SUMMARY OF IPC/O's PHIPA DECISIONS (current to June 17, 2021)

The orders and decisions are colour-coded by main theme covered in case:

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
H0-001 2005 **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. 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. Notice to affected patients was through a public post at the clinic.
H0-002 (same hospital as H0-010) 2006 **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: - 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. - Ensure that its agents are informed of their duties under PHIPA and their obligations to comply with the revised information practices of the HIC. The HIC was urged to issue an apology to the patient. The IPC commented that privacy policies are not enough – staff must be trained.

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H0-003 2006 **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: - 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. - 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 2007 **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: - Develop or revise and implement policies and procedures to ensure that records of PHI are safeguarded and that its information practices comply with PHIPA. - 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." - 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. - Review and revise its research protocols and applications to comply with PHIPA (use of PHI for research purposes).
H0-005 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: - 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. - Notified the CPSO. - 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 2009 **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: - Implement its plan to place cross-cut shredders in every location. - 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 2010 **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: - 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. - Revise its written information practices in order to comply with and incorporate the requirements of PHIPA and its regulations. - 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)

# and year	Allegations/Facts	IPC Decision
		- 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. 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. The public was notified through public advertisements in newspapers.

H0-008
 	
2010
 	
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:
		
		- Immediately develop and implement practices to ensure the records of PHI stored on mobile devices ae safeguarded at all times.
		- 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.
		- 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).
		    ○ Any PHI on a mobile device must be strongly encrypted
		    ○ 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.
		    ○ CIO has the responsibility to receive immediate notice of any encryption error message and investigate same.
		    ○ Guidelines must exist for staff receiving new mobile devices. Staff must review and purge all PI and PHI to be transferred to new device.
		- 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. The IPC stated "sever all personal identifiers or encrypt the data on mobile devices – Full Stop."
H0-009 2010 **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". IPC also concluded that the OMA Guide was unreasonable and used the calculations from a proposed regulation for fees. 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) 2010 **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: - 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 - 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 - Provide a written report of the privacy breach and a copy of the Order to the technologist's professional college - 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 - Include a discussion of Orders 2 and 10 in all future training programs - Conduct privacy retraining for all agents in the technologist's department, as required by the hospital's policy - Amend its written public statement to include a description of the "VIP Warning Flag" system, to indicate how an individual may request one and

# and year	Allegations/Facts	IPC Decision
		to identify the employee(s) of the hospital to whom the request may be directed - Ensure that the "VIP Warning Flag" may be applied in all electronic information systems that include PHI - 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. The IPC recommended that the hospital: - Conduct a review of existing technological safeguards and solutions that are currently available on the market to facilitate role-based access and audit - 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 2011 **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. 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. CCO proposed to develop a secure online web portal to delivery screening reports. CCO was ordered to: - Discontinue the practice of transferring screening reports containing PHI to primary care physicians in paper format

# and year	Allegations/Facts	IPC Decision
		- 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 - 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 - 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 2014 **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. 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
 	
2014
 	
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:
		
		- 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.
		- In relation to the Meditech system:
		    ○ 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.
		    ○ 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. - 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. - Develop a Privacy Training Program policy, a Privacy Awareness Program policy, and a Privacy Breach Management policy. - Immediately review and revise its privacy training tools and materials. - Using the privacy training materials developed in accordance with Order provision 5: ○ immediately conduct privacy training for all agents in clerical positions in the Hospital; and ○ conduct privacy training for all other agents by June 16, 2015.
H0-14 2015 **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 2015 **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) 2015 **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) 2015 **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. 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 2015 **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) 2016 **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. 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. 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) 2016 **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. 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) 2016 **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. The hospital declined to disclose to the complainant. It did not think the psychiatric records would be	See Decision 19. IPC concluded that the hospital did not properly exercise its discretion to disclose under s. 38(4). The hospital was ordered to re-consider. 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) 2016 **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. The CCAC declined to disclose further information to the complainant.	See Decision 19. 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. 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) 2016 **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 **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) 2016 **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 2016 **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 2016 **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) 2016 **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 2016 **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) 2016 **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) 2016 **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) 2016 **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) 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: - Records of quality of care information under QCIPA - 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 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 2016 **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 2016 **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. 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 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 2016 **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. 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) 2016 **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. 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.

