

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2013-18

June 14, 2013

COVENANT HEALTH

Case File Number F5944

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Summary: The Applicant requested an incident report and records from Covenant Health (the Public Body) containing information “that was the basis for the decision to ban [her] from the General Hospital on December 17, 2010.” When she completed the application form, she indicated that the period of the requested records was December 17, 2010.

The Public Body located a note documenting an incident in which the Applicant was required to leave the General Hospital on December 17, 2010.

At the inquiry, the Public Body argued that the Applicant’s request should be interpreted as a request for records recording a formal decision to ban her from the hospital premises that was made on December 17, 2010. As no formal decision had been made on December 17, 2010, the Public Body argued that no responsive records existed and that it had met its duty to assist her.

The Adjudicator determined that the Public Body had not taken steps to clarify the ambiguous portions of the access request, and had adopted an overly restrictive interpretation of the Applicant’s access request. She determined that the Applicant was seeking records containing any information relating to, or contributing to, a manager’s decision to require the Applicant to leave the hospital on December 17, 2010. She also found that the access request was not limited to only those records created on December

17, 2010. As the Public Body had not yet conducted a search for records responsive to the Applicant's access request, the Adjudicator ordered it to do so.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10, 72

Authorities Cited: AB: Orders F2004-026, Order F2007-029; F2011-016

I. BACKGROUND

[para 1] On July 19, 2011, the Applicant made an access request for records to Covenant Health (the Public Body). She indicated on her application that the time period for the records was December 17, 2010. She stated in her application:

Please provide with the Incident Report and all other information that was the basis for the decision to ban me from the General on December 17, 2010. I have in no way been disrespectful or behaved in an inappropriate manner.

[para 2] The Public Body responded to the Applicant's access request by stating that no incident report had been created. However, the Public Body located a record created by the individual who had asked to have the Applicant removed. The record contains an account of the incident of December 17, 2010.

[para 3] The incident to which the Applicant refers is an incident in which she visited a hospital ward in order to pick up documents for an individual she was representing. A manager (referred to in the Applicant's correspondence as a manager / recreational therapist) told the Applicant that the documents were not there and asked her to leave. The manager then asked a licensed practical nurse to tell security that the Applicant was in the building and have security escort the Applicant from the unit.

[para 4] The Applicant requested review by the Commissioner of the Public Body's response to her access request. In her request to the Commissioner, the Applicant stated:

I clearly state that I want access to the information that was the basis for the decision that I was banned indefinitely from the General on December 17, 2010. This information would include the personal information about me that had been provided to the 10Y Manager / Recreation Therapist which resulted in her decisions:
to wrongly state there is no document,
to have security called, to ban me,
to have me escorted off 10Y,
to discard my communications as [an individual's] advocate.

[para 5] The Commissioner authorized mediation. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

[para 6] The parties exchanged initial submissions. After reviewing the parties' initial submissions, I decided that I had questions for the Public Body. In a letter dated December 4, 2012, I said:

[The Director, Information and Privacy's] affidavit states:

I believe that the wording of the access request was clear, both in terms of its subject-matter, and in terms of its referenced time period. I did not feel that it was necessary for me to communicate further with the Applicant in order to clarify the scope of the Access request.

...

On or about July 28, 2011, I contacted [a] security advisor with Covenant Health. [The security advisor] informed me that he contacted the security personnel who were working at Edmonton General Hospital on December 17, 2010, and searched through their notebooks. [The security advisor] informed me that he did not locate any responsive entries relating to the Applicant that related to the date December 17, 2010.

[The security advisor] further advised that a search was performed of electronic records entered by Security personnel with respect to the date December 17, 2010, but that no responsive records were located relating to the Applicant.

On or about July 25, 2011, I received correspondence from [the security advisor] regarding the results of his search for records. [He] informed me of his understanding that the applicant was not banned from the Edmonton General Hospital on December 17, 2010.

The Applicant's access request states:

Please provide me with the incident Report and all other information that was the basis for the decision to ban me from the General on December 17, 2010. I have in no way been disrespectful or behaved in an inappropriate manner.

The notes of recreational therapist / manager who called security to escort the Applicant from the General Hospital on December 17, 2010, and which the Public Body included in its response to the Applicant, state:

Writer indicated that no documents were not here and asked [the Applicant] to please leave the unit. Writer asked LPN to notify security that [the Applicant] was in the building. ARCM notified [the social worker]. [The Applicant] left the unit.

