

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER H2008-005

November 25, 2008

CAPITAL HEALTH

Case File Number H1595

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Summary: The Applicant made a request under section 13 of the *Health Information Act* (the “Act”) to Capital Health (the “Custodian”), asking it to correct or amend his health information contained in a discharge summary. The Custodian refused to make some of the corrections and amendments, and the Applicant elected to submit a statement of disagreement under section 14. The Custodian rejected the statement of disagreement, and the Applicant requested a review of that decision.

A custodian has a duty under section 14(3) of the Act to attach an applicant’s statement of disagreement to the record that is the subject of the requested corrections or amendments, if the statement meets the requirements of section 14(1)(b). Under section 14(1)(b), the statement of disagreement must be 500 words or less, set out the requested corrections or amendments, and set out the reasons for disagreeing with the Custodian’s decision not to make them.

The Adjudicator found that the Applicant’s statement of disagreement was 500 words or less. However, he found that certain parts of it were unrelated to corrections or amendments of the Applicant’s health information that had been requested by him, or unrelated to corrections or amendments that had been refused by the Custodian. Those parts therefore set out neither requested corrections or amendments, nor the reasons for disagreeing with the Custodian’s decision not to make them. The Adjudicator accordingly found that the Applicant was not entitled to include those parts in his statement of disagreement.

The Adjudicator found that the remaining parts of the Applicant's statement of disagreement set out requested corrections or amendments of his health information that had been refused, and his reasons for disagreeing with the decision of the Custodian not to make those corrections or amendments. In conjunction with the fact that the statement was 500 words or less, those parts accordingly met the three requirements of section 14(1)(b) of the Act.

The Adjudicator found that there is no requirement under the Act that the Applicant's reasons for disagreeing specifically respond to the Custodian's own reasons for refusing to make the corrections or amendments. In addition, issues about the care that the Applicant received and comments about the professionals involved in his treatment – including unproven allegations – may form part of the statement of disagreement, provided that they are reasons for disagreeing with the Custodian's decision not to correct or amend the Applicant's health information.

The Adjudicator concluded that the Custodian did not fulfill its duty, under section 14(3)(a) of the Act, to attach the acceptable parts of the Applicant's statement of disagreement to his discharge summary, and did not fulfill its duty, under section 14(3)(b), to provide copies of the statement of disagreement to any person to whom the Custodian had disclosed the discharge summary in the year preceding the Applicant's request for the corrections and amendments. The Adjudicator accordingly ordered the Custodian to comply with these duties.

Statutes Cited: **AB:** *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1(1)(i)(i), 1(1)(i)(ii), 1(1)(k)(i), 1(1)(m)(i), 10(a), 13, 13(1), 13(2), 13(3)(c), 13(6)(a), 14, 14(1), 14(1)(b), 14(3), 14(3)(a), 14(3)(b), 80 and 80(3)(a); *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 36(3).

Authorities Cited: **AB:** Orders 97-020, 99-014, F2005-023, H2005-003, H2005-005, H2005-006 and H2006-003. **ON:** Order MO-1700 (2003).

I. BACKGROUND

[para 1] Under section 13(1) of the *Health Information Act* (the "Act"), the Applicant made a request, dated October 23, 2006, to Capital Health (the "Custodian"), asking it to correct or amend his health information contained in a discharge summary.

[para 2] By letter dated November 20, 2006, the Custodian advised the Applicant that it required more time to process his request. By letter dated December 21, 2006, the Custodian told the Applicant that his request had been partially accepted. It attached a table indicating which corrections and amendments had been accepted, which had been refused, and why. In respect of the refused corrections and amendments, the Custodian advised the Applicant, in accordance with section 14(1) of the Act, that he could submit a statement of disagreement or request a review by the Commissioner, but that he could not do both.

[para 3] The Applicant submitted a statement of disagreement to the Custodian, dated January 2, 2007.

[para 4] By letter dated January 17, 2007, the Custodian rejected the Applicant's statement of disagreement, on the basis that it did not set out the requested corrections and amendments, and the reasons for disagreeing with the Custodian's decision not to make them, as required by section 14(1)(b) of the Act. The Custodian attached a revised statement of disagreement, adapted from the Applicant's own words, for his consideration and approval.

[para 5] By letter dated January 23, 2007, the Applicant indicated that he did not agree with the Custodian's revised statement of disagreement, as he believed that it did not include his reasons for disagreeing. He enclosed another version of his statement of disagreement, dated January 23, 2007, in which he attempted to present his reasons more clearly.

