# Report of Findings: 25/26-H-028
# Vitalité Health Network

## June 30, 2026

**Citation:** Vitalité Health Network (Re), 2026 NBOMBUD 3

**Summary:** The Complainant asked Vitalité Health Network for a copy of the audit trail of their medical file. Vitalité denied the request, finding that the audit trail is not "personal health information" within the meaning of section 1 of the *Personal Health Information Privacy and Access Act.* The Complainant was not satisfied with the response and filed a complaint with the Office of the Ombud.

The Ombud found that the audit trail related to the Complainant's medical record is "personal health information" within the meaning of section 1 of the *Act*. Even though it does not directly describe the Complainant's state of health, it contains identifying information about them, relates to their medical record and its use, and presents a sufficient link with the Complainant's health or the care provided to them by Vitalité, in particular by identifying the care providers associated with the said care.

The Ombud also found that Vitalité had not reviewed the Complainant's request under subsection 7(1) of the *Act* on its merits, and that Vitalité should have addressed it in accordance with that provision, subject to any applicable exceptions. It was recommended that Vitalité assess the request in accordance with subsection 7(1), treating the audit trail as personal health information, and that Vitalité review the scope of the request, determine which information needs to be redacted, and disclose to the Applicant the information they are entitled to, giving reasons for any partial refusal.

**Statutes Considered:** *Personal Health Information Privacy and Access Act*, SNB 2009, c. P-7.05, ss. 1, 7(1); *General Regulation*, NB Reg 2010-112, s. 5.

**Authorities Considered:** *Mackenzie Health (Re)*, 2015 CanLII 73815 (ON IPC); *Public Health Ontario (Re)*, 2021 CanLII 93063 (ON IPC); *Toronto (Metropolitan) (Re)*, 1994 CanLII 6771 (ON IPC).

## INTRODUCTION

[1] This report follows the investigation of a complaint filed under the *Personal Health Information Privacy and Access Act* ("the *Act*") about Vitalité Health Network's response ("Vitalité") to the Complainant's request for a copy of the audit trail of their medical file.

[2] The Complainant emailed Vitalité on October 27, 2025, requesting a copy of the audit trail of their medical file covering all access records relating to their information, including:

- the date and time of access,
- the identifier or role of the person or system that accessed the information,
- the system or database concerned (e.g., electronic health file, Meditech, etc.), and
- if possible, the nature of or reason for access (consultation, change, printout, transfer, etc.).

[3] Vitalité replied on December 12, 2025, stating that under the *Act*, the requested audit trail is not "personal health information" subject to a right of examination or disclosure.

[4] The Complainant was not satisfied with Vitalité's reply and filed a complaint with this office on December 29, 2025.

[5] Informal resolution efforts by this office were unsuccessful, which led me to conduct a formal investigation under s. 69(3) of the *Act*.

## COMPLAINANT'S REPRESENTATIONS

[6] The Complainant argued that the *Act* gives everyone the right to access their personal health information held by a custodian. Custodians must assist in clarifying the request as needed and must respond within 30 business days, confirming the existence of the records, their accessibility, and if applicable, the specific reasons for any refusal. The Complainant contended that a general or vague response did not meet the *Act*'s requirements.

[7] The Complainant also argued that the *Act* requires a nuanced approach, even when a record contains exempted elements; custodians must redact the protected items where possible and disclose the rest; if some information is not covered by the *Act*, the request can be dealt with under the *Right to Information and Protection of Privacy Act*, which also prescribes a duty to assist, to provide a clear answer and to redact if necessary, rather than refusing outright.

[8] Lastly, the Complainant argued that the practice in other provinces confirms that it is possible to provide audit trail information in a structured and useful format. The logging and security obligations under the *Act* demonstrate that such data is essential for ensuring compliance and traceability, and that access to it can be requested in principle.

[9] To sum up, the Complainant's essential argument was that the audit trail for their medical file did constitute "personal health information" within the meaning of the *Act*, and that Vitalité should have given them a copy of it pursuant to their request.

## VITALITÉ'S REPRESENTATIONS

[10] Vitalité argued to the contrary that audit trails do not constitute personal health information as defined in the *Act*; they describe neither the patient's state of health nor the care provided, and are not part of the clinical file. Vitalité argued that audit trails are rather system-generated metadata that records activity and access, with no direct link to the patient's health.

[11] Vitalité argued further that such audit trails are administrative and internal compliance tools. They are used to ensure security, confidentiality and access control to personal health information by way of detecting and investigating unauthorized access. As such, the audit trails fall under Vitalité's internal governance rules and are not governed by the access mechanisms prescribed for personal health information.