It appears from its submissions that the Public Body has interpreted the Applicant's request as one seeking reference to an official decision to ban her from the premises permanently. However, from my review of the Applicant's access request, and her letter accompanying this request, I conclude that when the Applicant refers to "being banned from the premises" she refers to the decision to call security to ensure that she left either the unit or the hospital itself on December 17, 2010. The term "ban" can be used in this context. Bans refer to prohibitions or exclusions and may be temporary, or permanent. Bans need not be official.

The recreational therapist / manager's notes indicate that the Applicant was required to leave if not the building, then the unit. This can be described as being prohibited from, or banned, from the unit on December 17, 2010. Essentially, the Applicant has requested recorded information that would assist her to understand why she was required to leave on December 17, 2010.

I conclude that when the Applicant asked for recorded information "that was the basis for the decision to ban her" she is referring to any recorded information that would have resulted in or contributed to the recreational therapist / manager's decision to require her to leave the unit and to call security to ensure that she did so. I am unable to interpret the Applicant's access request

as excluding recorded information that may have informed the recreational therapist / manager's actions in existence prior to December 17, 2010. If a record exists that would inform the Applicant of the basis of the recreational therapist / manager's actions, then it would be responsive.

The records do not document any attempts made by Covenant Health to contact the Applicant to clarify her access request that would support its decision to narrow the scope of the access request to only those records created on either December 16 or December 17, 2010 as it did.

Questions:

1. With regard to the note, "Writer asked LPN to notify security that [the Applicant] was in the building", what did the recreational therapist / manager mean? What significance, if any, did the Applicant being in the building have for security, such that the recreational therapist / manager felt it necessary to inform security of her presence there? Please provide direct evidence from the recreational therapist / manager who created the note, if possible. In asking this question, I acknowledge that there may have been prior communications concerning the Applicant that were oral rather than written in nature. However, I ask this question so I may be satisfied that no prior written material exists that would explain the positions being taken regarding the Applicant's presence.

2. Does the Public Body have custody or control of any records containing information about how security or staff members should treat or consider the Applicant or her organization, that were created prior to December 17, 2010, or any other information, such as policies or procedures, that could be said to have informed the recreational therapist / manager's decision of December 17, 2010?

[para 7] The Public Body responded to my questions and exchanged this response with the Applicant.

II. ISSUES

Issue A: Did the Public Body meet its obligations required by section 10(1) of the Act (duty to assist applicants), including whether the Public Body conducted an adequate search for responsive records?

III. DISCUSSION OF ISSUES

[para 8] Section 10 of the FOIP Act states, in part:

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para 9] Prior orders of this office have determined that the duty to make every reasonable effort to assist applicants includes the duty to conduct a reasonable search for responsive records. In Order F2007-029, the Commissioner noted:

In general, evidence as to the adequacy of a search should cover the following points:

- The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request

- The scope of the search conducted – for example: physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search
- Why the Public Body believes no more responsive records exist than what has been found or produced

Whether the duty to conduct a reasonable search for responsive records is met is, in some cases, dependent on the manner in which a public body interprets an applicant's access request. If a public body adopts an overly narrow interpretation of an access request, it may fail to search for records otherwise falling within the scope of the request. If it interprets an access request overly broadly, it may spend time and expense locating records that an applicant has not requested.

[para 10] In F2004-026, former Commissioner Work noted that public bodies may have to clarify access requests in some circumstances in order to meet the duty to assist. He said:

Finally, in its oral submission, the Applicant argued that the Public Body failed in its duty to assist by failing to clarify with the Applicant what it meant by "implementation" in the context of its original request. The Public Body suggested it did not do this because it assumed that it already understood the request. It explained that it thought it would not be reasonable for the Applicant to ask for the numbers of records that would be involved on the other understanding (that the request included all records in 2003 created by the Public Body relative to Bill 27 after the Bill's passage - which the Public Body described as "11 cubic feet of records"). While I have some sympathy with the Public Body's point, I have also been advised by the parties that the Applicant has since clarified this aspect of the request, which suggests that clarification was possible, and that there is indeed some further information relative to this aspect that is being sought. Thus I agree that the Public Body should have asked for clarification as to the part of the request that was ambiguous in its wording, rather than relying on its assumption, and that its failure to take this step was a failure to assist the Applicant.