[para 6] By letter dated February 1, 2007, the Custodian rejected the Applicant's revised version of his statement of disagreement, again on the basis that it did not meet the requirements of section 14(1)(b) of the Act. The Custodian also believed that the statement made inflammatory or defamatory allegations, and that it set out events that did not specifically relate to the discharge summary that the Applicant wanted to have corrected or amended.

[para 7] By letter dated March 16, 2007, the Applicant asked this Office to review the Custodian's refusal to make some of his requested corrections and amendments, and its refusal to accept either of his own versions of the statement of disagreement. Mediation was authorized but was not successful. The Applicant requested an inquiry, by letter to this Office dated June 28, 2007, and a written one was set down.

II. RECORDS AT ISSUE

[para 8] As this inquiry involves a statement of disagreement in relation to a request to correct or amend health information, rather than a request to access health information, there are no records directly at issue. For context, however, the Applicant made a request to correct or amend information contained in a discharge summary dated August 8, 2006.

III. ISSUE

[para 9] The Notice of Inquiry, dated July 11, 2008, set out the following issue:

Did the Custodian properly refuse to attach and provide copies of the statement of disagreement in accordance with section 14(3) of the Act?

[para 10] In his submissions, the Applicant argues that his discharge summary should be corrected or amended, for instance by removing two paragraphs with which he

disagrees. However, the Custodian's refusal to make the Applicant's requested corrections and amendments is not itself an issue in this inquiry. Section 14(1) of the Act gives an applicant a choice between requesting a review by this Office of a custodian's decision not to correct or amend health information, and submitting a statement of disagreement to the custodian, but an applicant may not do both. Here, the Applicant opted for a statement of disagreement. The only matter that can therefore proceed to a review by this Office is the Custodian's refusal to accept the statement of disagreement that was submitted to it by the Applicant.

IV. DISCUSSION OF THE ISSUE

Did the Custodian properly refuse to attach and provide copies of the statement of disagreement in accordance with section 14(3) of the Act?

[para 11] The relevant parts of sections 13 and 14 of the Act read as follows:

13(1) An individual who believes there is an error or omission in the individual's health information may in writing request the custodian that has the information in its custody or under its control to correct or amend the information.

(2) Within 30 days after receiving a request under subsection (1) or within any extended period under section 15, the custodian must decide whether it will make or refuse to make the correction or amendment.

...

(5) If the custodian refuses to make the correction or amendment, the custodian must within the 30-day period or any extended period referred to in subsection (2) give written notice to the applicant that the custodian refuses to make the correction or amendment and of the reasons for the refusal.

(6) A custodian may refuse to make a correction or amendment that has been requested in respect of

(a) a professional opinion or observation made by a health services provider about the applicant, or

...

14(1) Where a custodian refuses to make a correction or amendment under section 13, the custodian must tell the applicant that the applicant may elect to do either of the following, but may not elect both:

(a) ask for a review of the custodian's decision by the Commissioner;

(b) submit a statement of disagreement setting out in 500 words or less the requested correction or amendment and the applicant's reasons for disagreeing with the decision of the custodian.

(2) *An applicant who elects to submit a statement of disagreement must submit the statement to the custodian within 30 days after the written notice of refusal has been given to the applicant under section 13(5) or within any extended period under section 15(3).*

(3) *On receiving the statement of disagreement, the custodian must*

- (a) *if reasonably practicable, attach the statement to the record that is the subject of the requested correction or amendment, and*
- (b) *provide a copy of the statement of disagreement to any person to whom the custodian has disclosed the record in the year preceding the applicant's request for the correction or amendment.*

[para 12] In certain circumstances under section 14(3) of the Act, a custodian has a duty to attach a statement of disagreement to the record that is the subject of a requested correction or amendment, and to provide copies of it to any person to whom the custodian has disclosed the record in the year preceding an applicant's correction/amendment request. The duty arises when a custodian refuses to correct or amend an applicant's health information, the applicant elects to submit a statement of disagreement, and the applicant's statement of disagreement meets the requirements of section 14(1)(b) (Order H2005-005 at para. 15). Under section 14(1)(b), the statement of disagreement must meet three requirements in that it must (i) be 500 words or less, (ii) set out the requested correction or amendment, and (iii) set out the applicant's reasons for disagreeing with the decision of the custodian not to make the correction or amendment (Order H2005-005 at para. 16).