[12] Lastly, Vitalité contended that disclosing such audit trails would pose significant risks to security and confidentiality because they contain sensitive information, particularly with respect to staff access practices, systems and security protocols, as well as information about third parties. It argued that the *Act* does not

require such trails to be created on request or disclosed, and that the right of access under the *Act* was limited to only the information specifically defined as personal health information.

[13] In short, Vitalité's position was essentially that the audit trails of patients' medical files do not constitute "personal health information" as defined by the *Act* and that Vitalité has no obligation to give the Complainant copies, despite their request.

## ISSUES

[14] The issues to be addressed are as follows:

- Is Vitalité Health Network a "custodian" within the meaning of the *Act*?
- Does the audit trail of the Complainant's medical file constitute "personal health information" within the meaning of section 1 of the *Act*?
- In the affirmative, and subject to the other provisions of the *Act*, is the Complainant entitled, on request, to examine or receive a copy of the audit trail of their medical file maintained by Vitalité?

## ANALYSIS AND DECISION

### A. Does the audit trail of the Complainant's medical file constitute "personal health information" within the meaning of s. 1 of the *Act*?

**Relevant legislative provisions**

[15] Section 7(1) of the *Act* entitles all individuals, on request, to examine or receive a copy of their personal health information maintained by a custodian, subject to certain exceptions set out in the *Act*.[1]

[16] Section 1 of the *Act* defines "personal health information" as "identifying information about an individual in oral or recorded form if the information

[1] *Ibid.*, s. 7(1).

(a) relates to the individual's physical or mental health, family history or health care history, including genetic information about the individual,

(b) is the individual's registration information, including the Medicare number of the individual,

(c) relates to the provision of health care to the individual,

(d) relates to information about payments or eligibility for health care in respect of the individual, or eligibility for coverage for health care in respect of the individual,

(e) relates to the donation by the individual of any body part or bodily substance of the individual or is derived from the testing or examination of any body part or bodily substance,

(f) identifies the individual's substitute decision maker, or

(g) identifies an individual's health care provider."[2]

[Emphasis]

[17] That same section defines "identifying information" as "information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual."[3]

[18] It also defines "health care" as "any observation, examination, assessment, care, service or procedure that is carried out or provided for a health-related purpose and

a) to diagnose, treat or maintain an individual's physical or mental condition,

b) to prevent disease or injury or to promote health, or

c) as part of rehabilitative or palliative care,

and includes

[2] *Ibid.*, s. 1.
[3] *Ibid.*, s. 1.

d) the dispensing or selling of a drug, a device, equipment or any other item to an individual, or for the use of an individual, pursuant to a prescription

e) the compounding of a drug, for the use of an individual, pursuant to a prescription, and

f) a health care service prescribed by regulation."[4]

[19] It goes on to define "health care provider" as "a person who is registered or licensed to provide health care under an Act of the Legislature or who is a member of a class of persons designated as a health care provider in the regulations."[5]

[20] In addition, section 5 of the *General Regulation* under the *Act* designates the following classes of persons for the purpose of the definition of "health care provider" in s. 1 of the *Act*: social workers registered under the *New Brunswick Association of Social Workers Act, 1988;* and New Brunswick members of the Canadian Health Information Management Association.[6]

[21] Having set out the relevant legislative provisions, the next step is to determine whether the audit trail of the Complainant's medical file truly constitutes "personal health information" within the meaning of the *Act*. This issue must be resolved before the analytical framework applicable to the Complainant's request can be determined.[7]

**Case Law**

[22] Although decisions from other provinces may not be decisive in this case, they may nevertheless be useful where they relate to similar legislative frameworks, particularly about the method of analysis and the interpretation of terms (e.g. "relate to") contained in the definition of "personal health information" set out in the *Act*.

[23] On this point, the decision of the Ontario Information and Privacy Commissioner ("the Ontario Commissioner") in *Public Health Ontario (Re)* states that we must first establish whether the audit trail at issue falls within the applicable definition to determine whether it truly is "personal health information."[8]

[24] That decision states that the entire record must be analyzed, not merely isolated elements of its content, as indicated in paragraph 38:

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[4] *Ibid.*, s. 1.
[5] *Ibid.*, s. 1.
[6] *General Regulation*, *NB Regulation* 2010-112, s. 5.
[7] *Public Health Ontario (Re)*, 2021 CanLII 93063 (ON IPC), paras. 27 to 28.
[8] *Ibid.*, para. 28.