[para 11] In Order F2011-016, the Adjudicator considered previous orders of this office commenting on the duties of public bodies to interpret access requests reasonably. He said:

The Applicant submits that the Public Body was too restrictive in its interpretation of the information that he requested and therefore overlooked responsive records. Previous Orders of this Office have said that a record is responsive if it is reasonably related to an applicant's access request and that, in determining responsiveness, a public body is determining what records are relevant to the request (Order 97-020 at para. 33; Order F2010-001 at para. 26). The Applicant argues that applicants should be given some latitude under the Act when framing their access requests, as they often have no way of knowing what information is actually available. I note Orders of this Office saying that a broad rather than narrow view should be taken by a public body when determining what is responsive to an access request (Order F2004-024 at para. 12, citing Order F2002-011 at para. 18).

[para 12] In that order, the Adjudicator found that Alberta Health Services had taken too restrictive an approach in its interpretation of the kinds of information requested by the applicant. As a result, the Public Body had failed to meet its duty to

assist the applicant, because it had not searched for the records the applicant had requested.

Because the Public Body took an overly restrictive view of the information that the Applicant was seeking, in view of both the wording of his initial access request and the clarification subsequently provided by him, I find that the Public Body did not adequately search for responsive records and therefore did not meet its duty to assist the Applicant under section 10(1) of the Act. I intend to order it to conduct another search for responsive records, bearing in mind the scope of the information that the Applicant actually requested, as discussed above.

[para 13] In response to my letter of December 4, 2012, in which I put forward the interpretation that I assign to the Applicant's access request, the Public Body stated:

The Correspondence makes the following statement regarding the scope of the Access Request; "[the Applicant] is referring to any recorded information that would have resulted in or contributed to the recreational therapist / manager's decision to require her to leave the unit and to call security to ensure that she did so."

In contrast, Covenant Health provided extensive submissions and affidavit evidence regarding the searches it performed for responsive records in its Initial Submissions, in light of its interpretation of the Access Request. These Initial Submissions make clear that Covenant Health interpreted the Access Request to mean a decision to "ban" the Applicant as indicated by the wording of the Access Request, and as further explained in its Initial Submissions. The Applicant sought records related to a decision to "ban" and no responsive records were located because the sworn evidence of Covenant Health indicates that no decision to ban the Applicant was made at the relevant time.

In light of the fact that Covenant Health directed its searches for responsive records in response to its (appropriate, it is submitted) interpretation of the Access Request, Covenant Health cannot now respond to specific questions which presuppose that searches were undertaken in relation to a different interpretation of the Access Request.

[para 14] I conclude from this response that the Public Body restricted its search to only those records reflecting a formal decision to ban the Applicant from attending at its premises on December 17, 2010.

[para 15] As former Commissioner Work noted, a public body has a duty to clarify ambiguously worded access requests or access requests that are open to more than one interpretation. If more than one interpretation is possible, and different interpretations result in more or less records being located, then the Public Body has a duty to clarify what the Applicant meant. This duty exists because a public body is usually in a better position to know its own processes, what kinds of records it has, where it keeps them, when it creates them, and how its forms are to be interpreted, than is an applicant. Ambiguity can arise in an access request simply because an applicant is unaware of the language used by a public body, the kinds of decisions it makes, and the kinds of processes it has in place and how it documents them.

[para 16] If a public body has adopted an overly restrictive interpretation of the access request without consulting the applicant, and other interpretations are possible and better reflect the kinds of records the applicant is seeking, then the public body may fail to meet its duty to assist the applicant, by failing to search for responsive records. If it is

found that a public body has failed to conduct an adequate search for responsive records because of an overly narrow interpretation of an access request, the public body will be ordered to conduct an adequate search for responsive records that includes the kinds of records sought by the applicant.

Is the Applicant's access request open to more than one interpretation? If so, which interpretation best reflects her intent in making the access request?

