

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2008-001

February 29, 2008

DALTEC OCCUPATIONAL HEALTH SERVICES INC.

Case File Number P0423

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request to an Organization for his personal information under the *Personal Information Protection Act* (the “Act”). The Organization provided records containing the Applicant’s personal information approximately six months after his request. The Applicant believed that the Organization did not provide all of the personal information about him that it had.

The Adjudicator found that the Organization made every reasonable effort to locate the personal information about the Applicant that it had in its custody or under its control. He therefore concluded that the Organization made every reasonable effort to assist the Applicant and to respond to him as accurately and completely as reasonably possible, as required by section 27 of the Act.

The Adjudicator found that the Organization had not responded to the Applicant within the 45-day time limit set out in section 28(1) of the Act.

Statutes Cited: **AB:** *Personal Information Protection Act*, S.C. 2003, c. P-6.5, ss. 26, 27, 27(1)(a), 27(1)(b), 27(2), 28(1), 28(1)(a), 28(2), 29(a), 31, 52 and 52(3)(a); *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 10(1).

Authorities Cited: **AB:** Orders 96-022, P2006-005 and F2007-007.

I. BACKGROUND

[para 1] On July 5 and 6, 2005, the Applicant attended the office of Daltec Occupational Health Services Inc. (the “Organization”) to undergo drug and alcohol testing. The testing was in connection with the Applicant’s prospective employment with Reppesco Services Ltd., who was named as an Affected Party in this inquiry.

[para 2] By letter dated September 27, 2005, the Applicant made a request to the Organization under the *Personal Information Protection Act* (the “Act”), asking for it to provide him with his “test results and [his] personal files”.

[para 3] By letter dated March 22, 2006, the Organization advised the Applicant that the only information that it had in relation to him consisted of the initial requests for services and nursing notes that were made following his visits. The letter indicated that information was enclosed for the Applicant.

[para 4] By letter dated March 29, 2006, the Applicant requested that this Office review the matter. Mediation was authorized but was not successful. The matter was therefore set down for a written inquiry. The Organization provided submissions but the Applicant did not.

II. RECORDS AT ISSUE

[para 5] The records involved in this inquiry are those that contain personal information about the Applicant and are in the custody or under the control of the Organization. The Organization has provided certain records to the Applicant, but the Applicant believes that other records are in existence and have not been provided to him (i.e., test results).

III. ISSUES

[para 6] The Notice of Inquiry, dated November 27, 2007, set out the following two issues:

- A. Did the Organization comply with section 27 of the Act (duty to assist)?
- B. Did the Organization respond to the Applicant in accordance with section 28(1) of the Act (time limit for responding)?

[para 7] The Affected Party also made submissions in this inquiry, in which it discusses the extent to which it responded to the Applicant’s request for personal information. However, the Applicant’s letter to this Office only asked for a review of the response of the Organization. I have no copy of a request for personal information made to the Affected Party and no indication that any dispute between the Applicant and Affected Party proceeded to an inquiry. This inquiry will therefore not address whether the Affected Party complied with the Act.

IV. DISCUSSION OF ISSUES

A. Did the Organization comply with section 27 of the Act (duty to assist)?

[para 8] Section 27 of the Act reads as follows:

27(1) An organization must

(a) make every reasonable effort

(i) to assist applicants, and

(ii) to respond to each applicant as accurately and completely as reasonably possible,

and

(b) at the request of an applicant provide, if it is reasonable to do so, an explanation of any term, code or abbreviation used in any record provided to the applicant or that is referred to.

(2) An organization must, with respect to an applicant's personal information, create a record for the applicant if

(a) the record can be created from a record that is in electronic form and that is under the control of the organization, using its normal computer hardware and software and technical expertise, and

(b) creating the record would not unreasonably interfere with the operations of the organization.

[para 9] In requesting a review of this matter, the Applicant suggests that the Organization did not provide him with all of his personal information and, in particular, his test results. He does not allege any failure on the part of the Organization under section 27(1)(b) of the Act to explain any terms, codes or abbreviations in records provided to him, and he does not allege any failure to create a record from an electronic record under section 27(2). I will therefore address the Organization's duty under section 27(1)(a) only. Section 27(1)(a) requires an organization to make every reasonable effort to assist an applicant and to respond as accurately and completely as reasonably possible.

[para 10] In suggesting that he did not receive all of his personal information from the Organization, the Applicant suggests that the Organization failed to respond to him accurately and completely. I agree that failure to make every reasonable effort to locate requested information may mean that an organization has failed in its duty to assist. In the context of the duty to assist under section 10(1) of the *Freedom of Information and Protection of Privacy Act*, a public body must show that it made every reasonable effort

to search for the records requested (Order 96-022 at para. 14; Order F2007-007 at para. 17). An organization likewise has an obligation to conduct a reasonable search for records in its custody or under its control that are subject to an access request under the *Personal Information Protection Act* (Order P2006-005 at paras. 32 and 33).

[para 11] According to the Organization's submissions, it has only the initial requests for services regarding the testing of the Applicant and the nursing notes that were prepared following his visits on July 5 and 6, 2005. It indicates that although the Applicant attended for testing on each of those days and provided a urine sample on the first day, the testing was not completed. The Organization indicates that consent forms completed by or collected from the Applicant on each of those days were shredded in his presence once it was determined that testing would not proceed. The Organization states that no copies of the forms were made and no other personal information about the Applicant was collected by it. It indicates that the urine sample was also disposed of in the presence of the Applicant. The Organization states that because no testing was done, there is no other paperwork and no test results.