# and year	Allegations/Facts	IPC Decision
	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 2017 **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 2017 **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

# and year	Allegations/Facts	IPC Decision
2017 **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) 2017 **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. 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 2017 **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.

# and year	Allegations/Facts	IPC Decision
	from his family physician and claimed the hospital failed to execute a "reasonable search".	
Decision 44 (includes an order) 2017 **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) 2017 **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. 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). The IPC also responded to the parents' concerns that the IPC was biased in favour of the hospital.

# and year	Allegations/Facts	IPC Decision
	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 2017 **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 2017 **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 2017 **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.

# and year	Allegations/Facts	IPC Decision
	hospital. The hospital searched for those records, but could not find them.	
Decision 49 (includes an order) 2017 **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. 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. The hospital undertook to maintain a copy of the image in case of future litigation.
Decision 50 2017 **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. 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.

# and year	Allegations/Facts	IPC Decision
Decision 51 2017 **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) 2017 **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. The hospital raised objections at the possible cost implications of having to provide raw source data in native format to all patients. 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". 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. 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. On the topic of the "reasonable search" the IPC supported the hospital's search practices and acknowledged that this case was "novel". 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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# and year	Allegations/Facts	IPC Decision
Decision 53 (includes an order) 2017 **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. 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. 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. The IPC discussed the issue of whether certain records were "primarily dedicated to the complainant's personal health information".
Decision 54 (includes an order) 2017 **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. 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. 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. 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 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.

# and year	Allegations/Facts	IPC Decision
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": 1. The custodian must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. 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. 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 2017 **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 2017 **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. 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.

# and year	Allegations/Facts	IPC Decision
	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 2017 **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. 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 2017 **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.

# and year	Allegations/Facts	IPC Decision
Decision 60 2017 **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 2017 **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. 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 2017 **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. 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. 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.

# and year	Allegations/Facts	IPC Decision
	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. 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: • Formalizing the relationship with the medical corporation • Ensuring all physicians were trained in privacy • Creating a joint privacy committee of both health centre members and physicians • Clarifying how discipline of physicians would be addressed in future
Decision 63 2017 **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. 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 2017 **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. 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

# and year	Allegations/Facts	IPC Decision
		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 2018 **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. 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 2018 **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. 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 2018 **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".

# and year	Allegations/Facts	IPC Decision
	allow a statement of disagreement to be attached to the record.	
Decision 68 (related to Decision 16) 2018 **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. 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. 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. 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: • 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. • The patient's physician, an employee of the clinic, was not responsible because the physician was not a health information custodian. • 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. • The pharmacy released information to the spouse based on mistaken belief it was sharing to a physician within the circle of care. • The spouse to be a "recipient" and that he misused and disclosed the patient's information for unauthorized purposes. 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 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. There was no evidence of intentional theft. The records were lost.

# and year	Allegations/Facts	IPC Decision
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 2018 **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. IPC document "What to do when faced with a privacy breach" was identified as a source for reminders how to prevent privacy breaches. 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 2018 **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. 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

# and year	Allegations/Facts	IPC Decision
	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 2018 **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. 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) 2018 **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. 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". 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 2018 **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. 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

# and year	Allegations/Facts	IPC Decision
	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. 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 2018 **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. 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). 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 2018 **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.

# and year	Allegations/Facts	IPC Decision
	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) 2018 **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. 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. 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. 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. The IPC also noted the group practice had failed to communicate with the IPC.
Decision 78 2018 **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. 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

# and year	Allegations/Facts	IPC Decision
	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) 2018 **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. The IPC also noted the physician had failed to communicate with the IPC.

