

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER H2021-04

May 14, 2021

ALBERTA HEALTH SERVICES

Case File Number 003926

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request for access to Alberta Health Services (the Custodian) to a copy of a letter refusing to see her that she believed had been written by Dr. Dushinski.

The Custodian searched for responsive records but was unable to locate any. The Applicant requested review by the Commissioner of the Custodian's response and search.

The Adjudicator found that the Custodian had met the duty to assist by conducting a reasonable search for responsive records. She also found that there was no convincing evidence that Dr. Dushinski had written a refusal letter or that the Custodian would be likely to have a copy.

Statutes Cited: AB: *Health Information Act* SA 2000, c H-5, ss. 10, 80

Authorities Cited: AB: Order H2015-01

I. BACKGROUND

[para 1] The Applicant made a request for access under the *Health Information Act* to Alberta Health Services (the Custodian). She requested:

Dr. John Dushinski's copy of referral denied and faxed to my family doctor [...] mid / end of April June 2016.

She also requested “Dr. John Dushinski cystoscopy reports and access disclosure records”.

[para 2] Alberta Health Services responded that it had located a copy of a cystoscopy report but was unable to locate a copy of a letter denying a referral.

[para 3] The Applicant made an access request to Dr. Dushinski for a copy of the letter denying a referral, but did not receive a response. That access request is the subject of case file 008401.

[para 4] The Applicant requested review by the Commissioner of the adequacy of search conducted by the Custodian.

II. ISSUES

ISSUE A: Did the Custodian meet its duty to assist the Applicant by conducting an adequate search for responsive records?

[para 5] Section 10 of the HIA requires Custodians to make reasonable efforts to assist applicants. It states, in part:

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 6] Past orders of this office have held that the duty to assist applicants includes the duty to conduct an adequate search for records and to explain to the Applicant what has been done. In H2015-01, the Adjudicator noted that a Custodian’s evidence should address the following factors in order to establish the adequacy of its search. She stated:

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[.]

[para 7] I turn now to the question of whether the Custodian has established that it conducted an adequate search for the refusal letter the Applicant requested. The Custodian states:

It is unclear from the submissions of [the Applicant] whether the record that she is seeking, which is stated to be a refusal to accept a referral (the "Refusal") that was sent to her family physician in approximately April 2016, related to clinical services provided at the RGH or at the SAIU.

As far as AHS can determine, the Applicant did not receive clinical services at the RGH [Rockyview General Hospital] in April 2016. As such, to the extent that the Refusal exists, as far as AHS can determine it does not appear to have been created in relation to health services provided at the RGH.

Despite the foregoing, AHS conducted a search for the Refusal, both in 2016 and 2020, as the Applicant sought the Refusal from AHS and had indicated that the Refusal was held by the "Rockyview Hospital - Urology Department". Furthermore, the Applicant received care at the RGH at a point in time close to April 2016 and it was possible that the Refusal had been provided to AHS, as a part of or in relation to that care.

[para 8] With regard to the specific steps it took to locate the requested record, the Custodian states:

A former AHS employee in Access & Disclosure, Health Information Management ("**HIM**"), took steps to respond to the Request.

As the AHS Employee who responded to the Request is no longer with AHS, AHS relies upon its general practices in July 2016 with respect to addressing requests for access to health information.

In July 2016, AHS' general practice in this regard would have been to take the following steps to locate a record that had been requested:

1. locate the patient chart number or Regional Health Record number using the patient registry "Clinibase". This system also provides patient demographic information and all admission / registration dates for the patient. HIM would then find the location of the paper charts that were required using a chart tracking system called Power Trac;
2. obtain and review the paper chart of the patient that is relevant to the identified admission or registration date(s); and
3. review the records held in the Sunrise Clinical Management System, an electronic health record system, with respect to the relevant admission or registration date(s).

In the letter sent by HIM to the Applicant, dated August 3, 2016 (the "Response"), AHS indicated that:

Copy of referral denied not found on chart. No access and Disclosure *[sic]* for time period found on chart.

AHS was unable to assist the Applicant further with respect to identifying the location or custodian of the Refusal, as it was unknown to AHS where the Applicant received the health services that gave rise to the Refusal.

In relation to this inquiry, AHS did a further search for the Refusal in December 2020. In the course of this search, AHS took the following steps:

identified that the Applicant had received care at an AHS clinic, located at the RGH (the "AHS Clinic), three times in 2016, with the first admission /registration date for the same being in June 2016 (the"Encounter").

that care was close in time to the indicated time period of the Refusal and because of the possibility that the Refusal had been provided in relation to the Encounter:

obtained and reviewed the paper chart pertaining to the Encounter;

reviewed the records in SCM pertaining to the Encounter;

due to the possibility that the Refusal may have been misfiled, reviewed the paper charts that pertained to the two, other instances in 2016 on which the Applicant received care from the AHS Clinic; and

reviewed the Access and Disclosure tab in the paper chart pertaining to the Encounter to determine whether AHS had disclosed health information to [the Applicant's family physician]

Through this further search, AHS did not locate the Refusal, nor any records indicating disclosure of the Refusal to [the Applicant's family physician].

Based on the unsuccessful searches for the Refusal that have occurred to date, AHS does not appear to have the Refusal or a copy of the Refusal in its possession.

AHS submits that the search that it conducted, both in 2016 and 2020, and its Response met its obligations under section 10(a) of the HIA.

The Custodian has explained the search it conducted and provided its reasons for believing that it does not have the record requested by the Complainant in its custody or control. I agree with the Custodian that it conducted a reasonable search and that this search would have located responsive records had there been any in its custody or control.

[para 9] There is no satisfactory evidence before me to establish that the Custodian ever had the requested record in its custody or control. I acknowledge that the Applicant provided a recording and a transcript of a telephone conversation she had with her family physician regarding a rejection letter. The physician explained that he had arranged for an appointment for the Applicant with Dr. Dushinski; the Applicant indicated that this was not a satisfactory solution. There is discussion of a letter, but it is unclear from this evidence whether it was ever the case that Dr. Dushinski wrote or sent a letter refusing to see the Applicant. Moreover, there is no evidence in the transcript to support finding that the Custodian (AHS) ever had a copy of the responsive record.

[para 10] I find that the Custodian met its duty to assist the Applicant by conducting a reasonable search for responsive records and that it has provided a satisfactory explanation of the steps it took to locate responsive records.

III. ORDER

[para 11] I make this Order under section 80 of the Act.

[para 12] I confirm that the Custodian met its duty to assist by conducting an adequate search for responsive records.

Teresa Cunningham
Adjudicator
/kh