[para 13] In other contexts under the Act, a custodian has the burden of proving that it fulfilled a particular duty, or that it had no duty, as it is in the best position to do so [Order H2005-003 at para. 42 and Order H2006-003 at para. 11, discussing a custodian's duty to assist an applicant and to conduct an adequate search for responsive records under section 10(a)]. I further note that, under a provision of the *Freedom of Information and Protection of Privacy Act* dealing with a public body's refusal to make a correction to an individual's personal information, the public body has the burden of showing that it properly annotated or linked the personal information with the requested correction [Order 97-020 at para. 109 and Order F2005-023 at para. 10, discussing section 36(3) of the *FOIP Act*].

[para 14] As a custodian is in the best position to show that it met its duty, or that it had no duty, with respect to attaching a statement of disagreement to a record and providing copies to any appropriate person, I find that a custodian has the burden of proof under section 14(3) of the Act. Having said this, it is in an applicant's best interest to also provide arguments and evidence, even where the other party has the burden of proof (Order 99-014 at para. 11). For instance, an applicant might make submissions as to whether his or her statement of disagreement meets the three requirements of section 14(1)(b).

1. The Applicant's statement of disagreement

[para 15] In this inquiry, I will review only the Applicant's original statement of disagreement, dated January 2, 2007. In his submissions, he states that his second version was written only in response to the Custodian's refusal of his first version, and that he prefers his first version to be attached to his discharge summary. I consider the Applicant's second version of his statement of disagreement to have been submitted to the Custodian in an effort to reach a resolution, and that the Applicant did not give up any right to have the information in his first version attached to his health record.

[para 16] The Custodian refused to correct or amend some of the Applicant's health information as he requested, and the Applicant elected to submit a statement of disagreement. The Custodian's duty to attach and provide copies of the statement of disagreement therefore arose – provided that the statement complies with the three requirements of section 14(1)(b) of the Act.

[para 17] The Applicant's own words in his statement of disagreement amount to 500 or less. However, he also included a reproduction of a computer printout at the end of the statement, which brings the total number of words to over 500. As the statement of disagreement must be 500 words or less, I do not consider the computer printout to form part of it (and the Custodian may do likewise). Moreover, I note that the Applicant's own words repeat what he considers to be the relevant information in the computer printout.

[para 18] As I do not find that the computer printout is part of the statement of disagreement, I conclude that the statement of disagreement is 500 words or less and accordingly meets the first requirement of section 14(1)(b) of the Act.

2. Corrections or amendments of health information that were requested but refused

[para 19] The Applicant made five requests for corrections or amendments in his correspondence of October 23, 2006, and the Custodian agreed to two of them in its letter of December 21, 2006. It accordingly corrected or amended the Applicant's discharge summary in those two respects, providing him with a copy of the revised discharge summary by letter dated January 24, 2007.

[para 20] Because a statement of disagreement under section 14(1) of the Act is in respect of a custodian's *refusal* to make a correction or amendment, it is only the Applicant's three correction/amendment requests that were refused by the Custodian that he is entitled to discuss in his statement. As set out in the table attached to the Custodian's response of December 21, 2006, those three refusals were as follows:

- a refusal to correct or amend a reference to the Applicant's hemoglobin level in paragraph 8 of his discharge summary;
- a refusal to correct or amend a reference to starting the Applicant on a particular diet in paragraph 13 of his discharge summary; and

- a refusal to correct or amend paragraphs 10 and 11 of the discharge summary, which discussed interactions between the Applicant’s wife and his physicians.

[para 21] Because section 14(1) of the Act refers to “a correction or amendment under section 13”, the “requested correction or amendment” referred to in section 14(1)(b) must be one made within the meaning of section 13. In other words, an individual cannot request just any information to be corrected or amended in a health record, and then expect to include that information in a statement of disagreement attached to that record. Under section 13(1), a correction/amendment request must be in respect of an individual’s health information and must be in relation to an error or omission that the individual believes to exist in that information.

[para 22] Having said this, it is not necessary – for the purposes of section 14 of the Act – that the health information *actually* contain an error or omission. That is only a requirement in order for an applicant under section 13(1) to shift the burden to the custodian to justify its refusal to correct or amend health information (Order H2005-006 at para. 42). All that is necessary to trigger the possibility of a statement of disagreement under section 14(1) is a refusal to make a correction or amendment that was *requested* within the meaning of section 13. To fall under section 13, the correction/amendment request must be directed toward an alleged error or omission in the applicant’s health information.

