

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER H2019-03

September 25, 2019

### ALBERTA HEALTH SERVICES

Case File Number 002374

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant made a request for access to his deceased mother's health information under the *Health Information Act* (the HIA) from Alberta Health Services (the Custodian) in his capacity as the executor of her estate. The Applicant explained that the requested records were "required for the administration of [his mother's] estate" and that he was making the access request as the "personal representative" of his deceased mother. The Applicant requested:

all records in any form (written, audio, or electronic) including notes from meetings, post-it notes, personal notes, emails or entries / logs, pertaining to [his mother and her care] at the Calgary South Health Campus between the dates of July 2, 2014 and July 2, 2015, written by or within the possession of the following personnel of the South Health Campus [...]

[...]

In Order H2018-01 the Adjudicator determined that the Applicant had standing under the HIA to make the access request and directed the Custodian to conduct a new search for records responsive to points 4 and 5 of the access request.

The Custodian conducted a new search for records responsive to points 4 and 5 and provided additional records to the Applicant. The Applicant requested review of the Custodian's new search for responsive records.

The Adjudicator directed the Custodian to conduct a new search for responsive records.

**Statutes Cited:** **AB:** *Health Information Act*, R.S.A. 2000, c. F-25, ss. 7, 10, 80

**Authorities Cited: AB: F2007-029, H2018-01**

## **I. BACKGROUND**

[para 1] On September 16, 2015, the Applicant made a request for access to his deceased mother's health information under the *Health Information Act* (the HIA) from Alberta Health Services (the Custodian) in his capacity as the executor of her estate. The Applicant explained that the requested records were "required for the administration of [his mother's] estate" and that he was making the access request as the "personal representative" of his deceased mother. The Applicant requested:

Please note: I do not require Doctor or Nurse charting information for the time period of May 1, 2015 through July 2, 2015 as same has already been provided to me through an earlier request.

All records in any form (written, audio, or electronic) including notes from meetings, post-it notes, personal notes, emails or entries / logs, pertaining to [his mother and her care] at the Calgary South Health Campus between the dates of July 2, 2014 and July 2, 2015, written by or within the possession of the following personnel of the South Health Campus [...]

[...]

All records regarding [the Applicant's mother] between the dates of July 2, 2014 and July 2, 2015, including charting notes between September 01 to 08, 2014, written by [...]

All records regarding [the Applicant's mother] including charting notes, written by Dr. [...] between September 12 to 15, 2014.

[para 2] On January 25, 2016, the Custodian informed the Applicant that it was closing its file as it considered the request abandoned because the Applicant had not paid an initial fee.

[para 3] On February 1, 2016, the Applicant requested review by the Commissioner of the Public Body's response to his access request.

[para 4] In a letter dated March 16, 2016, the Custodian wrote the Applicant and provided a summary of the records it had provided him in response to a previous access request, and in response to a Court order directing it to provide records to the Applicant. However, with regard to two categories of records it stated:

4. All records regarding [the Applicant's mother] between the dates of July 2, 2014 and July 2, 2015, including charting notes between September 01 to 08, 2014 written by [name of nurse].

Please be advised that the rule is that a Personal Directive becomes invalid after the death of the maker. As a result of this, you are not entitled to receive the medical records of your mother as the rights granted to you under the Personal Directive are no longer valid since your mother is deceased. Further, the right of access granted under the *Health Information Act* can only be exercised by the personal representative of a deceased person in relation to the administration of the deceased individual's estate. It is our understanding that you do not require the records for the administration of your late mother's estate and as such you are not entitled to your late mother's medical records. Assuming without conceding that the records are required for the administration of the estate, you are not entitled to the entire medical record. You have received

a copy of the Discharge Summary which is sufficient documentation for the administration of the estate.

5. All records regarding [the Applicant's mother] including charting notes, written by Dr. [name of doctor] between September 12 to 15, 2014.

As previously explained, you are not entitled to receive the medical records of your mother as the rights granted to you under the Personal Directive are no longer valid since your mother is deceased. Even if the records are required for the administration of the estate, you are not entitled to the entire medical record. You have received a copy of the Discharge Summary which is sufficient documentation for the administration of the estate.

[para 5] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter.

[para 6] Following this process, the Applicant requested an inquiry regarding the Custodian's response.

[para 7] The Commissioner delegated her authority to conduct the inquiry to me.

[para 8] At the inquiry, the Custodian argued that any issue surrounding its response to categories 4 and 5 was moot, as it thought it likely that it had provided the Applicant with records responsive to categories 4 and 5. In Order H2018-01 I found that the Applicant was the executor of his mother's estate and was entitled to make an access request for her health records under section 7 of the HIA in that capacity. I directed the Custodian to conduct a new search for responsive records, stating:

As there is evidence before me indicating that the Custodian may not have provided records responsive to items 4 and 5 to the Applicant, I find that the issue for this inquiry is not moot. I must direct the Custodian to search for records responsive to items 4 and 5 and to provide them in a response to the Applicant, unless an exception set out in section 11 of the HIA applies to the information. If the Custodian is unable to locate responsive records, it should document the search it conducted with reference to the factors set out in Order F2007-029.