[para 17] As cited above in the excerpt from my letter to the Public Body of December 4, 2012, the Director, Information and Privacy at Covenant Health, who reviewed the access request and oversaw the search for records stated in her affidavit:

On or about July 22, 2011, [the Applicant] forwarded to Covenant Health a Request to Access Information, a copy of which is attached to my Affidavit as Exhibit "A" (the Access Request). In the Access Request, the Applicant requested the following information:

Please provide me with the Incident Report and all other information that was the basis for the decision to ban me from the General on December 17, 2010. I have in no way been disrespectful or behaved in an inappropriate manner.

Time period: December 17, 2010.

I believe that the wording of the Access Request was clear, both in terms of its subject matter, and in terms of its referenced time period. I did not feel that it was necessary for me to communicate further with the Applicant in order to clarify the scope of the Access Request.

...

On or about July 28, 2011, I contacted [a security advisor] with Covenant Health. [He] informed me that he contacted the security personnel who were working at the Edmonton General Hospital on December 17, 2010 and searched through their notebooks. [The security advisor] informed me that he did not locate any responsive entries relating to the Applicant that related to the date December 17, 2010.

[The security advisor] further advised that a search was performed of electronic records entered by Security personnel with respect to the date December 17, 2010, but that no responsive records were located relating to the Applicant.

On or about July 25, 2011, I received correspondence from [the security advisor] regarding the results of his search for records. [The security advisor] informed me of his understanding that the Applicant was not banned from the Edmonton General Hospital on December 17, 2010.

[para 18] The affidavit of a social worker, which the Public Body submitted for the inquiry states:

I am further advised by [the manager who asked the Applicant to leave the unit] and believe that the Applicant was asked to leave Unit 10Y as she was not known to have any further business to attend to on the Unit. I am advised by [the manager] and believe that the Applicant was escorted from Unit 10Y and that she left voluntarily without the need to call for Security or any further assistance from other hospital personnel.

...

As well, because the doors to Unit 10Y lock behind visitors, it is necessary for all visitors who are not privy to the Unit's keypad exit code to be escorted out of the Unit so that the doors can be unlocked in a secure fashion that ensures that no patients have left the Unit in an unauthorized manner. In such an instance, security would only be called to attend at the Unit if an individual refused to leave the Unit or otherwise caused a disturbance or posed a risk to patients or others.

...

Based on my understanding of Covenant Health policies and procedures, I understand that individuals may be banned from attendance at facilities, or limited in their attendance, in two instances.

First, if an individual causes a disturbance or is otherwise disruptive, Covenant Health Security Services can issue a trespass ban which prohibits the individual from attending at a facility. I am not aware of any such trespass ban being issued to the Applicant on or about December 17, 2010, and it is my belief that no such trespass ban was issued.

Second, if there is a need to limit an individual's visitation with a particular patient, Hospital administration may create visitation conditions which limit attendance of an individual to certain times or in certain circumstances. If such a decision had been taken in relation to visitors to Unit 10Y, I would have been involved in the decision-making, or at the very least apprised of such a decision. I am not aware of any such visitation conditions being imposed on the Applicant on or about December 17, 2010, and it is my belief that no such visitation conditions were imposed on the Applicant.

I confirmed [with the manager] that no decision had been taken by her, or communicated to the Applicant by her, or taken by other Covenant Health staff and communicated to the manager, to ban the Applicant from the Edmonton General Hospital on or about December 17, 2010, either by way of a trespass ban, or by way of the imposition of visitation conditions.

[para 19] The notes of the manager who asked the Applicant to leave were included in the Public Body's response to the Applicant. These notes document the manager's dealings with the Applicant on December 17, 2010, and are contemporaneous with the events giving rise to the Applicant's access request. The notes state:

Writer indicated that no documents were not here and asked [the Applicant] to please leave the unit. Writer asked LPN to notify security that [the Applicant] was in the building. ARCM notified [the Social Worker]. [The Applicant] left the unit.

The notes of the manager establish that she asked a licensed practical nurse to call security regarding the Applicant's presence in the building. The manager then notified the social worker who swore the affidavit excerpted above, to inform him what had transpired during the Applicant's visit to the unit.

[para 20] The Public Body argues:

In the course of conducting the searches for responsive records, [the Director, Information and Privacy] was informed that there was no decision taken to ban the Applicant from the Edmonton General Hospital on December 17, 2010, either by way of a trespass ban, or by way [of] the issuance of visiting restrictions. There is no evidence that such a decision was even contemplated, as the Applicant had simply been asked to leave the secure locked Unit as would

any individual without remaining business on the Unit. Further, it was necessary to escort the Applicant from the locked Unit as she would otherwise have remained locked within the Unit.