[para 23] I will therefore first consider whether the three refusals on the part of the Custodian in this inquiry were in respect of requests to correct or amend the Applicant’s “health information”, as defined in the Act. Under section 1(1)(k)(i), “health information” means, among other things, “diagnostic, treatment and care information.” Under sections 1(1)(i)(i), “diagnostic, treatment and care information” means, among other things, information about the physical health of an individual. The reference to the Applicant’s hemoglobin level in his discharge summary meets this definition.

[para 24] Under section 1(1)(i)(ii) of the Act, “diagnostic, treatment and care information” also means information about a health service provided to an individual. Under section 1(1)(m)(i), “health service” means, among other things, a funded or partially funded service that is provided to an individual for the purpose of protecting, promoting or maintaining physical health, or treating illness. The information about starting the Applicant on a particular diet meets this definition.

[para 25] I find that almost all of the information regarding the interactions between the Applicant’s wife and his physicians, in paragraphs 10 and 11 of the discharge summary, is information about a health service provided to the Applicant. Those paragraphs record events that transpired while the Applicant was receiving health services, and the recorded exchanges between the Applicant’s wife and his physicians are about those health services. Specifically, there is information about treatment of the Applicant’s illness, such as decisions about surgery and transfer to another physician, which falls within the definition of “health service”. For the sake of clarity, I find that the last sentence of paragraph 10, referring to threatened legal action, is also the

Applicant's health information, as the threatened legal action is in respect of health services provided to the Applicant.

[para 26] I do not find that the first sentence and second half of the second sentence in paragraph 10 of the discharge summary is the Applicant's health information, as these only convey information about the Applicant's wife. As a result, the Applicant did not make a correction/amendment request, within the meaning of section 13 of the Act, in respect of that particular information. I will therefore only treat the Applicant's correction/amendment request as being directed toward the remaining parts of paragraphs 10 and 11, which parts are the Applicant's health information.

[para 27] Because the Applicant believed that there was wrong or missing information in his discharge summary – in relation to his hemoglobin level, his diet, and the interactions between his wife and physicians insofar as they were about his health services – his correction/amendment requests were directed toward what he believed to be errors or omissions in his health information. Therefore, there were corrections or amendments that were requested under section 13 of the Act, but that were refused, and which therefore can properly be the subject of a statement of disagreement under section 14.

3. Parts of the statement of disagreement unrelated to corrections or amendments of health information that were requested but refused

[para 28] As discussed above, the content of an applicant's statement of disagreement must be in respect of corrections or amendments that were requested within the meaning of section 13 of the Act. An applicant is not entitled to include in a statement of disagreement information unrelated to the correction/amendment requests that he or she actually made, or information about matters that were not properly the subject of a correction/amendment request because they were not directed toward an alleged error or omission in the applicant's health information.

[para 29] If there is content in an applicant's statement of disagreement unrelated to a request to correct or amend health information that was actually made, that content will set out neither a requested correction or amendment, within the meaning of section 14(1)(b) of the Act, nor the reasons for disagreeing with the custodian's decision not to correct or amend. The particular content will accordingly fail to meet the requirements for a statement of disagreement. If an individual wishes to raise new matters regarding the accuracy or completeness of his or her health information, he or she may bring them to the attention of the custodian as part of a new correction/amendment request. If and when that particular request is refused, the matters may *then* form part of a statement of disagreement. Matters unrelated to alleged errors or omissions in an applicant's health information may be the subject of neither a correction/amendment request under section 13, nor a statement of disagreement under section 14.

[para 30] In this inquiry, I find that certain content in the Applicant's statement of disagreement does not relate to the correction/amendment requests that he made

regarding his hemoglobin level, his diet, or the exchanges between his wife and physicians in relation to his health services. In finding that there is unrelated content, I reviewed the Applicant's correction/amendment request of October 23, 2006, and the specific information in his discharge summary that he wanted to correct or amend. Although the Applicant provides additional background and reasons for his correction/amendment request in his submissions to this inquiry, I am limited to reviewing what he actually requested.

[para 31] For instance, although the Applicant appears to have concerns about the decision to discharge him from the hospital and alleged failures on the part of his physicians to address specific symptoms, I do not find that the Applicant's correction/amendment request of October 23, 2006 expressly refers to these matters. Having said this, I do find certain references to being discharged in the statement of disagreement to be related to his correction/amendment request because the references are part of sentences regarding the interactions between the Applicant's wife and physicians in relation to his health services.

