

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER H2023-04**

August 15, 2023

**ALBERTA HEALTH SERVICES**

Case File Number 022487

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant made an access request to Alberta Health Services (the Custodian) under the *Health Information Act* (HIA) for records relating to a call made to a mental health help line on a specified date.

The Custodian located three pages of responsive records. The Custodian provided the responsive records to the Applicant, with information on two of the three pages withheld under sections 11(1)(b) and 11(2)(a).

The Applicant requested an inquiry into the Custodian's response.

The Adjudicator found that the Custodian properly applied sections 11(1)(b) and 11(2)(a) to information in the records.

**Statutes Cited: AB:** *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1, 7, 11, 79, 80

**Authorities Cited: AB:** Orders H2002-001, H2006-002

**I. BACKGROUND**

[para 1] The Applicant made an access request to Alberta Health Services (the Custodian) under the *Health Information Act* (HIA) dated July 14, 2021, for the following:

- recording or written report of call made to mental health link on Jan 15, 2021 from [name, phone number and location of individual]
- copy of completed FORM-10-Mental Health Act see attached letter

[para 2] The “attached letter” referred to above provided additional background information to accompany the Applicant’s request. The Applicant requested access to a Form 10. This request was transferred to Covenant Health; Covenant Health responded to the Applicant saying there was no record of a Form 10.

[para 3] The Applicant was asked to provide confirmation of consent from her daughter, (L), to release information relating to L appearing in the responsive records. That consent was provided to the Custodian on July 6, 2021. Consent was not obtained from anyone other than L.

[para 4] On July 12, 2021, the Custodian provided its response to the Applicant. Information was severed from two of the three pages of responsive records, under sections 11(1)(b) and 11(2)(a) of the HIA. The Applicant requested a review of the Custodian’s decision to withhold information in the records.

[para 5] Following the review, the Applicant requested an inquiry and the Commissioner agreed to conduct an inquiry into this file. The Applicant’s request for inquiry did not directly address the outcome of the review, or the information withheld by the Custodian in the records. The Applicant’s request for inquiry primarily addresses issues that do not fall within the jurisdiction of this Office, such as whether the Applicant’s hospitalization and/or treatment was authorized, concerns about masking and other restrictions relating to the global pandemic, as well as arguments similar to those raised in legal proceedings by Organized Pseudolegal Commercial Argument (OPCA), litigants, as discussed in *Meads v. Meads*, 2012 ABQB 571.

[para 6] The Applicant also raised concerns about the accuracy of information in records that are not related to the records at issue in this inquiry.

[para 7] In her request for inquiry, the Applicant accepts that the Form 10 she requested does not exist.

[para 8] The parties were informed in the Notice of Inquiry that this inquiry will not address any of the concerns raised by the Applicant over which this office does not have jurisdiction. The inquiry will also not address the accuracy of information contained in records that do not relate to file #022487. As the Applicant has accepted that there is no Form 10 record responsive to her request, that part of her request is also not at issue.

[para 9] This inquiry considers only the Custodian’s application of sections 11(1) and 11(2) to withhold information in the responsive records. The parties were asked to limit their submissions to these issues. The parties were informed that submissions unrelated to these issues may not be considered in the inquiry.

[para 10] The Applicant provided initial and rebuttal submissions to the inquiry. The Custodian provided an initial submission, but declined to provide a rebuttal submission. After the Custodian notified me that it would not be providing a rebuttal submission, the Applicant asked to make an additional submission to the inquiry, stating that her request was made in light of the recent Court of King's Bench decision *Ingram v Alberta (Chief Medical Officer of Health)*, 2023 ABKB 453.

[para 11] I reviewed the *Ingram* decision and the additional submission. I informed the parties that I would not be accepting the additional submissions, for the following reasons (letter to the parties, dated August 4, 2023):

The *Ingram* decision does not appear to be relevant to the issues in this inquiry. As stated in the Notice of Inquiry sent to the parties on May 15, 2023, the sole issues for this inquiry are the Custodian's application of sections 11(1) and 11(2) to withhold information in the responsive records. The Notice specifically stated that issues regarding masking and other restrictions relating to the global pandemic are outside the jurisdiction of this Office and will not be considered in the inquiry.

Having reviewed the submission the Applicant wishes to add to the inquiry, none of it relates to the issues for this inquiry. For this reason, I am not accepting the submission.

[para 12] Portions of the Applicant's initial and rebuttal submissions are related to the issues for this inquiry, and will be discussed in this order. Much of the submissions relate to matters outside the scope of the inquiry, including the quality of health services provided to the Applicant, and references to public health restrictions imposed during the pandemic. Although I have reviewed the Applicant's submissions in their entirety, I will not address any arguments or comments made that do not relate to the issues set out in the Notice of Inquiry.

