two computers and this software requires Windows 7. The two computers are not connected to the internet and are a closed system.<br>• Moving forward, the clinic agreed that all staff will complete privacy training and re-sign confidentiality agreements on an annual basis. |
| Decision 185<br>(includes an order)<br><br>2022<br><br>**Physiotherapy Clinic** | A client requested access to his records of PHI in electronic format. All of his records were in long-term storage on paper. The custodian issued a decision granting full access to the 475 pages of records indicating it would deliver paper copies of the records upon payment of $150. The custodian said that it did not have the financial or technological means to | The IPC ordered the clinic to provide the records in an electronic format.<br><br>The IPC found that the custodian was not required to permit the complainant to attend its premises to scan the records himself, as he had proposed.<br><br>The fee of $153.75 was upheld as in accordance with principle of reasonable cost recovery for 475 pages of records scanned and provided on a storage device ($30 fee from 2006 framework + $113.75 for scanning ($0.25 per page for each page after the first 20 pages) + $10.00 for CD or USB). If the records |

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| | maintain the security of the records if it were to provide them electronically.<br><br>The client objected to the custodian's fee and its refusal to provide the records in electronic format. | are transmitted electronically (i.e. not on a CD or USB), the fee should be $143.75. The complainant is entitled to choose whether to receive the records on a storage device or by electronic transmission. |
| Decision 186<br><br>2022<br><br>**Hospital** | A patient requested correction of medical history information in his EMR related to two incidents when he was brought to hospital under a Form 1.<br><br>He requested that the hospital remove references to "gout", "delusional disorders", "aggressive behaviour", and "marijuana or tobacco use", arguing that the medical history information contained unsubstantiated information provided by his family members. | No reasonable grounds for a review because complainant did not meet initial onus of establishing a right of correction. He did not establish that those portions of the records are "incomplete or inaccurate for the purposes for which the hospital uses the information."<br><br>Decision 196 denied a request for reconsideration of this decision. |
| Decision 187<br><br>2022<br><br>**Psychotherapist** | A patient made several access requests to his former psychotherapist. In Decision 100, the IPC upheld the psychotherapist's denial of access on the basis of risk of serious harm. Decision 113 dismissed a request for reconsideration of Decision 100.<br><br>Four days after the release of Decision 113, the complainant requested the same records from the psychotherapist and the psychotherapist again denied access on the same grounds. The complainant made a new complaint to the IPC.<br><br>(Decision 189 involves the same patient/client.) | The IPC declined to conduct a review. The common law doctrine of issue estoppel applies. The current and previous complaints to the IPC concern the same question and same parties. The new access requests were not accompanied by any new information. The IPC decisions disposing of the question are final decisions (i.e. they have not been subject to any judicial review application). |
| Decision 188<br><br>2022 | A woman went to a doctor's office for a scheduled appointment but the doctor refused to see her. The doctor sent a letter to the woman's general | Custodian's decision not to correct upheld. The complainant did not demonstrate that the information in the record was incomplete or inaccurate for the purpose for which the physician uses the information, which was to |

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| **Doctor** | practitioner explaining why he canceled the appointment and alleging that the woman was seeking a prescription for a narcotic or controlled substance when she already had a prescription from another physician. The woman obtained the letter through an access request and made a correction request asking that the letter be retracted/removed from her file. Two doctors wrote letters in support of her submission to the IPC that she was being wrongly accused of "double-doctoring." | document his reasons for refusing to see her at the scheduled appointment. The conduct or decision-making of the custodian or his staff are beyond the scope of the IPC correction complaint. |
| Decision 189<br><br>2022<br><br>**Mental health services agency** | A client who received various services including support from a crisis line and employment counselling requested access to his files in electronic format. The records consisted of 455 pages, many from individuals providing health care services to the complainant and others from services accessed in another jurisdiction sent to the custodian with the client's consent.<br><br>The HIC granted partial access, citing risk of harm.<br><br>The client filed a complaint with the IPC.<br><br>During mediation, the complainant was granted full access to his file except for staff and other names. At the end of mediation, the complainant continued to pursue access to the withheld names and raised the issue of reasonable search because he believed the search should have located at least two additional client risk assessment reports. The complainant was looking for answers regarding the custodian's decision to limit and then cancel its services to him. | The IPC upheld the search for records as reasonable, but deferred consideration of the risk of harm exemption pending the complainant's confirmation that he continues to seek access to the withheld names and the subsequent notification of these individuals.<br><br>The custodian redacted staff names and the names of individuals outside of the organization who contributed to the file (former psychotherapist, police officers, job counsellors, health care providers or other individuals whose names appear in the record in their professional capacity, but who are not employed by the custodian).<br><br>The IPC found that all of the names are the complainant's PHI.<br><br>The custodian took the position that granting the complainant access to any of the withheld names in the records could reasonably be expected to result in a risk of bodily harm to the individuals that would be identified. The custodian provided a psychological consultation report in support of its position. The report had recommended that only last names of staff be redacted.<br><br>The IPC determined that in the interests of procedural fairness, the affected individuals should be notified about the circumstances of the complaint. |