[para 32] With respect to interactions between the Applicant's wife and his physicians, I explained earlier in this Order that the Applicant's correction/amendment request under section 13 of the Act could only properly be directed toward those interactions insofar as they were about his health services. I find that two sentences in the Applicant's statement of disagreement do not relate to a requested correction or amendment of his health information in this regard, and may therefore not be included.

[para 33] As discussed earlier in this Order, a custodian's duty regarding a statement of disagreement under section 14 of the Act arises only in respect of corrections or amendments that it refused to make. As a result, an applicant is not entitled to discuss, in a statement of disagreement, any corrections or amendments that were made as opposed to refused. In his request of October 23, 2006, the Applicant asked for a sentence in his discharge summary about his fever to be corrected or amended, and the Custodian made the correction or amendment. The Applicant is therefore not entitled to discuss the fever in his statement of disagreement. I considered whether references to the fever were inextricably linked to statements regarding the interactions between the Applicant's wife and physicians in relation to his health services, so that the references might remain, but found that they were not.

[para 34] The parts of the Applicant's statement of disagreement, dated January 2, 2007, that I find unrelated to corrections or amendments of his health information that he actually requested, or unrelated to corrections or amendments that the Custodian refused to make, are as follows:

- the first and second sentences of the entry for "Jul. 31, 2006 morning" (this information about a particular treatment and being discharged was not the subject of the Applicant's correction/amendment request);
- the second and third sentences of the entry for "Aug. 01, 7:14am" (the information about being discharged was not the subject of the Applicant's

correction/amendment request; the information about the Applicant's hemoglobin in the last sentence – unlike the first sentence – was not the subject of his correction/amendment request, as this information is about the physician's response to the hemoglobin level and not the level itself);

- all of the entry for “Aug. 01, noon” (this information about a particular event was not the subject of the Applicant's correction/amendment request);
- the first sentence of the entry for “Aug. 01, afternoon” (this information about two treatments and a symptom was not the subject of the Applicant's correction/amendment request);
- the second and fourth sentences of the entry for “Aug. 02, late morning” (this information discussing interactions between the Applicant's wife and his physicians – unlike the information in the first, third and fifth sentences – does not relate to a request to correct or amend the Applicant's health information within the meaning of section 13 of the Act);
- the first, second and third sentences of the entry for “Aug. 03, early morning” (this information about the Applicant's fever is related to his correction/amendment request, but the correction/amendment was made as opposed to refused); and
- all of the entry for “Aug. 03, near 11am” and for “Aug. 04, late afternoon” (this information about interactions between the Applicant's wife and a particular physician was not the subject of the Applicant's correction/amendment request, as this physician was not one of the physicians referenced in paragraphs 10 and 11 of the Applicant's discharge summary, which are the relevant paragraphs that he wanted corrected or amended).

[para 35] I find that all the foregoing content is not properly part of the Applicant's statement of disagreement because it introduces information that is not related to the corrections or amendments that he requested, is not related to a correction or amendment of his health information, or is not related to a correction or amendment that was refused rather than made by the Custodian. I therefore conclude that none of the information sets out a requested correction or amendment, or the reasons for disagreeing with the Custodian's decision not to correct or amend, within the meaning of section 14(1)(b) of the Act.

[para 36] As the Applicant is not entitled to have information that does not comply with section 14(1)(b) in his statement of disagreement, the Custodian has no duty under section 14(3)(a) to attach the foregoing content to the Applicant's discharge summary, and no duty under section 14(3)(b) to provide copies of the above parts of the statement of disagreement to any other person. Having said this, nothing in the Act *requires* the Custodian to remove any or all of the foregoing information. A custodian may accept information in a statement of disagreement, even if it does not meet the legislative requirements (Ontario Order MO-1700 at p. 7 or para. 27).

4. **Setting out the requested correction or amendment and the reasons for disagreeing with the custodian**

[para 37] The remaining information in the Applicant's statement of disagreement relates to corrections or amendment of his health information that he requested under section 13 of the Act, but that were refused. However, I must go on to consider whether the statement of disagreement sets out these requested corrections or amendments, and sets out the reasons for disagreeing with the decision of the custodian not to make them. In order to meet these two requirements of section 14(1)(b), it is not necessary, in my view, that each piece of information in a statement of disagreement set out *both* a requested correction or amendment *and* the reasons for disagreeing with the custodian. It is sufficient for each piece of information to set out either of those two things, as not every piece can do both.