[para 21] The Public Body appears to have interpreted the Applicant's access request as one restricted to records documenting a formal decision to ban her from its premises, such as a trespass ban, made on December 17, 2010. It says it has no documents that record a formal banning process on that date.

"Banning"

[para 22] First, the Public Body argues that the word "ban" refers to formal processes. Presumably the Public Body means that since there was no formal process or decision to ban the Applicant on that date, there could be no responsive records. It states:

At the facility in question, a decision to ban an individual can occur either through a trespass ban or through visitation conditions. Both of these matters involve more formalized legal or administrative processes that did not occur in this instance.

Second, the term "ban" implies prohibiting an activity or presence. This should not be understood as merely a recording of a past event, but a prohibition, or interdict on future activity (here the Applicant's presence at a facility).

For instance, at issue in one court matter was a period of debarment from participation in club activities, also referred to as a "ban". Another example would be a ban under trespass legislation. (*Lee v. Canadian Kennel Club Appeal Committee*, 2003 ABQB 51 at paras. 1, 13)

[para 23] The Public Body also included in its submissions an excerpt from the *New Shorter Oxford English Dictionary on Historical Principles*. The excerpt from this dictionary provides several definitions of "ban". These include, "exclude or proscribe" and "interdict or formally prohibit." The Public Body also provided definitions from *Webster's Unabridged Dictionary* and *Black's Law Dictionary*. The Public Body concludes from this research that the term "ban" typically contemplates either a legal or other formal process.

[para 24] I do not accept that it would follow from the fact the Applicant used the word "ban" that any records documenting the reasons the Applicant was asked to leave on the day in question would not be responsive to her request because no decision to formally ban her had been made on that day.

[para 25] I note first that the dictionary definitions provided by the Public Body support finding that the word "ban" can have a range of meanings. It can refer to excluding or proscribing someone from doing something formally, or informally. In any event, there is no reason to assume that the Applicant was using the term "ban" in a formal legal sense or was relying on any of the resources cited by the Public Body when she made her access request. Rather, her use of the term could have been referable to the Public Body's decision to require her to leave on the day in question. Alternatively, she may have thought that the person who asked her to leave had the authority to "ban" her formally, and had done so. Finally, it may be that since she was required to leave on

December 17, 2010 for no obvious reason, the Applicant thought it possible that decisions had been made to ban her from the hospital at some earlier time.

The date restriction

[para 26] Second, the Public Body interprets the Applicant's access request as restricted to records created on December 17, 2010, although it also checked for records for December 16, 2010, as that was the date on which the Applicant indicated she would be coming to pick up some documents.

[para 27] On the "Request to Access Information" form, the Applicant answered two questions as follows:

What records do you want to access?

Please provide with the Incident Report and all other information that was the basis for the decision to ban me from the General on December 17, 2010. I have in no way been disrespectful or behaved in an inappropriate manner.

What is the time period of the records?

December 17, 2010.

(Additional pages were attached to the access request which have no bearing on the present issue.)

[para 28] The Public Body says:

If records are out of the referenced time frame, they will not be responsive. Therefore, Covenant Health properly looked for records related to the time period of December 17, 2010. In addition, whether or not such records would strictly be responsive to the Access Request Covenant Health searched for records relating to December 16, 2010, once the Applicant indicated she would be attending at the facility. There would be no reason to search for records predating this time as it was only on December 16, 2010, that it became apparent that the Applicant intended to attend at Unit 10Y.

[para 29] I accept that a possible interpretation of the Applicant's access request, if one considers the request in isolation without regard to the events that had transpired, is that she was seeking records that recorded the reasons for the decision to ban her that were *created on* December 17, 2010. The form field on which the Applicant indicated the date of December 17, 2010 does say "What is the time period *of the records?*"

[para 30] However, there are a number of counter-indications to this interpretation. The first is that the answer to the first question is arguably inconsistent with the answer to the second in that the Applicant used the words "*all other information* that was the basis for the decision to ban me" in the field "What records do you want to access?". The date could conceivably have been a way of identifying records relating to an incident on that date but unrestricted to it, or in her mind it could have been intended, or intended in part, to identify the date of any responsive Incident Report but not to restrict the "other

information” being requested. Given the broad language chosen to answer the first question, there is arguably an internal inconsistency which needed to be explored on the basis of the words the Applicant used alone.

