

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER H2015-01/F2015-24

September 1, 2015

ALBERTA HEALTH SERVICES

Case File Number H5479/F7933

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request for records from the dialysis unit where he was receiving treatment and for security records. Alberta Health Services (“the Public Body” or “the Custodian”) provided the Applicant with over 2000 pages of records. The Applicant believes that there are other responsive records that have not been provided to him.

The Adjudicator found that for the most part, the Public Body performed an adequate search for records that were responsive to the Applicant’s request and fulfilled its duty pursuant to both section 10(a) of the *Health Information Act* (“HIA”) and section 10(1) of the *Freedom of Information and Protection of Privacy Act* (“FOIP”). The only exception was that it was not clear if the Public Body searched the dialysis unit for non-medical information. The Adjudicator ordered the Public Body to search for non-medical information responsive to the Applicant’s request or to confirm that it had already done so as part of its initial search.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10 and 72 and *Health Information Act*, R.S.A. 2000, c. H-5, ss. 10 and 80.

Authorities Cited: **AB:** Order F2007-029.

I. BACKGROUND

[para 1] On February 12, 2013, the Applicant made a request to Alberta Health Services (“the Public Body” or “the Custodian”) for records from the “Dialysis Unit – Whole Records” and “Pallidin Security Records – Dialysis Unit Visits”. He wanted:

All documents (uncensored); medical progress notes, letters, emails, reports, etc. including security (in-house plus pallidin security)

[para 2] The Public Body responded and provided the Applicant with over 2000 records. The records from the dialysis unit contained the Applicant’s health information and were dealt with pursuant to the *Health Information Act* (“HIA”). Security records that did not contain “health information” were provided to the Applicant pursuant to the *Freedom of Information and Protection of Privacy Act* (“FOIP”). In its initial response to the Applicant, the Public Body severed some information from the records. However, eventually, the Public Body provided the Applicant with unsevered copies of all of the responsive records.

[para 3] On May 9, 2013, the Applicant requested that the Office of the Information and Privacy Commissioner review the Public Body’s response to the Applicant’s request. The Commissioner authorized mediation to attempt to resolve the issues between the parties but this was not successful and the Applicant requested an inquiry on October 17, 2013. The only outstanding issue for inquiry was whether the Public Body had performed an adequate search for responsive records. I received both initial and rebuttal submissions from the Applicant and Public Body.

II. RECORDS AT ISSUE

[para 4] As the only issue in this inquiry is the adequacy of the Public Body’s search for responsive records, there are no records directly at issue.

III. ISSUES

[para 5] The Notice of Inquiry dated March 9, 2015 state the issue in this inquiry as follows:

Did the Custodian/Public Body meet its duty to the Applicant as provided by section 10(a) of the HIA and section 10(1) of the FOIP Act (duty to assist applicants)?

In this case, the Commissioner will consider whether the Custodian/Public Body conducted an adequate search for responsive records.

IV. DISCUSSION OF ISSUES

Did the Custodian/Public Body meet its duty to the Applicant as provided by section 10(a) of the HIA and section 10(1) of the FOIP Act (duty to assist applicants)?

[para 6] The Public Body responded to the Applicant's request pursuant to the HIA and FOIP. Section 10(a) of the HIA states:

10 A custodian that has received a request for access to a record under section 8(1)

(a) must make every reasonable effort to assist the applicant and to respond to each applicant openly, accurately and completely,

[para 7] Section 10(1) of the FOIP Act states:

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 8] The duty to assist under both Acts requires a custodian or public body to perform an adequate search for records. The search does not have to be perfect but the custodian or public body must make every reasonable effort to search for all records that are responsive to an applicant's request.

[para 9] In general, evidence of an adequate search should include:

- 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

Order F2007-029 at para 66

[para 10] In its submissions, which included an affidavit sworn by the Public Body's Access Services Director, the Public Body provided the following evidence:

- The Applicant requested records from the dialysis unit where he received treatment and security records. The Site Manager for security and the Patient Care Manager of the dialysis unit were contacted to locate responsive records. As the Applicant was no longer receiving treatment from the dialysis unit, his records had been transferred to the Foothills Medical Centre, which was also contacted.

- To begin the search, the Applicant's name, health number, date of birth and chart number were entered into the Clinibase electronic records system. The records retrieved from that search were then compared to a list of visits the Applicant made as a cross reference. If treatment at a unit other than the dialysis unit showed up on the search, this would have been flagged so the Applicant could make an access request to that unit if he wished.

- The request for security records for the Applicant's dialysis unit visits was given to the Site Manager who copied the security file for the Applicant.

- The search was done by the Health Information Management Division of the Public Body.

- The Foothills Medical Centre is the repository for all renal records in Southern Alberta and a search of that system would have retrieved all records requested. Over 2000 records were retrieved.

[para 11] On the basis of the information provided to me by the Public Body, I believe that an adequate search was conducted for the Applicant's medical records as well as security records. However, it was not clear from the information and evidence provided to me by the Public Body if it had searched for non-medical information relating to the Applicant such as emails which contained information about the Applicant but were not on his chart. The Applicant's request was limited to records in the dialysis unit but was broad enough to cover all records held there, even ones that were not health information or may not be in the Applicant's chart.

[para 12] It could be that this information was searched as part of the process outlined above. However, I do not know if a search of the Clinibase records system would have captured records such as letters, emails, and reports about the Applicant that were not medical in nature. Since this is not clear and I believe any such information was included in the Applicant's access request, I will order the Public Body to either search for non-medical records responsive to the Applicant's request, or confirm that this was encompassed by the original search.

V. ORDER

[para 13] I make this Order under section 72 of FOIP and section 80 of the HIA.

[para 14] I order the Public Body to search for non-medical records responsive to the Applicant's request and to provide to the Applicant any records that are located subject to any relevant exceptions to disclosure in the FOIP Act, or confirm to the Applicant that this was encompassed by the original search.

[para 15] I 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.

Keri H. Ridley
Adjudicator