[para 38] The remaining information in the Applicant's statement of disagreement, dated January 2, 2007, is as follows:

- all of the introductory paragraph of the statement (i.e., the paragraph before any of the date and time entries);
- the third sentence of the entry for "Jul. 31, 2006, morning" (and the date and time);
- the first sentence of the entry for "Aug. 01, 7:14am" (and the date and time);
- all of the entry for "Aug. 01, near 10am" (including the date and time);
- the second sentence of the entry for "Aug. 01, afternoon" (and the date and time);
- the first, third and fifth sentences of the entry for "Aug. 02, late morning" (and the date and time);
- all of the entry for "Aug. 02, late afternoon" (and the date and time);
- the fourth and fifth sentences of the entry for "Aug. 03, early morning" (and the date and time); and
- all of the concluding paragraph of the statement (i.e., the paragraph after all of the date and time entries).

[para 39] The Custodian indicates that it refused to make some of the Applicant's requested corrections and amendments because the health information was a professional opinion or observation. It then argues, in respect of the statement of disagreement, that the Applicant failed to set out reasons why the opinions or observations are not properly considered to be professional opinions or observations. It accordingly submits that the Applicant's reasons are not adequate.

[para 40] In my view, the reason why a custodian refused to make a requested correction or amendment, or whether it properly did so, does not need to be discussed in a statement of disagreement, and therefore is not relevant to the custodian's duty under section 14(3) of the Act. In Order H2005-005 (at paras. 9 to 15), the Commissioner distinguished the issue of whether a custodian properly refused to make a correction or amendment – specifically because the health information was a professional opinion or observation under section 13(6)(a) – from the issue regarding the duty to attach a

statement of disagreement. He stated that the duty arises once the requested correction or amendment has been refused (i.e., without reference to the custodian's reasons for refusing to make the correction or amendment) – provided that the statement of disagreement complies with section 14(1)(b). The Commissioner did not address whether, or find that, an applicant must specifically respond in the statement of disagreement to the custodian's reasons for refusing to make a correction or amendment.

[para 41] I do not believe that an applicant must respond to the custodian's reasons for refusing to correct or amend, as the statement of disagreement is not required to set out reasons for disagreeing with the *reasons* of the custodian. Under section 14(1)(b) of the Act, the statement of disagreement must set out the reasons for disagreeing with the *decision* of the custodian. That decision is the refusal to make the correction or amendment (Order H2005-005 at para. 17), as this is the decision referenced in section 14(1) – as well as section 13(2), which uses the word “decide”. Accordingly, a statement of disagreement only needs to set out the reasons why an applicant believes that the refusal to correct or amend was wrong. The reasons for disagreeing with the refusal can essentially be the same reasons for requesting the correction or amendment in the first place – or entirely new reasons – without any reference to why the correction or amendment was refused by the custodian.

[para 42] The Custodian submits that a statement of disagreement is limited in nature, as it is required to be placed in a custodian's file even though its contents are not accepted to the extent that requested corrections or amendments were refused. It argues that the statement should be concise, and that it is not the proper forum in which to raise issues that patients have with the care that they received, allegations of negligence, or comments about the professionals involved in their treatment, as there are other legal and administrative processes that address these matters.

[para 43] The objective of section 14(1)(b) of the Act is to allow individuals to place their views about their health information on record, close to the health information in question, when a custodian has refused to make a requested correction or amendment. A statement of disagreement alerts readers of an individual's health record to that individual's views about the correctness or completeness of his or her health information, *despite the fact* that those views were more or less rejected by the custodian. There are indeed limits regarding the content of a statement of disagreement – but they are only those limits set out in section 14(1)(b) itself. The content of a statement of disagreement does not have to be “concise” – the statement as a whole only needs to be 500 words or less. A statement of disagreement does not have to be devoid of allegations of negligence or comments about professional care – those allegations or comments only need to set out a requested correction or amendment, or the reasons for disagreeing with the Custodian's decision not to correct or amend.

[para 44] In Order H2005-005 (at para. 20), the Commissioner did not reject the statement of disagreement in that case on the basis that it contained defamatory or inflammatory allegations; he rejected it because it did not meet the requirements of section 14(1)(b) of the Act. In my view, allegations may form part of a statement of

disagreement, provided that they otherwise fulfill section 14(1)(b). For instance, the substance of an allegation – even an unproven one – can be the reason for disagreeing with a custodian’s refusal to make a requested correction or amendment.