[para 9] The Custodian conducted a new search for responsive records. On February 8, 2019, the Custodian informed this office and the Applicant that it had complied with Order H2018-01. It provided 35 additional records. On February 22, 2019, the Applicant requested review of the adequacy of the Custodian's new search for responsive records.

## **II. ISSUE**

**Did the Custodian make every reasonable effort to assist the Applicant and to respond to the Applicant openly accurately and completely, as required by section 10(a) of the Act?**

[para 10] Section 10(a) of the HIA creates a duty to assist an applicant. It 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 [...]*

Prior orders of this office have held that the duty to assist encompasses a duty to conduct an adequate search for responsive records.

[para 11] In Order F2007-029, former Commissioner Work explained the kinds of evidence that assist an adjudicator to determine whether a search is adequate. He said:

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[.]

[para 12] In his letter of February 22, 2019, the Applicant raised the following concerns regarding the Applicant's search:

In my previous correspondence I felt I was clear in that I sought all records and never used any terminology exclusive to September 01 to 08, 2014. As a courtesy and to assist the Custodian in this search I provided these dates for the bulk of the records. I assumed that AHS personnel would complete a comprehensive search to include all dates and all records. In an enclosed cover letter from [an access and disclosure specialist], it is stated that the Electronic Multidisciplinary Records and Notes have been disclosed. As well, the [Inpatient] Admission Record was enclosed, this is not the case since these Admission Records were not included. Has there been a search for all records in any form (written, audio or electronic) including notes from meetings, post-it notes, personal notes, emails or entries / logs pertaining to [the Applicant's mother]? There is no mention or confirmation that a search has been conducted to eliminate being in possession of these additional forms or alternative records.

[para 13] The Applicant also states:

My records reflect that [the Applicant's mother] received care from [...] RN between July 2, 2014 and July 2, 2015 both dates inclusive not just during the month of September 2014. There was no disclosure for August 27, 2014, June 11 and June 12, 2015. These dates are required and have not been disclosed.

[para 14] In its submissions dated March 19, 2019, the Custodian responded to the points made by the Applicant in his submissions of February 22, 2019:

In reviewing the concerns raised by [the Applicant] in his February 22, 2019 letter I requested Health Information Management ("HIM") to:

1. Reexamine whether there is a further charting note by Dr. [...] for September 13, 2014;
2. Search for any charting done by [...] RN for the dates of August 27, 2014, June 11 and June 12, 2015;

This is in addition to the search for items #4 and # 5 that was undertaken pursuant to paragraph 33 of Order H2018-01.

With regard to the first query, there was a note completed by Dr. [...] in the Multidisciplinary Progress Record, page 1 & 2 dated September 11 and 12, 2014. A note was written dated September 12, 2014 and Dr [...] added on an undated notation along the side of the page. The next page of charting starts on September 13, 2014 @940. The Multidisciplinary Note will be sent under separate cover.

Regarding the second query, HIM could not see any charting completed by [...] RN on August 27, 2014. There is charting completed on June 11, 2015 (between 15:35 & 23:01) as well as June 12, 2015 (between 15:40 & 23:13). This will be included in the package sent under separate cover.

While reviewing the correspondence regarding the disclosure of [the Applicant's mother's] entire medical record in August 2016 HIM raised the possibility that it may have missed printing and releasing the ICU Record from August 12-22, 2014. To ensure full disclosure these records will be part of the package sent under separate cover.

As to possible severing or redaction I have confirmed with HIM that no redactions are made to Medical Admissions. The only time a file is reviewed with regard to redaction is if there are mental health records or maternity/newborn records.

[para 15] The Custodian provided the following description of its search:

HIM advises the following:

*1. The steps taken to identify and locate records responsive to the Applicant's request?*

Upon receipt of this request HIM would locate the patient chart number or RHRN (Regional Health Record number) using the patient registry named "Clinibase". This system also provides patient demographic information and all admission/registration dates for the patient. HIM record the RHRN on the request along with the admission dates and types. HIM would then find the location of charts using a Chart Tracking system called Power Trac. This system locates whether the chart is held in the file room, or is signed out to a Unit, Emergency or Clinic etc.

*2. The scope of the search conducted, such as physical sites, program areas, specific databases, off-site storage etc.*

This was a four step process. The first step was to use Clinibase to locate the patient record number and admission dates/types. It is documented if the patient was admitted to the Intensive Care Unit or Maternity Unit as these units have separate electronic records to provide. The second step would be the use of Power Trac to locate any paper charts. The third step is to print all records held in the Sunrise Clinical Management System (an electronic health record in use

by AHS). The final step would be printing off any records held in the ECritical (ICU) electronic record system.