[para 31] More importantly, there is no evidence that the Applicant refused to leave the ward or the hospital when told to do so, or caused a disturbance or did something that threatened patients such that there was a need arising from the Applicant’s visit on this occasion to alert security (according to the hospital’s own rules) regarding her presence. Given this, as well as the brevity of the encounter as documented by the manager, and the Applicant’s uncontradicted evidence that she was being respectful and did not behave inappropriately, some explanation for “the decision to ban [her]” was called for. It seems apparent that this explanation was the information the Applicant was seeking in her access request. It would have made no sense for her to exclude any records created before December 17, 2010 that might explain why she was required to leave.

[para 32] In these circumstances, in my view, reading the date “December 17, 2010” as restricting the date of the records was an unduly strict reading. A more reasonable interpretation of the Applicant’s access request would have taken into account that she was seeking an explanation for circumstances that she did not regard as explicable without more – that is, that she had been “banned”, and possibly (given her subsequent reference in her request for review to being banned “indefinitely”) asked not to come back, although she had done nothing untoward on the day in question. Given the apparent brevity of the encounter with hospital staff on that day, at least part of the explanation the Applicant was seeking would, reasonably, relate to earlier events, and, if recorded, would have been recorded in records pre-dating the day in question.

[para 33] Although I am satisfied as to the best interpretation of the access request for the reasons already given, further support for my interpretation of what the Applicant says she was asking for when she made her access request can be found in the language she used in her request for review. She stated:

The Director of Privacy’s response, “please be advised that no Incident Report was created” and the one record reiterating the events of December 17 are not responsive to my request. I clearly state that I want access to the information that was the basis for the decision that I was banned indefinitely from the General on December 17, 2010. This information would include the personal information about me that had been provided to the 10Y Manager / Recreational Therapist which resulted in decisions:

to wrongly state that there is no document,
to have Security called,
to ban me
to have me escorted off 10Y,
to disregard my communications as [an individual’s] advocate.

...

As there was no response to my communications, no discussion and no warning; the 10Y Manager / Recreational Therapist’s banning, just prior to [the individual’s] meeting regarding the Investigation into her concerns was not fair or ethical... [My emphasis]

Attached to this request for review are four pages, one of which lists specific records created *prior to* December 17, 2010 relating to her advocacy on behalf of a particular client, which she says would be responsive to her access request. (Tab C of the Public Body's initial submissions.)

[para 34] This document is “after the fact” of the access request, and therefore could not have guided the Public Body in interpreting the request itself. At the same time, the request for review provides some evidence of the Applicant's true intention. In my view the request for review can be taken as providing insight as to how she intended to use language in her initial request even though that intention is not entirely clear from the language she chose initially.

[para 35] As discussed in Order F2004-026, when an access request has more than one interpretation, or it comes to a public body's attention that its interpretation may not be accurate, a public body has a duty to clarify the kinds of records an applicant is seeking. I find that there are more possible interpretations of the Applicant's access request than that adopted by the Public Body. In my view in this case, the lack of clarity arising from the inconsistent wording of the request, and the totality of circumstances, gave rise to a duty in the Public Body to clarify the true scope of the request before responding.

para 36] I also find that the Applicant's correspondence, which the Public Body has included in its own submissions, contains statements that indicate the access request was not intended to be limited to records created on December 17, 2010.

[para 37] Further, I am satisfied that the Applicant was requesting any records containing information relating or contributing to the manager's December 17, 2010 decision to require her to leave the unit or the building. Any information forming the basis for the decision to require the Applicant to leave the hospital on December 17, 2010 would be responsive, even if the information was not created on December 17, 2010, but was created before that date. Responsive records would include information about decisions to restrict her access to the Public Body's premises made prior to December 17, 2010 regardless of their degree of formality.

[para 38] Before leaving this section I wish to respond to the Public Body's answer to my question, cited above, where it states that it does not need to respond to questions from an adjudicator that, in its words, “presuppose a different interpretation” from the one it adopted. It is within my jurisdiction to decide what the correct interpretation of an access request is, which records are responsive, and whether the public body has conducted an adequate search for them.