# and year	Allegations/Facts	IPC Decision
Decision 80 2019 **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 2019 **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 2019 **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

# and year	Allegations/Facts	IPC Decision
	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. 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. 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 2019 **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. 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.
Decision 84 2019 **Hospital** **(see also Decision 94)**	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.

# and year	Allegations/Facts	IPC Decision
	and implemented the lockbox directive. The patient complained to the IPC.	
Decision 85 2019 **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. The IPC also acknowledged that because the patient had died, the hospital would not require the records for ongoing care.
Decision 86 2019 **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: • Searched for the records • Fulfilled its information management practices • Followed its privacy breach protocol • Notified the complainant and the IPC of the lost records • Updated its practices to prevent future similar incidents • Consulted with its third party vendor responsible for scanning paper records to prevent future similar incidents

# and year	Allegations/Facts	IPC Decision
Decision 87 (includes an order) 2019 **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. 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. 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 (Does not exist)		
Decision 89 2019 **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. 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) 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. 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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# and year	Allegations/Facts	IPC Decision
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." 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 2019 **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. 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 2019 **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.

# and year	Allegations/Facts	IPC Decision
Decision 93 2019 **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. 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) 2019 **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 Does not exist		
Decision 96 (includes an order) 2019 **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. 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.

# and year	Allegations/Facts	IPC Decision
Decision 97 2019 **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 2019 **Medical Clinic**	A media outlet notified the IPC that a cosmetic surgery clinic was using surveillance cameras in examination rooms. 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: 1. The clinic ceased its recordings immediately when notified by the IPC. 2. Only 2 cameras remain: at 2 reception desks and entrance 3. The 2 cameras are only recording after office hours 4. The clinic put up new signs to alert "For security, these premises are under closed circuit audio/video security surveillance" 5. The clinic destroyed old recordings 6. The clinic updated its privacy policies and consent forms 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 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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# and year	Allegations/Facts	IPC Decision
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".
Decision 100 2019 **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.	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. 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. 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*.

# and year	Allegations/Facts	IPC Decision
Decision 101 (includes an order) 2019 **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: • The information requested was personal health information • The request for access would proceed first under PHIPA and second under FIPPA • The records at issue were not "dedicated primarily to" the personal health information of the requester • 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 • 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) 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 2019 **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: 1. the agreement governing the shared system 2. privacy breach management policies and procedures 3. lock-boxes 4. training 5. confidentiality agreements 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: 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;* 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;

# and year	Allegations/Facts	IPC Decision
	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; 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; 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; 6. Implementing privacy notices that agents accessing the shared system view prior to accessing personal health information; and 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 2019 **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. 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. 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." The IPC was also satisfied that the good faith professional opinion or observation exception applied.
Decision 104 2019 **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".

# and year	Allegations/Facts	IPC Decision
	did not find any additional records. The patient complained to the IPC.	
Decision 105 2019 **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: • she retrieved the three binders from the CPSO • she transferred the binders to a secure storage facility where she keeps all the records of personal health information of her former patients • 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 • her contact details are provided to former patients who are seeking access to records of their personal health information But note that although the IPC decided not to review, it decided to identify the physician because: 1. the incident that triggered the complaint was publicized in the media; 2. the IPC had issued at least one previous PHIPA decision in which it identified the same physician (see Decision 42); and 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 Does not exist		
Decision 107 2020	A father requested that his child's physician correct or remove a letter in the child's file that included	The IPC dismissed the father's complaint about the physician's refusal of the correction request.

# and year	Allegations/Facts	IPC Decision

Physician and Medical Clinic	information about the father that he alleged was false.
	
	The father shared joint custody of the seven-year-old child with the child's mother, from whom he was separated.
	
