

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

REQUEST TO DISREGARD H2022-RTD-01

May 27, 2022

SURGICAL CENTRES INC./DR. NANJI

Case File Number 021227

- [1] Dr. Nanji is a custodian under the *Health Information Act* (“HIA” or the “Act”). Surgical Centres Inc. is an affiliate under the Act authorized to act on the custodian’s behalf in this matter. Collectively, for ease of reference, the custodian and affiliate are referred to as the “Custodian” in this matter. The Custodian requested authorization under section 87(1) of the Act to disregard any outstanding access requests and correction requests, as well as any future access or correction requests made by an individual whom I will refer to as the Applicant.
- [2] For the reasons outlined in this decision, I have decided to grant the Custodian authorization to disregard any outstanding access requests for records containing the Applicant’s health information. The Custodian is authorized to disregard any future access requests from the Applicant for the same records it has already provided her. I have found that the Applicant did not make a request for correction, therefore the Custodian does not need to disregard it. If the Applicant makes a correction request in the future that includes sufficient detail about the alleged error or omission, the Custodian should respond in accordance with the HIA. If the Custodian believes that the criteria of section 87(1) are met in any future interactions with the Applicant that are not covered by this decision, it may apply to me to disregard those future requests under section 87(1) and I will consider the matter at that time.

Commissioner’s Authority

- [3] Section 87(1) of the HIA gives me the power to authorize a custodian to disregard certain requests. Section 87(1) states:
- 87(1) At the request of a custodian, the Commissioner may authorize the custodian to disregard one or more requests under section 8(1) or 13(1) if
- (a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the custodian or amount to an abuse of the right to make those requests, or
 - (b) one or more of the requests are frivolous or vexatious.

Background

- [4] Following a medical procedure in March, 2021, the Applicant requested access to all records containing her health information.
- [5] The Custodian states it emailed the Applicant a copy of its records containing her health information (12 pages) on March 22, 2021.
- [6] On April 25, 27, and 29, 2021, the Applicant sent a series of emails to the Custodian, again requesting copies of her medical records, as well as additional information such as names of those who were involved in creating the records, and asked to speak to staff of the Custodian. The Applicant stated there were errors in her records that needed to be corrected, but provided no additional information as to what the errors were. On May 5, 2021, the Custodian states it sent the Applicant another copy of her medical records via registered mail, which was received on May 7, 2021.
- [7] As communications between the Custodian and the Applicant continued, and given the Applicant's publicly available litigation history including her characterization by the Alberta Court of Appeal as a "prolific litigator", the Custodian retained counsel. In May, 2021 a number of communications went between the Applicant, the Custodian and the Custodian's counsel. On May 12, 2021, the Custodian, through its counsel, sent the Applicant a third copy of her medical records – the same records that the Custodian states had previously been provided to the Applicant on March 22 and May 5, 2021. The Applicant was also informed of her other rights under the HIA, including how to make a correction request:

By providing you with your full record, SCI has responded to your request for health information accurately and completely, as required by the Act. If you require an explanation of any term, code or abbreviation in the record, please advise and SCI will provide you with such explanation if it is reasonably practicable to do so, as required by section 10(c) of the Act, and subject to SCI's right of refusal under section 11 of the Act.

In order to properly consider any request for a correction to your records, SCI must be made aware of what, exactly, you are seeking to have corrected. You indicate in your Letter that there are errors. Please specify what errors you perceive in the record and how you would like them corrected. Please also submit any additional documentation you may have to support your request. SCI will then decide whether or not to make the correction, as required by section 13 of the Act.

- [8] The next day, on May 13, 2021, the Applicant responded. She stated she had never previously received her medical records, and requested proof that she had received them. The Applicant further requested that the pages be numbered, descriptions provided of each record, and raised other concerns about the Custodian. The Applicant indicated she intended to bring her concerns before my office. In later correspondence, the Applicant

continued to raise additional concerns including that the Custodian's counsel had breached her privacy by accessing her medical records.

- [9] On May 19, 2021, the Custodian brought an application before my office under section 87(1) of the Act. The Custodian requested the following:

“...that it be given authorization to disregard her requests. While many of her requests fall outside the scope of the Act, and so this office's authorization is not required in order for SCI to be entitled to disregard them, she has indicated that she is seeking a correction to her health information, and SCI specifically seeks authorization to disregard this request. SCI is also seeking authorization to disregard future requests from [the Applicant] in respect of her medical records pertaining to her [March, 2021] procedure.”

- [10] I have reviewed the parties' submissions, including their correspondence. The parties exchanged much correspondence in the short time between the Applicant's medical procedure and the Custodian's request under section 87(1) of the HIA. Based on my review of the submissions, it is not entirely clear whether there is currently an outstanding access request from the Applicant for her health information, or whether that was satisfied by the Custodian's prior response(s). It appears that the Applicant continued to expand her requirements of the Custodian beyond the scope of the Custodian's duties under the Act. Many of the Applicant's communications also contain general assertions that her medical records contain errors.
- [11] The Applicant disputes the Custodian's characterization of her interactions. She states the Custodian “never provided me with any medical records whatsoever and also refused to even acknowledge my requests for my medical information.” Having reviewed the correspondence between the parties, it is clear that the Applicant received at least some information, as in her April 27, 2021 email she described concerns with specific pages of her medical records. This discrepancy is better understood through the Applicant's dispute regarding the number of pages she previously received and whether they originated from a physician custodian or a corporate affiliate acting on a custodian's behalf under the HIA.
- [12] For the purposes of this matter it is not necessary for me to determine how many times the Applicant received her medical records from the Custodian. She has now received at least one full copy of her medical records from the Custodian.
- [13] In a request for authorization to disregard a request under section 87(1), a custodian bears the burden to demonstrate that the legislative criteria are met. An applicant is not required to make a submission, but they may choose to do so. In this case, the Applicant chose to make submissions.