[para 45] The Custodian further argues that superfluous information or commentary in the form of unproven allegations creates a risk of confusion due to a variety of versions of events, or the potential for mischief should an applicant pursue a claim for medical negligence. In my view, however, the reader of a statement of disagreement will be able to ascertain that it was the applicant who prepared or submitted it, and that the statement is for the purposes of the *Health Information Act*. The reader can accordingly consider or believe the contents of the statement of disagreement as the reader sees fit. I see no real potential for confusion or mischief.

[para 46] Having said all of the foregoing, I do agree with the Custodian that the content of the Applicant’s statement of disagreement must relate to the decision not to correct or amend his health information. As discussed earlier, the content must be in relation to an alleged error or omission in the Applicant’s health information – as this is what may be the subject of a correction/amendment request under section 13 of the Act – and the content must be in relation to corrections or amendments that the Custodian refused rather than made. This is why I rejected certain parts of the Applicant’s statement of disagreement above. They did not meet the requirements of section 14(1)(b) by setting out corrections or amendments of health information that were requested but refused, or the reasons for disagreeing with the Custodian’s decision not to make those corrections or amendments.

5. Parts of the statement of disagreement that meet the requirements of section 14(1)(b) of the Act

[para 47] With respect to the content in the Applicant’s statement of disagreement described in paragraph 38 of this Order, I find that all of it sets out a requested correction or amendment of his health information, which was refused, or sets out the Applicant’s reasons for disagreeing with the decision of the custodian not to correct or amend. In conjunction with the fact that the statement of disagreement is 500 words or less, I conclude that this content meets the three requirements of section 14(1)(b) of the Act.

[para 48] In particular, the introductory paragraph of the statement of disagreement (i.e., the paragraph before any of the date and time entries) sets out the corrections or amendments that the Applicant requested regarding his hemoglobin level, and regarding the exchanges between his wife and physicians about his health services. The concluding paragraph of the statement sets out the Applicant’s overall reasons for disagreeing with the Custodian’s decision not to make the requested corrections or amendments.

[para 49] I find that the first sentence of the entry for “Aug. 01, 7:14 am” sets out the Applicant’s reasons for disagreeing with the Custodian’s decision not to make the requested correction or amendment regarding his hemoglobin level.

[para 50] I find that the reference in the introductory paragraph to how the Applicant's wife was portrayed, the third sentence of the entry for "Jul. 31, 2006, morning", all of the entry for "Aug. 01, near 10am", the second sentence of the entry for "Aug. 01, afternoon", the first, third and fifth sentences of the entry for "Aug. 02, late morning", all of the entry for "Aug. 02, late afternoon", and the fourth and fifth sentences of the entry for "Aug. 03, early morning" all set out the Applicant's reasons for disagreeing with the Custodian's decision not to correct or amend paragraphs 10 and 11 of his discharge summary, which described his wife's interactions with his physicians insofar as those interactions were about the Applicant's health services. Those passages of the statement of disagreement indicate why the Applicant believes that paragraphs 10 and 11 were wrong or were missing information, in that the passages offer the Applicant's different version of events. It is the Applicant's view that events occurred differently that amounts to his reasons for disagreeing with the Custodian's decision not to make the corrections or amendments that he requested.

[para 51] As discussed earlier in this Order, there is no requirement that the Applicant's reasons specifically respond to the Custodian's own reasons for refusing to make the correction or amendment. For the sake of clarity, I further point out that nothing in the Act requires an applicant's reasons for disagreeing to contain his or her health information, or requires the reasons to have any other particular content. Although a correction/amendment request under section 13 must be directed toward an applicant's health information, the reasons for disagreeing with a custodian's decision not to make the requested correction or amendment do not necessarily have to.

[para 52] In this inquiry, for instance, it is acceptable for the Applicant's reasons for disagreeing to be based on, among other things, his view that his wife was portrayed inaccurately in his discharge summary. Because his initial correction/amendment request was directed toward his health information – to the extent that his wife was dealing with his physicians in respect of his health services – his reasons for disagreeing with the Custodian's decision not to correct or amend that health information can be solely in reference to his wife. In my view, quite frankly, an applicant's reasons under section 14(1)(b) of the Act can be just about anything, so long as they are reasons for disagreeing with the custodian's refusal to correct or amend the applicant's health information.