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| | Note: The client in this decision is the same patient who requested records from his former psychotherapist in Decisions 100, 113, and 187 above. | |
| Decision 190<br><br>2022<br><br>**Hospital** | A patient made a correction request asking that a Form 1 be removed from her records because it was based on false information and that references to her having schizophrenia and being suicidal be removed from a Patient Triage Record because inaccurate.<br><br>The patient said that she was taken to the hospital by ambulance for abdominal pain and symptoms of low magnesium, not for concerns about her mental safety and wellbeing or suicidal thoughts. She said the Form 1 was completed in error. | Refusal to correct upheld. The IPC found that the hospital did not have a duty to make the requested corrections because the complainant had not demonstrated that the information is incomplete or inaccurate for the purposes for which the hospital uses the information.<br><br>The doctor and the nurse who saw the complainant said that the records accurately reflect the information they gathered and the treatment provided.<br><br>The IPC said that the complainant's disagreement with the contents of the records does not establish that the records are incomplete or inaccurate for the purposes for which the custodian uses the information – that purpose being to document the information available in order to inform treatment. |
| Decision 191<br><br>2022<br><br>**Hospital** | A woman made an access request for all records relating to the death of her husband, who was admitted to hospital during the COVID-19 pandemic and in the care of the hospital for a five-week period.<br><br>The hospital conducted two searches and granted access to around 800 pages of records.<br><br>The complainant challenged the reasonableness of the hospital's search for records. | Complaint dismissed. The hospital conducted a reasonable search for records.<br><br>During mediation, the hospital conducted a further search and located additional responsive records to which it granted access. The complainant continued to challenge the reasonableness of the search, asserting that additional records should exist documenting the administration of heparin to the patient, and records relating to the patient's stay in the palliative care unit. The complainant also asserted that more than 800 pages of records should exist in relation to a five-week stay at the hospital. In its representations, the hospital described its search and also responded to the complainant's assertions. |
| Decision 192<br>(includes orders)<br><br>2022 | A patient made a complaint alleging that a hospital failed to implement and enforce her withdrawal of consent for her PHI after she reported to the hospital | The IPC granted the physician's disclosure request in part, disclosing most, but not all, of the documents requested. The complete patient chart "up to the end of the time period at issue" was not reasonably necessary for addressing the complaint. The IPC disclosed discrete records totalling 12 |

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| **Hospital** | that a physician with privileges at the hospital had sexually assaulted her during a medical examination.<br><br>As part of the IPC's review of the complaint against the hospital, the IPC sought representations from the doctor, as an affected person in the review.<br><br>The physician made a procedural request that the IPC disclose to him a number of documents including records of the patient's PHI so that he could participate in the IPC's review of the complaint. His request included the patient's complete chart "up to the end of the time period at issue," which the IPC itself had not requested or obtained from the hospital. | pages – the records of PHI from the chart that the IPC obtained from the hospital for the purposes of making a decision in the complaint.<br><br>(Although the complainant initially objected to the disclosure request, she ultimately did not take issue with it.)<br><br>The IPC considered the requirements of procedural fairness in the case, based on relevant factors including the nature of the decision to be made, the role of the doctor as an affected person in the complaint, and the statutory context governing the IPC.<br><br>The IPC ordered that conditions and restrictions attach to the handling of the 12 pages of the complainant's personal health information if disclosed, including that the doctor and his legal counsel sign undertakings agreeing to the conditions and restrictions before the IPC would disclose.<br><br>No undertakings required before disclosure of the hospital's representations and related documentation (which included the audit trail and EHR flag), the complaint documentation, and the mediators' report. |
| Decision 193<br><br>2022<br><br>**Hospital** | A patient requested correction of a consultation note. The note was authored by a physician who was a resident. The patient said that it contained inaccurate statements about her behaviours and about her mental health – she objected to statements in the note referring to alcoholism, major depression, and anxiety. | Complaint dismissed. The IPC upheld the hospital's refusal to correct on the basis of professional opinion or observation made in good faith. Even if errors could be attributed to lack of experience or to systemic biases in the profession, this would not be sufficient to establish bad faith.<br><br>The purpose of the exception is to preserve "professional opinions or observations," *accurate or otherwise*, that have been made in good faith. This purpose is based on policy considerations including the need for documentation that may explain treatments provided or events that followed a particular observation or diagnosis. |
| Decision 194<br>(includes an order) | An individual made an access request for an investigation report resulting from his complaint to the Professional Standards Department of the | IPC ordered the custodian to provide the report to the complainant. |