	The doctor refused the correction request on various grounds including that:
	
	• the record was not a record of the complainant's own personal health information; and
	• the child's mother objected to the father's correction request.
		The IPC found that:
		
		• the record at issue was a record of personal health information of the complainant's daughter, and not of the complainant; and
		• in the circumstances, the complainant did not have authority under PHIPA to act as an independent substitute decision-maker for the child because
		  ○ as joint custodial parents, the father and the mother were equally ranked substitute decision-makers for the child under PHIPA ; and
		  ○ 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 2020 **Hospital**	A patient made a correction request with respect to a record relating to his past admission to the hospital. 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. The hospital denied the correction request because the Form 1 contained a professional opinion and observation that a physician made in good faith. The hospital advised the complainant that he could have a statement of disagreement attached to the record.	The IPC found that no review was warranted because there were no reasonable grounds for a review. 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. 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.

# and year	Allegations/Facts	IPC Decision
Decision 109 (includes an order) 2020 **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: 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); 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 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. The former employee argued that her access to personal health information was within her role at the clinic.	The IPC ordered: 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. 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. 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. 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. 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 2020 **Hospital and Physicians**	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 private practice office of a physician with privileges at the hospital. In each case, the accesses at issue were made by, or under the EMR credentials of, an employee of 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. The IPC concluded that the hospital and the two physicians involved are each health information custodians in relation to the EMR transactions under

# and year	Allegations/Facts	IPC Decision
	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. (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.)	review, and, accordingly, that each had responsibilities under PHIPA to safeguard the personal health information at issue. 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. 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). With respect to accesses to the EMR, the IPC found the following to be in contravention of PHIPA: • "credential-sharing", even if done for health care purposes; and • 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. 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: • privacy training and education for their private practice employees; • the implementation of confidentiality agreements as a condition of employment; and

# and year	Allegations/Facts	IPC Decision
		• introducing limitations on (or altogether prohibiting) their private practice employees' access to the hospital's EMR. The IPC also advised the physicians to: • 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; • 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 • 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. The steps taken by the hospital included: • 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; • introducing new policies to confirm the identity of specific agent users of its EMR and to prohibit the sharing of EMR user credentials; • e-educating existing professional staff with private practice offices of their privacy protection obligations; • updating other aspects of its privacy training and education for professional staff more generally; • separate privacy refresher training to the physicians involved; • 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 • exploring new role-based system of EMR access.

# and year	Allegations/Facts	IPC Decision
		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 2020 **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. 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. 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.) 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. "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." 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. Based on the principles set out in the decision, the IPC reduced the custodian's fee estimate to $2,831.
Decision 112	A patient made a correction request with respect to records relating to her past admission to the hospital.	The IPC found that no review was warranted because there were no reasonable grounds for a review.

# and year	Allegations/Facts	IPC Decision
2020 **Hospital**	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. The hospital denied the correction request because the records contained a professional opinion or observation that a physician made in good faith. 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 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) 2020 **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 (includes an order) 2020 **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 third party cybersecurity firm) after the breach occurred; the communications between the attacker and Cytelligence (a firm that LifeLabs engaged to	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. With respect to litigation privilege, LifeLabs failed to demonstrate that the documents at issue were created for the dominant purpose of litigation.

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# and year	Allegations/Facts	IPC Decision
	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 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 (includes an order) 2020 **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. 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. 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. 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. 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	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. 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. 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.

# and year	Allegations/Facts	IPC Decision
	analyst and said that preparing a decision would take some time. The custodian did not issue a decision.	
Decision 116 2020 **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. 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. 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 (includes an order) 2020 **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 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 ordered: 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. 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. 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. 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. 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,

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# and year	Allegations/Facts	IPC Decision
		which qualifies as identifying information about the complainant that relates to the providing of health care to him. 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. 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. 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. 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 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.

# and year	Allegations/Facts	IPC Decision
Decision 118 2020 **Hospital** (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). 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. 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. The hospital maintained its position that patient sex is a relevant factor in dosing decisions, as well as for 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	The IPC dismissed the complaint. 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. 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).

