

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER H2023-01

January 25, 2023

ALBERTA HEALTH SERVICES

Case File Number 018281

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request under the *Health Information Act* (HIA) to Alberta Health Services (the Custodian) for her health information related to health care services provided to the Applicant on May 14 and 15 of 2016. The request was for records of the Applicant's admission and treatment on the two days in question, as well as specified surgical reports. The time period for the records was May 14 and 15 of 2016.

The Custodian provided records to the Applicant in response to the request. The Applicant requested a review of the Custodian's search for records. Subsequent to the review, the Applicant requested an inquiry.

The Adjudicator found that the Custodian initially failed to meet its duty to assist the Applicant but that this initial failure was rectified by the Custodian as a result of the review that preceded the inquiry.

Statutes Cited: **AB:** *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1, 10, 80.

Authorities Cited: **AB:** Orders F2012-09, H2005-003, H2006-003, H2021-11

I. BACKGROUND

[para 1] An Applicant made an access request under the *Health Information Act* (HIA) to Brooks Medical Centre, operated by Alberta Health Services (the Custodian). The request was for the Applicant's health information related to health care services provided to the Applicant on May 14 and 15 of 2016. The request was for records of the Applicant's admission and treatment on the two days in question, as well as specified surgical reports. The time period for the records was May 14 and 15 of 2016.

[para 2] The Custodian provided records to the Applicant in response to the request. The Applicant requested a review of the Custodian's search for records. Subsequent to the review, the Applicant requested an inquiry. The Applicant's request for inquiry indicates that she believes that treatment received in May 2016 led to injuries that were identified in medical imaging performed in August 2016. The Applicant's request for her health information appears to relate to this concern about injuries sustained during the treatment(s).

II. INFORMATION AT ISSUE

[para 3] As this inquiry addresses the adequacy of the Custodian's response under section 10 of the Act, there are no records directly at issue.

III. ISSUES

[para 4] The issue in this inquiry, as set out in the Notice of Inquiry dated October 6, 2022, is:

Did the Custodian meet its obligations required by section 10(a) for HIA of the Act (duty to assist applicants)? In this case, the Commissioner will consider whether the Respondent conducted an adequate search for responsive records.

IV. DISCUSSION OF ISSUES

[para 5] Section 10 of HIA 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.

[para 6] Past Orders of this office have determined that a custodian is in the best position to show that it conducted an adequate search for responsive records; therefore, the burden of proof is on the custodian to show that it has done so (see Orders H2005-003 and H2006-003).

[para 7] Regarding the test for whether an adequate search was conducted, former Commissioner Work stated the following in H2005-003 (at paras. 19-21):

These FOIP Orders have not established a specific test for adequacy of the search; this is a question of fact to be determined in every case. The standard for the search is not perfection but rather what is “reasonable” in the circumstances. The decision about adequacy of a search is based upon the facts of how the search was conducted in the particular circumstances. In order to discharge its burden of proof under FOIP, a public body must provide sufficient evidence to show that it has made a reasonable effort to locate responsive records.

In its written and oral submissions, the Custodian argued that the FOIP approach to interpretation should be applied to the parallel provision in HIA. I accept this argument. I hereby adopt the above described FOIP criteria and approach for deciding whether the adequacy of the search and therefore the duty to assist under section 10(a) of HIA has been satisfied by a custodian.

To address the Applicant’s concerns, I must review the thoroughness of the Custodian’s search. In its written and oral submissions, the Custodian provided detailed descriptions of the steps that were taken, the communications that occurred, the documentation utilized and the efforts that were made to attempt to locate the information requested.

[para 8] The standard for determining whether a public body conducted an adequate search for records under the *Freedom of Information and Protection of Privacy Act* (FOIP Act) have been applied to organizations under the *Personal Information Protection Act*. I agree with former Commissioner Work that these standards are also applicable under the HIA.

[para 9] Further, the duty to assist includes clarifying the scope of the Applicant’s request. Past Orders of this Office with respect to a public body’s duty to assist under the FOIP Act have found that a public body will fail to meet this duty to assist if it unilaterally narrows the scope of an Applicant’s request. In Order F2012-09, the adjudicator stated (at para. 53):

If a public body interprets a request for records too restrictively, or wrongly, the public body runs the risk of unilaterally narrowing the scope of the access request and failing in its duty to assist the Applicant, by failing to search for records falling within the scope of the access request.

[para 10] This approach has also been followed with respect to a custodian’s duty to assist under the HIA (see Order H2021-11).

[para 11] The Applicant’s submission comments on various imaging she had done, entries onto various electronic records systems relating to health services she received, and concerns about whether the entries in the electronic records systems match the dates of files that were received from various health services providers. The Applicant also

states that various images (e.g. ultrasound images) show injuries that she seems to believe occurred as a result of (or during) surgical procedures she underwent.

[para 12] It is difficult to decipher what the Applicant is trying to communicate in her submission, and how it relates to her access request to the Custodian. It appears that the Applicant believes additional records exist in relation to surgeries that were performed. She states that the Custodian located surgical reports from dates other than what the Applicant specified in her request. She also raised concerns about her records being altered or removed. This last complaint was not raised until the Applicant's submission to this inquiry, which is too late to raise an entirely new issue. Therefore, it is outside the scope of this inquiry.