- [14] Most of the Applicant's submissions focus on her allegations of a breach of privacy, a failure of the duty to assist, a breach of the timelines to respond, a request that the Custodian be investigated for an offence, and that fines be levied against the Custodian. The Applicant also expanded her concerns into matters under the *Personal Information Protection Act* ("PIPA"), as well as allegations under other statutes, such as the *Health Professions Act*, regarding her medical care. However, submissions made in response to a request to disregard are an inappropriate method by which to request an investigation or review by my office, and I have not considered these allegations further. Concerns about a custodian (or organization), over which I have jurisdiction, may be addressed through my office by filing a request for review or a complaint.
- [15] The Applicant takes the position that she has not yet made a request for correction. I agree. The Applicant's communications with the Custodian contain only general assertions that there are errors in her records. There is insufficient information for the Custodian to respond to a correction request in accordance with the HIA, and the Custodian is not obligated to respond any further to the Applicant's general assertions of an error.

Analysis

Section 87(1)(a) – requests are repetitious or systematic in nature

- [16] "Repetitious" is when a request for the same records or information is made more than once. "Systematic in nature" includes a pattern of conduct that is regular or deliberate.
- [17] As I noted above, there is a great deal of correspondence between the parties, and it is not clear whether a request for the Applicant's medical records remains outstanding. However, as the Custodian has made this request to disregard her access requests, I assume it is of the opinion that an access request or requests remain outstanding. As such, I will proceed on the assumption that there is an outstanding access request(s) for the Applicant's medical records.
- [18] I am satisfied that the Applicant has already been provided her medical records by the Custodian, so to the extent that there is any outstanding access request for the medical records that have already been provided to her, it would be repetitious.

Section 87(1)(a) – the requests would unreasonably interfere with the operations of the custodian or amount to an abuse of the right to make those requests

- [19] In addition to establishing that a request is either repetitious or systematic, under section 87(1)(a), a custodian must also provide evidence that the requests would unreasonably interfere with the operations of the custodian or that they amount to an abuse of the right to make those requests.

[20] As I have noted in numerous prior request to disregard decisions (under section 55(1)(a) of the *Freedom of Information and Protection of Privacy Act*, section 87(1)(a) of the HIA and section 37 of PIPA), the fact that a request is repetitive may be abusive in and of itself. In this case, having reviewed the parties' submissions, including the Applicant's communications to the Custodian, I find that to the extent that there may be an access request outstanding, for the same medical records that the Applicant has already received, it would be an abuse of the Applicant's right to make those requests.

Section 87(1)(b) – frivolous or vexatious

[21] As I have found the criteria of section 87(1)(a) are met, there is no need for me to consider the Custodian's arguments under section 87(1)(b) that the Applicant's outstanding access requests, if there are any, are frivolous or vexatious.

Request for Authorization to Disregard Future Requests

[22] The Custodian requested authorization to disregard any future access requests from the Applicant for her medical records related to her March 2021 procedure. I am satisfied that the Applicant has received these records, and I authorize the Custodian to disregard any future requests for those same records that it has already provided.

[23] The Custodian also requests authorization to disregard any future requests from the Applicant for corrections to her health information. As I found above, the Applicant has not yet made a correction request. It is possible that she may, in the future, provide the Custodian with sufficient information about what she believes to be an error or omission in her medical records that will allow the Custodian to respond in accordance with the Act.

[24] The Custodian is authorized to disregard any future correction requests from the Applicant if they contain mere assertions that there is an error or omission in her records. However, if the Applicant provides sufficient information about her belief in an error or omission, then the Custodian must respond in accordance with the Act.

Decision

[25] On the basis of the evidence before me, I have decided to exercise my discretion under section 87(1)(a) of the HIA. To the extent that any current access requests for the Applicant's health information remain outstanding, the Custodian may disregard those requests.

[26] The Custodian may disregard any future access requests from the Applicant for the records containing her health information that it has previously provided to her.

- [27] As I agree with the Applicant that she has not yet made a request for correction, there is no need to authorize the Custodian to disregard any outstanding correction requests.
- [28] The Custodian may disregard any correction requests in the future if they consist of mere assertions that there are errors or omissions in the Applicant's medical records; however, if the Applicant provides sufficient information about her belief in an error or omission, then the Custodian must respond to the Applicant in accordance with the Act.
- [29] If the Custodian believes that the criteria of section 87(1) are met in any future interactions with the Applicant that are not covered by this decision, the Custodian may apply to me to disregard those future requests under section 87(1) and I will consider the request at that time.

Jill Clayton
Information and Privacy Commissioner

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