# and year	Allegations/Facts	IPC Decision
	any effects before recommending removal of sex from its Family Practice EMR prescriptions.	
Decision 119 (reviewed in Decision 121) 2020 **Pain Management Clinic**	A patient of a pain management clinic sought a copy of his medical records. 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. 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. 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. The complainant did not provide sufficient evidence to establish a reasonable basis for his belief that additional responsive records exist. The clinic gave a sufficient explanation for why it was unable to locate and provide the complainant with the images and discharge papers.
Decision 120 (includes an order) 2020 **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. 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. The video was composed of four recordings from three different hospital cameras. It was compiled by the hospital at the request of the Crown Attorney's office for use in a law enforcement proceeding.	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. 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. 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

# and year	Allegations/Facts	IPC Decision
	Although the hospital and the complainant treated it as an access request and appeal under FIPPA, the IPC treated as a complaint under PHIPA.	recorded for security purposes and the video that was compiled from the footage was created for a legal proceeding. The complainant only had a right of access to his PHI in the video that could be severed from the rest of the video. 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). The IPC upheld the hospital's search for records as reasonable. 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 (reviews Decision 119) 2020 **Pain Management Clinic**	Complainant in Decision 119 made a request to the IPC for reconsideration.	The IPC denied the reconsideration request. 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 Does not exist		

# and year	Allegations/Facts	IPC Decision
Decision 123 (includes an order) 2020 **Hospital**	A patient requested video recordings of events leading up to, and including, his restraint and placement in a seclusion room by hospital staff. 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. This decision discusses the test for records that are "dedicated primarily to" the requestor's PHI. 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 2020 **Rehabilitation Clinic**	A rehabilitation clinic reported two breaches: 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. The clinic revised its Clinician Agreement, Privacy Policy and Confidentiality Agreement to teach staff that: • 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

# and year	Allegations/Facts	IPC Decision
	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).	• they are not permitted to send PHI to a personal email address • 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 • they may not leave confidential information exposed for others to view." The clinic also instituted annual privacy training for all employees and specific instructions and training to all staff in response to the breaches. The IPC concluded the clinic's response was sufficient and no order was required.
Decision 125 2020 **Hospital**	A patient requested correction of records of his personal health information that contained a cancer diagnosis because he disagreed with the diagnosis. 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. 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 2020 **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 records in relation to both the marriage and co-parenting counselling.	In relation to the marriage counselling sessions, the IPC found: • 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; • the respondent conducted a reasonable search for records; and • 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

# and year	Allegations/Facts	IPC Decision
		her and give her an opportunity to provide representations on the issues raised by his request for those records. 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. 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. 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.
Decision 127 (includes an order) 2020 **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 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.	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. 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 the third party as to how long it estimates the work will take based on the specific request. 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.

# and year	Allegations/Facts	IPC Decision
	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.	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." 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. 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) 2020 **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. The complainant applied for a judicial review of PHIPA Decision 83. Upon being notified of the application for 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*	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. 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 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. 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.

# and year	Allegations/Facts	IPC Decision
	from Matters under the Personal Health Information Protection Act, 2004.	No order issued.
Decision 129 2020 **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. 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. 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.
Decision 130 (includes an order) 2020 **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. The hospital issued an invoice for an additional payment of $443. A complaint was filed disputing the fee.	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. 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 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: • For records requiring only a "straightforward review", five seconds per page is reasonable.

# and year	Allegations/Facts	IPC Decision
		• For records requiring more detailed review, two minutes per page is reasonable. Hospital charged $180/hour for review, which IPC did not question.
Decision 131 2020 **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. 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. 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. As a result, the hospital is not required to correct any of the record and no order is issued.
Decision 132 (includes an order) 2020 **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. 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 $66.10 for photocopying and $19 for postage and administration. The lawyer (now the complainant) filed a complaint with the IPC about the custodian's fee.	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. 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. 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. 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

# and year	Allegations/Facts	IPC Decision
		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. Absent additional information the amount for "postage and administration" is not allowed as it is subsumed within the $30.
Decision 133 (includes an order) 2020 **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. 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 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. 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. 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 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.

