

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2012-07

September 21, 2012

LIFEMARK HEALTH MANAGEMENT INC

Case File Number P1812

Office URL: www.oipc.ab.ca

Summary: An individual made an access request to Lifemark Health Management Inc. (now owned by Centric Health Corporation) (the Organization) under the *Personal Information Protection Act* (PIPA) for a copy of “[her] file in its entirety” including the results of tests scheduled for February 17, 2011. The Organization responded by denying her request.

The Organization then reconsidered its response to the Applicant, and decided to provide her entire file; the Organization notified the Applicant that her file was ready on March 25, 2011.

The Applicant requested a review of the Organization’s response, stating that particular records were missing from the information provided to her. The Organization stated that it had provided all of the Applicant’s personal information in its custody and control.

The Adjudicator determined that the Organization had fulfilled its duty to assist the Applicant by conducting an adequate search for the requested information.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 24, 27, 28, 52.

Authorities Cited: AB: Orders P2006-005, P2006-012, P2009-005.

I. BACKGROUND

[para 1] On February 14, 2011, an individual made an access request to Lifemark Health Management Inc. (the Organization) under the *Personal Information Protection Act* (PIPA) for a copy of “[her] file in its entirety” including the results of tests scheduled for February 17, 2011. The Organization responded by denying her request.

[para 2] The Applicant made a request to this office to review the Organization’s response to her request. The Commissioner authorized a portfolio officer to investigate and try to settle the matter. During this time, the Organization reconsidered its response to the Applicant, and decided to provide the requested records to her. It notified the Applicant on March 25, 2011 that her file was ready, which was within the Organization’s 45 day time limit to respond under section 28(1). However, the Applicant states that some documents are missing from the file provided. Specifically, the Applicant states that she is missing

- the pre-placement assessment results for 2004;
- a document entitled Pre-Placement Assessment for a named company with a Revised 01/31/03 date in the footer that was provided to her via another process but not in response to her access request;
- clinical diagnostic documents related to a 2004 urine test (the results of which the Applicant states she has received); and
- pre-placement assessments for the years 2004, 2007, and 2008.

[para 3] In her request for inquiry, the Applicant referred to a number of separate issues, including a privacy complaint about improper sharing of her personal information, a complaint about documents being altered, and a complaint about the Organization not having provided her with certain explanations. As noted in the Notice of Inquiry sent to both parties, these issues were not dealt with during mediation, and they are excluded from the scope of this inquiry.

II. INFORMATION AT ISSUE

[para 4] The information at issue is personal information of the Applicant that she states should have been included in the information provided to her by the Organization in response to her access request.

III. ISSUES

[para 5] The Notice of Inquiry, dated March 8, 2012, states the issue for inquiry as the following:

- 1. Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including duty to conduct an adequate search for responsive records)?**

IV. DISCUSSION OF ISSUES

[para 6] Section 27(1)(a) of the Act states the following:

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

[para 7] An adequate search has two components: every reasonable effort must be made to search for the actual records requested, and the organization must inform the applicant, in a timely manner, what steps have been taken to search for the requested records. Further, the decision as to whether an adequate search was conducted must be based on the facts relating to how a search was conducted in the particular case (Order P2009-005, at para. 47).

[para 8] With respect to the burden of proof, an applicant must show some basis that an organization failed to locate or provide a record in its custody or control; the burden then shifts to the organization to show that it conducted an adequate search (Order P2006-012 at para. 12).

[para 9] The Applicant made her request to the Organization on February 14, 2011. The Organization initially refused to provide the information to her; the Organization states in its submission that it had initially misunderstood the Applicant's request to be limited to information normally provided by the Organization to employers (the Organization's clients). The Organization's normal procedure is to have an applicant request the information from his or her employer; if the employer will not provide the information, the Organization would.

[para 10] The Organization then states that once it understood the Applicant's request to be for much more information than would have been provided to her employer, the Organization decided to respond to the request and provide the Applicant with her entire file.

[para 11] The Organization states that it retrieved the Applicant's records from the location at which it stores all of its occupational health services records for ten years. The file provided to the Applicant includes two categories of records: functional testing and reports, and medical testing, from 2004-2011. The Organization states that it provided the Applicant with all records related to her.

[para 12] The Applicant argues that she is missing several specific records:

- the pre-placement assessment results for 2004;

- a document entitled Pre-Placement Assessment for a named company with the Organization's logo and a Revised 01/31/03 date in the footer that was provided to her via another process but not in response to her access request;
- clinical diagnostic documents related to a 2004 urine test (the results of which the Applicant states she has received); and
- pre-placement assessments for the years 2004, 2007, and 2008.

[para 13] I will first consider the Pre-Placement Assessment (second item listed above). The Applicant has provided me with a copy of a similar document, with the same footer, that was provided to her by the Organization; however, the content of these two records is slightly different. The Applicant states that the version of the Assessment provided to her in another process was in her file retained by her employer; she presumably believes that the Organization should have a copy of that version of the Assessment also.