[para 53] In specific response to the Custodian's concerns that certain parts of the Applicant's statement of disagreement raise issues about the care that he received, allegations of negligence, or comments about the professionals involved in his treatment, I find that the parts that I have accepted nonetheless properly form part of the statement of disagreement. The Applicant's different version of events regarding his care and treatment is precisely why he disagreed with the Custodian's decision not to correct or amend certain of his health information. Because these parts of the statement of disagreement meet the requirements of section 14(1)(b) of the Act, the Applicant is entitled to include them, even if there are other legal and administrative processes to address his concerns.

[para 54] Given all of the foregoing, I conclude that the Custodian has a duty under section 14(3)(a) of the Act, with which it did not comply, to attach to the Applicant's discharge summary, dated August 8, 2006, those parts of his statement of disagreement set out in paragraph 38 of this Order. The Custodian did not meet its burden of proving that it complied with its duty, or that it did not have one.

[para 55] The Custodian submitted a copy of a letter dated January 24, 2007, in which it advised the Applicant that it had made some of the requested corrections or amendments to his discharge summary. The letter further advised that a copy of the revised discharge summary had been provided to persons to whom the discharge summary had been disclosed during the preceding year, as required by section 13(3)(c) of the Act. Because there were persons to whom the Custodian was required to provide the corrected or amended discharge summary, the Custodian would also be required to provide these persons with a copy of the Applicant's statement of disagreement. I therefore conclude that the Custodian has a duty under section 14(3)(b), with which it did not comply, to provide copies of the acceptable parts of the statement of disagreement to appropriate persons.

[para 56] Under section 14(3)(b) of the Act, a custodian must provide a copy of a statement of disagreement to any person to whom the custodian has disclosed the record that is the subject of the requested correction or amendment in the year preceding the applicant's request for the correction or amendment. I note a gap in this provision. While it contemplates providing the statement of disagreement to persons who received the relevant record *before* the applicant's correction/amendment request – and anyone who receives the record *after* the statement of disagreement is attached to it will also receive the statement – the provision does not indicate that a custodian must provide a copy of the statement of disagreement to any person to whom the custodian disclosed the relevant record *between* the time of the applicant's correction/amendment request and the time of attaching the statement to the relevant record. There can be a delay between those two points in time, particularly where the matter proceeds to an inquiry, as here.

[para 57] To achieve the purpose of alerting others to an applicant's statement of disagreement if they have received the record to which it relates during a period proximate to the applicant's correction/amendment request, I believe that the Custodian, in this inquiry, should also provide copies of the acceptable parts of the Applicant's statement of disagreement to any persons to whom the Custodian has disclosed the Applicant's discharge summary between the time of the Applicant's correction/amendment request and the time that the Custodian attaches the statement of disagreement to the discharge summary. As section 14(1)(b) of the Act does not state that this is required, I can only recommend that the Custodian do so.

V. ORDER

[para 58] I make this Order under section 80 of the Act.

[para 59] I find that the Custodian has no duty under section 14(3)(a) of the Act to attach to the Applicant's discharge summary those parts of his statement of disagreement, dated January 2, 2007, that are identified in paragraph 34 of this Order, and that it has no duty under section 14(3)(b) to provide copies of those parts of the statement of disagreement to any other person. Those parts of the Applicant's statement of disagreement do not relate to corrections or amendments of his health information that were requested but refused, and therefore set out neither requested corrections or amendments, nor the reasons for disagreeing with the Custodian's decision not to make them.

[para 60] I find that the Custodian has a duty under section 14(3)(a) of the Act to attach to the Applicant's discharge summary the remaining parts of his statement of disagreement, dated January 2, 2007, which parts are identified in paragraph 38 of this Order. Those parts of the Applicant's statement of disagreement set out corrections or amendments of his health information that were requested but refused, set out the reasons for disagreeing with the Custodian's decision not to correct or amend, and are 500 words or less. I also find that the Custodian has a duty under section 14(3)(b) to provide copies of those parts of the statement of disagreement to any persons to whom the Custodian has disclosed the Applicant's discharge summary, dated August 8, 2006, in the year preceding the Applicant's correction/amendment request.

[para 61] As I find that the Custodian failed to perform its duties under sections 14(3)(a) and 14(3)(b) of the Act, as set out in the preceding paragraph, I order it to perform them under section 80(3)(a).

[para 62] I further order the Custodian to notify me, in writing and within 50 days of receiving a copy of this Order, that it has complied with the Order.

Wade Riordan Raaflaub
Adjudicator