[para 39] At the stage I asked the questions, I had noted that if the Public Body were to determine whether responsive records created prior to December 17, 2010 existed, and if it were able to assure me that there were no records responsive to a broader time-frame for information, this would have permitted an earlier resolution to the matter. In addition, even had I agreed with the Public Body's interpretation, the Applicant could still choose

to make a broader request, and again, the answers to my question could have brought about a more expedient resolution of the issues. As it is, it is still necessary for me to make an order on the basis of my view of the correct interpretation of the request, and to order the Public Body to conduct a search for what I regard to be responsive records, as I will do below.

Did the Public Body conduct an adequate search for responsive records?

[para 40] The Public Body describes issuing a trespass ban as a formal legal and administrative process. The written or electronic communications of the manager and the social worker would not be the only appropriate place to search for responsive records, given that the Public Body has established that neither employee has the power to issue trespass bans. Moreover, such a process would clearly have had to be in place prior to December 16 and 17, 2010 if the Applicant were required to leave the hospital on December 17, 2010 on the basis of a trespass ban. While the affidavits provided by the Public Body state that neither a ban, nor visitation restrictions were imposed on the Applicant on December 17, 2010, it remains possible that a decision to impose a ban or visitation restrictions, either officially or less formally, was made prior to December 17, 2010.

[para 41] The Public Body has not yet conducted a search for responsive records created prior to December 17, 2010 among the files of those who are responsible for issuing trespass bans. In addition, it has not conducted a general search for responsive records created prior to December 17, 2010 that discuss or may have led to banning her or otherwise restricting her access.

[para 42] To summarize, the original access request was ambiguous because of the question of whether December 17, 2010 referred to the date range of the records or the date of the incident. Several interpretations of the Applicant's access request are possible. The Public Body adopted one possible interpretation – that the Applicant was seeking only records created on December 17, 2010 – but in my view, this interpretation is narrower and more restrictive than that intended by the Applicant. As the Public Body's evidence is clear that the Applicant was not officially banned from its premises on December 17, 2010, it is equally clear that there would not be any responsive records, if that is what the Applicant intended in making her request. However, in my view, the language of her access request is sufficient to reach the conclusion that she was seeking records that would enable her to learn why she was required to leave the hospital on December 17, 2010. Moreover, the access request was not limited to only those records created on December 17, 2010, but was intended to extend to any records that may have led to her being required to leave. As the Public Body has not searched for responsive records created prior to December 16, 2010, or responsive records that may be located in areas other than the manager's and the social worker's written and electronic records prior to December 17, 2010, it follows that I find it has not conducted an adequate search for responsive records.

Did the Public Body meet its duty to assist the Applicant?

[para 43] The Public Body did not clarify with the Applicant the kinds of records that she believes would be responsive to her access request, but confined its search to records documenting an official decision to ban the Applicant from its premises, created on December 17, 2010. The Public Body has not yet searched for potentially responsive records created prior to December 17, 2010 regarding decisions, (formal or otherwise) regarding the Applicant's access to its premises, and therefore has not yet met its duty to assist the Applicant within the terms of section 10 of the FOIP Act. As the Public Body has not answered my questions as to whether records meeting the requirements of the access request exist, as I have found the Applicant intended it, I must now require it to determine whether they do by searching for them.

[para 44] As the Public Body has not yet conducted an adequate search for responsive records that potentially exist, it follows that I find it has not yet met its duty to assist the Applicant. I will therefore order the Public Body to conduct a new search for responsive records that will contain any information relating to decisions affecting the Applicant's access to its premises that contributed to the manager's decision to require the Applicant to leave the Public Body's premises on December 17, 2010. Records may be responsive if they are created prior to December 17, 2010 and the access request is not limited to records created on that date.

IV. ORDER

[para 45] I make this Order under section 72 of the Act.

[para 46] I order the Public Body to conduct a new search for responsive records that will include records created prior to December 17, 2010 containing any information relating to decisions regarding the Applicant's access to its premises that may have contributed to the manager's decision to require the Applicant to leave the hospital on December 17, 2010. The search for responsive records is to include, but is not limited to, areas of the Public Body where decisions regarding trespass bans are made and issued.

[para 47] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Teresa Cunningham
Adjudicator