[para 14] An applicant may request only his or her own personal information under section 24(1) of the Act. Personal information is defined in section 1(1)(k) of the Act, which reads as follows:

I In this Act,

...

(k) "personal information" means information about an identifiable individual;

...

[para 15] The two versions of the Assessment are both charts of testing procedures for a named company, with requirements that must be met by an applicant for a particular position with that company. Both charts include the Organization's logo. There is no indication on either page of the Applicant's results or whether she met the requirements; in fact, there is no information about the Applicant at all on these pages.

[para 16] The fact that the Assessment document was (presumably) located in the Applicant's file is not sufficient to make the information *about* the Applicant. Therefore I find that the pre-placement assessment having the Revised 01/31/03 date is not personal information that the Applicant can request under section 24(1) of PIPA, and the Organization's response with respect to this page is not reviewable by this office. As stated in Order P2006-005,

...an organization is not required to generate documents pleasing to an applicant or to provide records to which the Applicant is not entitled under the Act. Instead, its obligation is to conduct a reasonable search for the records actually in its custody or under its control that are properly the subject of an access request.

[at para. 33]

[para 17] The Applicant alleges that the 2004 results provided to her are not actually from 2004 but rather are from 1995, and that the dates on the records were changed, and therefore she is still missing her actual 2004 results. The Organization denies having altered any records.

[para 18] The Applicant also states that she is missing clinical diagnostic documents related to a 2004 urine test, although she received the results of the test, and that she is missing pre-placement assessments for 2004, 2007 and 2008.

[para 19] The Organization provided an affidavit sworn by the Medical Records Coordinator, who was one of the two employees who conducted the search. The affiant states that she conducted “a number of searches of all [the Organization’s] electronic and paper files, and no other records exist relating to the Applicant or any services provided by [the Organization] to the Applicant other than what was provided to the Applicant on April 2, 2011. Such search efforts have been made by me on more than one occasion to ensure that I have retrieved all of the Records pertaining to the Applicant”, and “[f]urther, no information in the Records provided to the Applicant was altered in any way.”

[para 20] With respect to the 2004 assessment, I have no evidence from the Applicant that the records were tampered with such that the 2004 records have not been provided. Having reviewed the records provided to me by the Applicant, I see no evidence on the face of the records that they are other than what they appear to be: the Applicant’s 2004 results.

[para 21] With respect to the clinical diagnostic documents and the 2007 and 2008 assessments, the Applicant has not provided me with any evidence to find that the Organization has or should have a copy of these documents.

[para 22] The Notice of Inquiry, sent to both parties, stated the following:

When the issues at inquiry include adequacy of search, it is helpful for the Organization to include in its initial submission, direct evidence such as an affidavit regarding the search conducted for records responsive to the Applicant’s access request. In preparing the evidence, the Organization may wish to consider addressing the following:

- The specific steps taken by the Organization to identify and locate records responsive to the Applicant’s access request.
- The scope of the search conducted, such as physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories where there may be records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search? (Note: that person or persons is the best person to provide the direct evidence).
- Why the Organization believes no more responsive records exist other than what has been found or produced.
- Any other relevant information.

[para 23] The Organization provided affidavit evidence regarding who conducted the search and the scope of the search. It would have been helpful had the Organization included some further detail about the search, such as which databases were searched, keywords used, and why the Organization believes that no further records exist.

[para 24] However, based on the Organization's evidence that it searched both physical and electronic records; both Health Centre records for functional testing, and Occupational Health Services records for medical testing; and that the searches were conducted multiple times to ensure all records were found, I am satisfied that the Organization conducted an adequate search for records in response to the Applicant's request.

[para 25] In order to fulfill the duty to assist under section 27(1), an organization must also inform the applicant, in a timely manner, what steps have been taken to search for the requested records. In this case, within a few days of the request, the Organization notified the Applicant that it would not provide the Applicant with her personal information, directing her instead to her employer (based on information provided by the Applicant, she appears to have had this response by February 17, 2011). However, the Organization subsequently reconsidered its response and responded to the Applicant fully, within the 45 days permitted under section 28(1) of the Act. The Organization states that it emailed the Applicant on March 25, 2011 to notify the Applicant that her file was ready; it is not clear whether the Organization communicated with the Applicant in the interim regarding its reconsideration. Regardless, the Organization informed the Applicant that it would provide her entire file as requested, and subsequently confirmed this via email after the Applicant had received the records and inquired about perceived omissions.

[para 26] In my view, the Organization conducted an adequate search for records and responded to the Applicant as required by section 27(1), fulfilling its duty to assist.

V. ORDER

[para 27] I make this Order under section 52 of the Act.

[para 28] I find that the Organization met its duty to assist the Applicant under section 27(1) of the Act.

Amanda Swanek
Adjudicator