# and year	Allegations/Facts	IPC Decision
		"Postage & handling" of $35 not allowed. Should be included within the $30 set fee.
Decision 134 2020 **Developmental services provider** 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. 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. 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). The IPC found that it is not SCS' primary purpose to provide health care. 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. 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. Given that SCS is not a HIC under PHIPA, there is no basis to review SCS' search for records.
Decision 135 2020 **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. The hospital fully refused to make the requested corrections and informed the complainant of her right	The IPC dismissed the complaint, finding that: • the hospital is the "health information custodian" as defined in section 3(1), with respect to the consultation note ○ the psychiatrist was acting as the hospital's "agent" under PHIPA with respect to the complainant's personal health information

# and year	Allegations/Facts	IPC Decision
	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. The complainant filed a complaint with the IPC. 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.	○ 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" • 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 • 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 ○ 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 • 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)	The complainant began filing complaints with the IPC in 2014 and has initiated 29 access and/or correction	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

# and year	Allegations/Facts	IPC Decision
(same complainant as Decision 91) 2020 **Hospitals, Community Care Access Centres, Medical Clinics, Paramedic Services, Physicians, Physiotherapists and others**	complaints against various health information custodians. 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).	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. 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. 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: 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. 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. 3. At least some of the complainant's complaints are a clear attempt to revisit matters that were addressed in now-closed complaint files. 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. 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.

# and year	Allegations/Facts	IPC Decision
Decision 137 (includes an order) 2020 **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). 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. Physician spent 30 minutes reviewing eight pages of responsive records and charged their hourly rate for 15 minutes of the 30 minutes. 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 2021 **Doctor**	A patient made a number of correction requests to his family physician. 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. The complainant was advised that he was entitled to submit a statement of disagreement to be included in his records of personal health information.
Decision 139 2021 **Developmental services provider** 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. 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.

# and year	Allegations/Facts	IPC Decision
Decision 140 2021 **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. 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. 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 2021 **Hospital**	A patient made an access request for records containing her personal health information related to a 2007 surgery. 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. 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. The complainant failed to establish a reasonable basis for her belief that additional electronic records related to her surgery and recovery exist.
Decision 142 (includes an order) 2021 **Hospital**	A hospital received a request for access to video surveillance recording. The hospital took the request as a freedom of information request (under FIPPA) 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.	The IPC found: 1. The hospital should have responded under PHIPA first. 2. The video surveillance recordings were records of PHI. 3. The images of hospital staff and security should not be redacted but the images of other patients should be redacted. 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. 5. There were no exemptions to the right of access. 6. The hospital was allowed to hire an external company to redact the recordings.

# and year	Allegations/Facts	IPC Decision
		7. The fees for access should be determined under PHIPA not FIPPA. 8. The hospital had to reconsider its fee quote.
Decision 143 2021 **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. 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. 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. 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 2021 **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 sent her a lockbox request form, which she did not return. 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. The patient filed a complaint with the IPC alleging unauthorized access to her records after her initial	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: • With respect to the initial request prior to submitting the form, although a conversation could be sufficient to communicate the 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. • 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.

# and year	Allegations/Facts	IPC Decision
	attempt to put a lockbox in place and that the hospital was incapable of implementing her direction. After the complaint, the hospital put into place a newly worded consent directive warning flag on the patient's EHR. 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.	• 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. 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. With the introduction of a new electronic medical records system, the hospital remedied the deficiencies in its procedures for implementation of consent directives: • 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. • 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, users are told that accesses beyond the flag are monitored by the hospital's privacy office. • The IPC accepted the hospital's rationale for the implementation of a seven-day "window" following consent to access a patient's records. 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"

# and year	Allegations/Facts	IPC Decision
		(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. 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. 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 personal health information under PHIPA - PHIPA does not require a health information custodian to provide absolute guarantees.
Decision 145 (includes an order) 2021 **Physician**	A patient sought access to her records of personal health information from a psychiatrist who was no longer seeing patients. She received no response and made a deemed refusal complaint to the IPC. 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.	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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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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