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| 2022<br><br>**Paramedic Services of a City** | Paramedic Services. The custodian denied access on the basis of the exemptions for use in a proceeding and for an investigation authorized by law. | The report is a record of personal health information under PHIPA and the report is dedicated primarily to the personal health information of the complainant.<br><br>Exemptions do not apply. Insufficient evidence that report was created primarily for use in a proceeding as defined in PHIPA. Also insufficient evidence of proceeding not being concluded. Given that the internal investigation was concluded, the investigation exemption could not apply (IPC did not make a finding on whether the investigation was "authorized by law" as required by s. 52(1)(d)). |
| Decision 195<br><br>2022<br><br>**Physician** | A patient made a correction request asking her family physician to remove notations related to the status of her mental health. She wanted references to "anxiety", "counselling", or "mental health" removed because she did not seek medical advice from the custodian for anxiety related issues. | Custodian's decision to not make the requested correction upheld.<br><br>The complainant did not demonstrate that the information in the record was incomplete or incorrect for the purpose for which the physician uses the information, which in this case, was to document the custodian's contemporaneous observations during her medical examination of the complainant. |
| Decision 196 (same case as Decision 186)<br><br>2022<br><br>**Hospital** | The complainant sought a reconsideration of Decision 186, making an allegation of bias against the IPC adjudicator. | The IPC denied the reconsideration request. Allegation of bias or reasonable apprehension of bias not established. No grounds for reconsideration. |
| Decision 197<br><br>Does not exist | | |
| Decision 198<br><br>2023<br><br>**Physician** | A patient alleged that his physician disclosed more of his personal health information than necessary to the Workplace Safety and Insurance Board (WSIB). The patient believed that his doctor disclosed information | Complaint dismissed. The IPC found that the physician was authorized to disclose under the discretionary disclosure provision at s. 43(1)(h) of PHIPA (disclosure permitted or required by law) because s. 37(1) of the *Workplace Safety and Insurance Act, 1997* (WSIA) required the disclosure. Section 37(1) |

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| | not directly related to his knee injury, about which the WSIB requested information. | of WSIA is broad - saying that the health care practitioner must give such information relating to the worker as the WSIB may require. This may include information about related pre-existing conditions. |
| Decision 199<br>(includes an order)<br><br>2023<br><br>**Hospital** | A mother (as substitute decision-maker) made a request for her son's entire file while on a particular ward at the hospital and all internal hospital correspondence about him. The hospital granted partial access, denying access to portions of email correspondence under PHIPA (legal privilege exemption) and FIPPA (advice and recommendations and personal privacy exemptions).<br><br>The mother objected to the denial of access to portions of the emails and also said the hospital did not conduct a reasonable search. | The IPC partially upheld the hospital's denial of access (regarding information exempt from access because subject to legal privilege and regarding information consisting of advice and recommendations), but ordered the hospital to provide some of the withheld information. The IPC found that internal hospital emails relating to heath care services provided to the complainant's son are records of PHI and are dedicated primarily to the PHI of the complainant's son.<br><br>The following records were found exempt from access because subject to legal privilege, specifically, common law solicitor-client communication privilege:<br>• Email chains related to legal advice sought by hospital from external legal counsel<br>• Communications between hospital staff that were provided to legal counsel, seeking advice on the matters discussed in the communications<br>• Email to hospital's legal counsel requesting legal advice<br>• Advice provided by hospital's external legal counsel<br>• Hospital staff member's response to advice provided by legal counsel<br>• Emails forwarding the legal advice provided by legal counsel to various hospital staff<br>• An email chain that would reveal the nature of the legal advice provided by legal counsel<br><br>The IPC found some information exempt from disclosure as a result of the exemption for advice and recommendations (s. 49(a) of FIPPA read with s. 13(1) of FIPPA and PHIPA's "flow-through" exemption at s. 52(1)(f)), but found the following information NOT to be advice or recommendations: |