> In considering the records at issue, I apply the "record-by-record" method of analysis adopted by this office.[3] Under this method, the unit of analysis is the whole record, rather than individual paragraphs, sentences or words contained in a record. In addition, where the information at issue is the withheld portion of a record that has been partially released, the whole of the record (including released portions) is analyzed in determining a requester's right to access the withheld information. As noted in PHIPA Decision 17, the presence of any personal health information in a record makes it a record of personal health information under PHIPA.[9]

[25] This approach, described as a "record-by-record" analysis, is based on the Ontario Commissioner's order in *Toronto (Metropolitan) (Re)*. That decision stated that records should not be analyzed word by word or line by line, but by considering the records as a whole in order to determine their nature, as set out in pages 8 and 11 of the order:

> […]
>
> In my view, the record-by-record analysis best reflects the special character of requests for records containing one's own personal information, and it provides a practical, uniform procedure which all institutions can apply in a consistent manner.
>
> […]
>
> **The Record-by-Record Approach - Which Part of the Act Should Apply**
>
> The Municipality argues that it is inappropriate to decide which part of the Act should apply based upon a record-by-record approach for several reasons, as outlined above.
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> As I have indicated, the record-by-record approach is consistent with the intention of the legislature that individuals should have a higher right of access to their own personal information.
>
> By contrast, the approach advocated by the Municipality (that the analysis should depend on the nature of the **information** being considered) would require switching back and forth from Part I to Part II of the Act based upon a word-by-word, line-by-line or paragraph-by-paragraph analysis. This would mean that records containing a requester's own personal information could, in

[9] *Ibid.*, para. 38.

> part, be analyzed under Part I of the Act, which works against the higher right of access conferred under Part II of the Act.
>
> In addition, this approach virtually guarantees a lack of uniformity in the way institutions respond to access requests for individuals' own personal information. Seen from a broad perspective, the lack of a uniform approach would mean that different institutions would apply different criteria for determining whether records or parts thereof should be evaluated under Part I or Part II of the Act.
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> For all these reasons, I am of the view that the record-by-record approach to the determination of which part of the Act should apply is most consistent with the purposes of the Act, and most conducive to the uniform administration of the legislation.[10]
>
> [Emphasis added]

[26] I am of the opinion that the "record-by-record" analysis is particularly appropriate in cases involving data trails of medical files. Even though they are made up of separate fields, their content must be studied comprehensively because taken together they reveal information about the Complainant and the use of their medical file.

[27] The decision by the Ontario Commissioner in *Mackenzie Health (Re)* issued under the *Personal Health Information Protection Act, 2004,* provides useful details about the scope of the expression "relates to" as used in the definition of "personal health information." It relies on a broad interpretation, covering all information that has a sufficient link with the health of an individual or the care provided, as set out in paragraphs 65 to 68 of the decision:

> **[65]** I find that most of these records are also records of personal health information within the meaning of paragraphs (a) and (b) of section 4(1). I conclude that the phrase "relates to," as it appears in these paragraphs, and read in its grammatical and ordinary sense, includes information that is connected in some way to the health of the complainant's wife and daughter, or to the provision of health care to them.
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> **[66]** This interpretation of the phrase "relates to," as it appears in sections 4(1)(a) and (b) of PHIPA, accords with the interpretation this office has applied to this phrase and to analogous phrases in provincial access-to-information legislation.[16] This interpretation best gives effect to one of the

[10] *Toronto (Metropolitan) (Re)*, 1994 CanLII 6771 (ON IPC), pp. 8 and 11.

> purposes of PHIPA, which is to provide individuals with a right of access to personal health information about themselves, subject to limited and specific exceptions. [17] Such an interpretation is supported by PHIPA's inclusion, in the definition of personal health information, of non-health-related information about an individual contained in "mixed records" (section 4(3)). [18]
>
> **[67]** I also find support for such a reading of the definition of personal health information for the purposes of PHIPA in the Guide to the *Ontario Personal Health Information Protection Act*. [19] I observe that a more restricted interpretation would, in this case, still leave the complainant's wife and daughter with the right to access their personal information through a FIPPA request. However, it would limit the information available to individuals seeking their personal health information from health information custodians that are not subject to FIPPA or its municipal equivalent. I am not convinced that there are policy reasons to favour a more restrictive understanding of the right of access under PHIPA.
>
> **[68]** I also find support for a liberal interpretation of the definition of personal health information, as a threshold question supporting the right of access, in Part V of PHIPA, which sets out rules governing the right of access. As will be seen below, balanced against a liberal understanding of the type of record which is subject to the right of access under PHIPA is a limitation on the right of access to the information in the record, based on the nature of the record and whether it is "dedicated primarily" to the personal health information of the individual requesting access. [20] [11]
>
> [Emphasis added]