*3. Who did the search?*

There were three member of HIM who undertook searches regarding [the Applicant's] requests.

*4. Why does AHS believe that no other records exist other than those that have been found or produced?*

As indicated at the beginning of this submission, AHS has further searched for items under #4 and #5 of [the Applicant's] original request and replied to his queries of February 22, 2019. There remains the possibility that the ICU Records from August 12-24 were not disclosed at the time of the original request and which are now being disclosed to [the Applicant]. [The Applicant] previously received 17,476 pages of document for the 12 month inpatient stay of his mother.

[para 16] The Custodian has documented the process it followed to search for the responsive information where it is located in medical charts. However, it has not provided an explanation of its search for responsive records that might exist outside medical charts or an electronic health record.

[para 17] The Applicant's access request is clear that it is not confined to medical charting. As he notes in his submissions, he requested: "records in any form (written, audio, or electronic) including notes from meetings, post-it notes, personal notes, emails or entries / logs". The Applicant's request is not limited to information appearing on charts, but encompasses information regarding his mother and the care she received in the Custodian's custody or control. While I accept it is possible that the Custodian conducted a search for responsive records not located on medical charts or forming part of an electronic health record, it has not provided evidence to allow me to make a finding that it did. I am therefore unable to say that the Custodian has searched for responsive records in all likely repositories of responsive records, and for that reason, I cannot find that it has completed a reasonable search for responsive records.

[para 18] As I am unable to find that the Custodian conducted a reasonable search for responsive records I must direct it to conduct a new search. However, I recognize that the Custodian has searched for, and produced thousands of records in response to a Court order and to the access request. I will not require the Custodian to conduct a new search that would duplicate the search it has already conducted. Instead, I will require it to conduct a new search for responsive records that may exist outside the Complainant's mother's chart, in locations it has not indicated it has searched for this inquiry. Examples of such records would be administrative records, emails, and meeting notes containing reference to the Applicant's mother and her care. However, if it has already conducted such a search, then I require it to provide an explanation of the search that conforms to the requirements of Order F2007-029.

[para 19] The new search should focus on records created by the nurse referred to in category 4 of the Applicant's access request. It may be expedient for the Custodian to ask this nurse whether she created responsive records on the dates for which the Applicant

has indicated he continues to seek records, and if so, where any such records may be located.

[para 20] Once it has conducted the new search, the Custodian should provide any additional responsive records it locates to the Applicant. If it is unable to locate any additional records, it should provide an account of the search it conducted, and the outcome, to the Applicant. The Applicant is not precluded from requesting an inquiry in relation to the new search.

### *Nonresponsive records*

[para 21] In his submissions of February 22, 2019, the Applicant requested records that are not responsive to the access requests that are the subject of case files 002373 and 002374. For example, he states:

Additionally, I sought the assistance of [...] RN, when my mother received poor and negligent care from [...], RN in August 2014. I met with [...] in September 2014 to discuss the shortcomings of this care. This information has not been disclosed; therefore, I am requesting to receive full disclosure as it involves [...] and relates to Ms. [...].

I am also aware of another meeting during June 2015 involving the following nursing and support personnel to discuss my mother's care. I seek all information related to [...] RN, as well as the following colleagues as specified in my original request.

[names of colleagues]

[para 22] I lack jurisdiction over these records, as the Applicant has not yet made an access request to the Custodian for these records. The original request was for records containing the Complainant's mother health information created by, or in the possession of the employees the Applicant named. However, the new request is for information relating to these employees, which is outside the scope of the original access requests.

[para 23] To obtain the records falling outside the scope of the original access requests, the Applicant must first make a formal access request to the Custodian. I recognize that the Applicant has undergone a lengthy process in order to obtain records from the Custodian; however, the Custodian is now satisfied as to the Applicant's authority to obtain the records. In addition, it has searched for and produced thousands of responsive records. In other words, I believe that the Custodian will conduct a search in a timely manner if the Applicant requests the records referred to in his letter of February 22, 2019 from the Custodian. In any event I have no jurisdiction in relation to those requests until the Applicant makes an access request and then requests review of the Custodian's response.

### **III. ORDER**

[para 24] I make this order under section 80 of the Act.

[para 25] I order the Custodian to conduct a search for records responsive to items 4 and 5 of the Applicant's access request that do not form part of the Applicant's mother's chart or electronic health record. If the Custodian is unable to locate responsive records, or it has already conducted this type of search, it must document the search it conducted by addressing the points set out in Order F2007-029.

[para 26] I order the Custodian to inform me within 50 days of receiving this order that it has complied with it.

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Teresa Cunningham  
Adjudicator