[para 12] The Organization's submissions are supported by an affidavit sworn by a manager, who is also its privacy officer. She confirms that the consent forms were shredded in the Applicant's presence, no copies of them were made, and no other personal information about the Applicant was collected on July 5 or 6, 2005.

[para 13] The Applicant provided no submissions in this inquiry and therefore does not contradict the Organization's statements that the forms, and urine sample, were destroyed in his presence. One point that is unclear in the supporting documentation submitted in this inquiry by the Organization is whether the Applicant provided a urine sample on July 5, 2005 only, or on both July 5 and 6, 2005. Regardless, the affidavit of the manager and privacy officer states that at no time did the Organization perform pre-employment drug and alcohol testing on the Applicant. Although he appears to believe that test results or other paperwork may exist, I accept the Organization's submission that the only information that it has in relation to the Applicant consists of the initial requests for services and the nursing notes.

[para 14] The Organization's letter of March 22, 2006 to the Applicant is clear that a copy of the nursing notes was enclosed for the Applicant. However, that letter and the affidavit sworn on behalf of the Organization are unclear as to whether the initial requests for services were also enclosed or otherwise provided to the Applicant. If the requests for services contain personal information about the Applicant, they should also have been provided to him (unless an exception to disclosure under the Act applies).

[para 15] Given the information before me, I am unable to confirm whether or not the requests for services contain personal information about the Applicant, and whether or not they were provided to him. Further, the Applicant's request for review by this Office does not indicate that he did not receive copies of the requests for services, or that he is concerned that he did not receive them. Any uncertainty as to whether copies of the requests for services were provided to the Applicant will therefore not affect my

conclusion as to whether or not the Organization met its duty to assist under section 27 of the Act.

[para 16] The Notice of Inquiry indicates that the Applicant was at one time concerned that a record provided to him contained a black mark across the middle of it, making it unreadable. I believe that this is a reference to the nursing notes that were provided to him, as it had information blackened out. The affidavit sworn on behalf of the Organization and included with its submissions indicates that a copy of the nursing notes, without information blackened out, was later provided to the Applicant, although no date is given.

[para 17] As the Applicant made no submissions in this inquiry to dispute that he has now received a copy of the nursing notes without the information blackened out, I find that he received one. I accordingly conclude that the initial provision of a blackened copy of the notes has no bearing on whether or not the Organization met its duty to assist the Applicant.

[para 18] I find that the Organization made every reasonable effort to search for and locate the records in its custody or under its control that were responsive to the Applicant's request for his personal information. I conclude that it made every reasonable effort to assist the Applicant and to respond to him as accurately and completely as reasonably possible. The Organization therefore complied with its duty under section 27 of the Act.

B. Did the Organization respond to the Applicant in accordance with section 28(1) of the Act (time limit for responding)?

[para 19] The relevant parts of section 28 of the Act read as follows:

28(1) Subject to this section, an organization must respond to an applicant not later than

- (a) 45 days from the day that the organization receives the applicant's written request referred to in section 26, or*
- (b) the end of an extended time period if the time period is extended under section 31.*

(2) An organization is not required to comply with subsection (1)(a) if the time period is extended under section 31.

[para 20] The Applicant made a request to access his personal information under section 26 of the Act. Section 28(1)(a) requires an organization to respond to an applicant's request for personal information not later than 45 days from the day the organization receives the written request. An extension may be obtained under section 31 in certain circumstances – in which case the 45-day deadline does not apply under

section 28(2) – but there is no evidence that such an extension was obtained in the present matter. The Organization does not submit that it obtained an extension.

[para 21] The Applicant made his information request by letter dated September 27, 2005. The Organization acknowledges that it received the request at the end of September or beginning of October 2005. It responded to the Applicant by letter dated March 22, 2006. This was outside the 45-day deadline set out in section 28(1)(a) of the Act.

[para 22] The Organization indicates that its privacy officer had telephone conversations with the Applicant throughout July, August and September 2005, regarding the personal information that the Organization had about him. Nonetheless, because the Organization did not respond to the Applicant's request of September 27, 2005 until March 2006, it failed to meet the time requirements imposed by section 28 of the Act. Even though there were previous conversations between the Organization and the Applicant regarding his personal information, the Organization should have responded to the Applicant within 45 days of receiving his September 27, 2005 request.

[para 23] The Organization submits that it was not required to provide the Applicant with a copy of the nursing notes, as they are subject to a discretionary exception to disclosure under the Act. However, this is irrelevant to whether or not the Organization met the requirements of section 28(1). Even if an organization chooses not to provide records requested by an applicant, it must still respond to him or her by indicating that decision within the statutory deadline. Under section 29(a) of the Act, an organization's response to an applicant includes whether or not the applicant is entitled to or will be given access to all or part of his or her personal information.

[para 24] The Organization raises other exceptions to disclosure under the Act. However, given the scope of the Applicant's request for review, the issues identified in the Notice of Inquiry and my earlier finding that the Applicant received a copy of the nursing notes without information blackened out, I do not find it necessary to address any exceptions to disclosure for the purposes of this inquiry.

[para 25] I conclude that the Organization did not respond to the Applicant in accordance with section 28(1) of the Act. I remind it of its duty to respond to applicants within the required time limit.

V. ORDER

[para 26] I make this Order under section 52 of the Act.

[para 27] Under section 52(3)(a), I confirm that the Organization complied with its duty under section 27 of the Act by making every reasonable effort to assist the Applicant and to respond to him as accurately and completely as reasonably possible.

[para 28] As the Organization did not respond to the Applicant within 45 days of receiving his request for personal information, I find that it did not respond to the Applicant in accordance with section 28(1) of the Act.

Wade Riordan Raaflaub
Adjudicator