[28] I am of the opinion that we can also adopt that liberal interpretation in this case, since the expression "relates to", as it appears in most of the paragraphs defining "personal health information" in the New Brunswick *Act*, gives effect to one of the law's purposes, namely "to provide individuals with a right to examine and receive a copy of their personal health information maintained by a custodian, subject to the limited and specific exceptions set out in this Act."[12]

[29] The definition of "personal health information" in the *Act* is also based on the notions of "identifying information" and information that "relates to" the Complainant's

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[11] *Mackenzie Health (Re)*, 2015 CanLII 73815 (ON IPC), paras. 65 to 68.
[12] *Supra*, note 1, para. 2(a).

physical or mental health, family history or health care history, including genetic information about them, as well as the health care provided to them by Vitalité.

[30] In the case before me, I am of the opinion that the audit trail is directly related to the Complainant's medical file. It relates to the Complainant and identifies them, either directly or by cross-reference to other information. That makes it identifying information about the Complainant.

[31] That trail also documents the access to and use of the medical file. The file only exists because Vitalité provided medical care. At the very least that constitutes a sufficient link between the information contained in the audit trail and the Complainant's physical or mental health, family history or health care history, including genetic information about them, and the care provided by Vitalité.

[32] Lastly, to the extent that the audit trail can indicate who accessed the Complainant's medical file, it can also identify the "health care providers" associated with such care, thereby directly matching one element of the legislative definition of "personal health information" as found in the *Act*.[13]

[33] For these reasons, I find that the audit trail related to the Complainant's medical file is "personal health information" within the meaning of section 1 of the *Act*.

**B. In the affirmative, and subject to the other provisions of the Act, is the Complainant entitled, on request, to examine or receive a copy of the audit trail of their medical file maintained by Vitalité?**

[34] It is important to note that subsection 7(1) of the *Act* gives all individuals the right to examine or receive a copy of their personal health information maintained by a custodian, subject to the exceptions set out in the *Act*.[14]

[35] In the case before me, Vitalité denied the Complainant's request on the grounds that the requested audit trail is not "personal health information" under the *Act,* without considering the application of subsection 7(1) on the merits.

[36] Since it has now been determined that the audit trail at issue does meet the definition, the Complainant's request must be analyzed in light of the right of access set out in subsection 7(1), on the merits and in accordance with the applicable provisions of the *Act*.

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[13] *Ibid*, s. 1.
[14] *Ibid*., s. 1.

[37] As a result, I am of the opinion that Vitalité must consider the Complainant's access rights to the requested audit trail, which is the Complainant's personal health information, and decide which parts, if any, need to be redacted pursuant to the exceptions set out in the *Act*.

## CONCLUSION

[38] After reviewing all the evidence and the parties' representations, I find Vitalité to be a "custodian" within the meaning of section 1 of the *Act*.

[39] I also find that the audit trail of the Complainant's medical file constitutes "personal health information" within the meaning of section 1 of the *Act*. The trail contains identifying information about the Complainant, pertains to their medical file and its use, and "relates to" their physical or mental health, family history or health care history, including genetic information about them as well as the health care provided to them by Vitalité. It also identifies the health care providers associated with such care.

[40] The audit trail therefore presents a sufficient link with the Complainant's health or the care provided to him by Vitalité.

[41] In the case before me, Vitalité denied the Complainant's request, finding that the requested audit trail did not constitute "personal health information" within the meaning of the *Act*.

[42] It follows, therefore, that the Complainant's request should have been properly considered under subsection 7(1) of the *Act*, subject to any applicable exceptions.

[43] In these circumstances, Vitalité must reconsider the Complainant's request under subsection 7(1), assessing its scope and determining which portions, if any, would need to be redacted per the exceptions set out in the *Act*.

## RECOMMENDATIONS

[44] I recommend, under s. 73(1) of the *Act*, that

- Vitalité assess the Complainant's request for access under subsection 7(1) of the *Act*, treating the audit trail of their medical file as personal health information;
- Vitalité review the scope of the request and determine which portions, if any, need to be redacted per the exceptions set out in the *Act*;

- Vitalité disclose to the Complainant the information they are entitled to and give reasons for any partial refusal.

[45] As set out in section 74 of the *Act*, Vitalité must give written notice of its decision with respect to these recommendations to the Complainant and this office within 15 business days of receipt of this Report of Findings.

This report is issued in Fredericton, New Brunswick this 30th day of June, 2026.

**Marie-France Pelletier**
Ombud for New Brunswick