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| | | • Factual information<br>• Factual information together with an opinion, which would not reveal a suggested course of action or policy options for consideration by a decision maker<br><br>The IPC found the hospital's search for records deficient and ordered it to conduct a further search for records. The hospital's response to the complainant's concerns regarding the search was quite general and did not explain why it had not located specific records that the complainant identified and already had in her possession. The complainant established a reasonable basis for believing that additional records should have been found. |
| Decision 200<br><br>2023<br><br>**Hospital** | A patient made two requests for access to a copy of his hospital file for a specified time period.<br><br>The hospital denied access on the basis of risk of serious harm and confidential source. | Complaint dismissed. During IPC review, the hospital provided most of the information at issue, which it had initially withheld because of risk of serious harm to the individual or others, but continued to withhold portions under s. 52(1)(e)(iii) – access could reasonably be expected to identify a confidential source. The IPC upheld the hospital's claim that the confidential source exemption applied to the remaining information: granting access could reasonably be expected to lead to the identification of individuals who provided certain information to the hospital and the information was provided to the hospital in confidence. |
| Decision 201 (same case as Decision 141)<br><br>2023<br><br>**Hospital** | The complainant in Decision 141, in which the hospital was found to have conducted a reasonable search for records, made a request to the IPC for reconsideration on the basis of alleged bias of the adjudicator. | The reconsideration request was denied. The complainant failed to establish bias or reasonable apprehension of bias. And the rest of the complainant's arguments were a re-arguing of her complaint that did not meet any grounds for reconsideration in s. 27.01 of the IPC's *Code of Procedure for Matters under the Personal Health Information Protection Act, 2004*. Mere disagreement with a decision is not a ground for reconsideration. |
| Decision 202<br><br>2023 | A Health Centre that was working with the IPC on a privacy breach file notified the IPC of additional unauthorized accesses to PHI by a number of employees. The accesses were made by five | The IPC found that at the time of the breaches, the Health Centre had not taken reasonable steps to protect PHI because: |

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| **Health Centre** | employees of a particular team on a day when they participated in EMR system training. Fake charts had been set up for training, but the Health Centre's audit showed that the employees accessed real patient charts. A further audit of the five employees showed more questionable accesses after the training day.<br><br>The Health Centre's investigation determined that between the five employees there were 28 unauthorized accesses. The Health Centre's investigation determined that these accesses were due to a lack of knowledge, insufficient training, and a lack of support from the Health Centre.<br><br>The IPC opened a file to address the additional unauthorized accesses and systemic issues related to the breaches. | • There was a lengthy delay between the Health Centre becoming aware of a possible breach and when it took steps to make a determination;<br>• The Health Centre was not consistent regarding its requirements that employees sign a confidentiality agreement and an EMR authorized user agreement upon hire;<br>• Employees were not required to re-sign the confidentiality agreement on an annual basis;<br>• The EMR system did not have a privacy notice; and<br>• The Health Centre did not have a formal privacy breach policy.<br><br>The IPC noted that one of the challenges faced by the privacy officer during their investigation was lack of response by employees to requests for meetings. The Health Centre has addressed this issue by making meetings with the privacy officer mandatory for employees to attend.<br><br>The Health Centre remedied the issues identified and otherwise responded adequately, including by providing additional training for the employees involved in the breach and training for all staff on privacy breach protocols, audits, proper documentation in charts, when to access patient charts, and what steps to take to enter a chart without authorization. The Health Centre committed to continuing to provide annual privacy training and to track privacy training of its employees. The Health Centre committed to completing monthly privacy audits, both random and targeted.<br><br>The Health Centre did not provide notice of the breach to affected patients "at the first reasonable opportunity" but the new privacy breach policy addresses this. |
| Decision 203<br><br>2023 | A client made an access request to a psychologist for her entire file. She also made a complaint to the College of Psychologists of Ontario. The custodian | The IPC decided that no review was warranted because the college proceedings appropriately dealt with the subject matter of the complaint. The |

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| **Psychologist** | granted access to records located. The client said that additional email records should exist. | differences between the college and IPC proceedings, in the circumstances, do not give rise to a fairness issue warranting re-litigation of the matter. |

Kate Dewhirst loves privacy issues. She advises health care organizations across Ontario on anything to do with privacy. Privacy breach responses. Privacy policies. Team privacy training. Privacy Officer training. If it has to do with health privacy – she does it (and enjoys it!!).

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