[para 13] In her submission, the Applicant asks that I order the Custodian to provide her with all surgical reports from January 2013 onward. This is beyond the scope of the request that she made to the Custodian in March 2020. As such, it falls outside the scope of what the Custodian could have been expected to provide the Applicant in response to her March 2020 request and is therefore outside of what I can order in this inquiry.

[para 14] As part of its initial submission, the Custodian provided an affidavit sworn by an Information Access and Privacy Advisor who participated in the review of this file that preceded this inquiry. The Advisor provided me with the explanations previously provided to this Office for the review. Attached to the affidavit are records of the Applicant's admission to the Brooks Health Centre dated May 14, 2016 and May 15, 2016, and notes relating to the admissions as well as an imaging report from May 14, 2016.

[para 15] The explanations previously provided for the review, and provided again with the Advisor's affidavit, state that

Alberta Health Services Access and Disclosure staff logged the request. They entered the patient's last name and date of birth into the system Meditech. This produced a confirmation of stay document that is printed and was subsequently shared with an AHS Clerk at the Brooks Health Center. The Clerk located two potential sources of records at the Brooks Health Center. One repository contained physical records that were responsive and a second repository contained electronic medical records that were responsive. Paper records were retrieved from where they were shelved and electronic records were printed from the database Meditech. These records were scanned and sent to Access and Disclosure.

No other sources were identified because responsive records were located in these two repositories.

[para 16] The Custodian further states that they provided 16 pages of responsive records to the Applicant.

[para 17] With its submission, the Custodian also provided an affidavit sworn by the employee (N) who processed the Applicant's access request. Attached to N's affidavit is

an explanation of their search for records, which they had prepared for the review that preceded this inquiry. That explanation states that the Applicant sought records of her admission and treatment at the emergency department of Brooks Health Center, as well as surgical reports for three procedures, all from May 14 and 15, 2016. The Custodian confirmed the Applicant's admittance to the Brooks Health Center on the dates identified in the access request and emailed the confirmation to a clerk at Brooks Health Center to locate the responsive records. This clerk located the responsive paper records and printed off responsive electronic records in Meditech. The Applicant's name, date of birth and chart number were used as search terms. Other areas such as storage or additional electronic drives were not searched because "health records are not stored on storage or electronic drives."

[para 18] The explanation attached to N's affidavit also notes that the Applicant's request specified "complete disclosure of May 14 & 15, 2016 records from date of creation to date." N's explanation states that this was interpreted to mean that the Applicant sought a copy of her complete chart for the two identified dates. Therefore, "[t]he complete health record of the two ER visits, of May 14 & 15, 2016 were disclosed in full, all paper pages and electronic pages were provided to the patient."

[para 19] However, the surgical reports for the procedures specified in the Applicant's request were not provided because these procedures were performed on dates other than the dates specified in the Applicant's access request. N's explanation states that the "staff member [processing the request] erred on the side of providing the least amount of information to meet the request."

[para 20] N states that as a result of the review previously conducted by this office, N reprocessed the Applicant's request to include any responsive records dated between May 14, 2016 and March 6, 2020 (the date of the Applicant's original access request). Attached to N's affidavit are two letters from the Custodian to the Applicant, acknowledging the new scope of the Custodian's search for records (dated March 17, 2022) and a letter providing additional records to the Applicant (letter dated April 6, 2022).

Analysis

[para 21] I understand that the procedures to which the surgical reports relate were performed outside the dates identified in the Applicant's access request. N's explanation attached to their affidavit states that "[n]o correspondence happened between patient and AD staff." I presume this means that the Access & Disclosure area processing the Applicant's request did not clarify the Applicant's request with her.

[para 22] It is not clear why the employee processing the request decided to err on the side of providing the least amount of information to meet the request, without clarifying the scope with the Applicant. The Applicant had specified three procedures she underwent, and asked for the surgical reports. From the Custodian's statement, I understand that the employee was aware of surgical reports that matched the procedures

identified in the Applicant's request, but did not provide them as the dates were not the same as those identified by the Applicant.

[para 23] Given that the Custodian was aware of surgical reports that matched the procedures identified in the Applicant's request, the Custodian ought to have clarified the Applicant's request and asked if she was interested in the surgical reports for procedures that occurred on different dates than those specified in her request. By instead choosing the narrower interpretation of the access request without consulting the Applicant, the Custodian failed in its duty to assist the Applicant.

[para 24] However, the Custodian has now provided the Applicant with the surgical reports. As such, it has fulfilled its duty and there is nothing for me to order.

[para 25] With respect to the remainder of the Custodian's search for records, I accept that the Custodian provided all records relating to the Applicant's ER admissions on the dates she specified in her request. As such, I find that the Custodian met its duty to assist the Applicant with respect to that part of her request.

V. ORDER

[para 26] I make this Order under section 80 of the Act.

[para 27] I find that the Custodian initially failed to meet its duty to assist the Applicant but that this initial failure was rectified by the Custodian.

Amanda Swanek
Adjudicator