## **II. INFORMATION AT ISSUE**

[para 13] The information at issue in this inquiry is information severed from two of the three pages of responsive records.

## **III. ISSUES**

[para 14] The Notice of Inquiry, dated May 15, 2023, states the issues for inquiry as follows:

1. Did the Custodian properly apply section 11(1) of the HIA (discretionary refusal of access) to the records/information?
2. Does section 11(2) of the HIA (mandatory refusal of access) apply to the records/information?

## **IV. DISCUSSION OF ISSUES**

**1. Did the Custodian properly apply section 11(1) of the HIA (discretionary refusal of access) to the records/information?**

[para 15] The Custodian applied section 11(1)(b) to information appearing in two of the three pages of responsive records.

[para 16] Section 11 of the HIA authorizes a Custodian to withhold health information from a requestor in some circumstances. It states, in part:

*11(1) A custodian may refuse to disclose health information to an applicant*

*[...]*

*(b) if the disclosure could reasonably lead to the identification of a person who provided health information to the custodian explicitly or implicitly in confidence and in circumstances in which it was appropriate that the name of the person who provided the information be kept confidential*

[para 17] When making decisions to sever information under the HIA, the Custodian bears the burden of proof. Section 79 of the HIA states:

*79 If an inquiry relates to a decision to refuse access to all or part of a record, the onus is on the custodian to prove that the person asking for the review has no right of access to the record or part of the record.*

[para 18] To establish that section 11(1)(b) applies to information, a custodian must show that disclosure of the information could reasonably lead to the identification of a person who provided health information to the custodian explicitly or implicitly in confidence and in circumstances in which it was appropriate that the name of the person who provided the information be kept confidential (see Order H2006-002, at para. 14).

*Arguments of the Custodian*

[para 19] The Custodian states that the records at issue contain case notes taken by an employee of the Custodian relating to “screening and referral services for intake and case management activities” relating to the Applicant, and that the information is properly characterized as diagnostic, treatment and care information (at para. 20).

[para 20] The Custodian cites Order H2006-002, in which the adjudicator noted that in some circumstances, the nature of information in the records could lead to the identification of the individual who provided that information. Specifically, the adjudicator noted that only a limited number of individuals in that case would know of the information that had been provided. The Custodian argues that this finding is applicable in this case, as the information withheld under section 11(1)(b) is such that it would be known by only a few individuals, and that disclosing the information could reasonably reveal who provided it.

[para 21] The Custodian characterizes the information in the records at issue as information

collected during a call or calls from one or more third parties about the Applicant to a mental health help line. The Custodian's public-facing website clearly indicates that the province-wide "Mental Health Help Line is a 24 hour, 7 day a week, 365 days a year, confidential service that provides support, information and referrals to Albertans experiencing mental health concerns (at para. 29).

[para 22] The Custodian cites Order H2002-001, in which former Commissioner Work found that information provided by individuals in the context of an involuntary committal at a mental health facility can be assumed to have been provided implicitly in confidence (at para. 49).

[para 23] The Custodian states that the following factors are also relevant (at para. 37):

- (a) Mental health concerns were prevalent in the overall context of the scenario in which the 11(1) Information was collected;
- (b) The 11(1) Information was relevant to identifying and providing appropriate health services to the Applicant;
- (c) Given the Applicant's position that she did not require such health services, it is surmisable that the 11(1) Information would not have been collected by the Custodian directly from the Applicant nor from anyone else with her agreement;
- (d) To the extent that they contradicted her own perceptions, the Applicant did not wish the Custodian to consider the perspective of other individuals insofar as to impact whether health services would be provided to her and the nature of such services; and
- (e) The evident reluctance of the other person(s) to share such information with the Custodian and thereby facilitate the initiation and/or provision of health services to the Applicant, infused with the highly charged emotions of all involved, is apparent on the face of the unredacted Responsive Record and specifically within the 11(1) Information.

[para 24] The Custodian also provided a link to its website for its Mental Health Help Line<sup>1</sup>, which supports the Custodian's argument that an individual providing information to this help line has a reasonable expectation that the information is provided in confidence. The website states (emphasis added):

The Alberta Health Services Mental Health Help Line is a 24 hour, 7 day a week, 365 days a year, **confidential service** that provides support, information and referrals to Albertans experiencing mental health concerns.

[para 25] Lastly, the Custodian argues that it appropriately exercised its discretion to withhold information under section 11(1)(b).

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<sup>1</sup> <https://www.albertahealthservices.ca/findhealth/Service.aspx?id=6810&serviceAtFacilityID=1047134>

*Arguments of the Applicant*

[para 26] In her rebuttal submission, the Applicant acknowledges that the records include information that affects other individuals. However, in her initial submission, the Applicant argues that section 11(1)(b) does not apply to information in the records because “I already know the names of ALL the people who would have provided the information”; the Applicant further stated that anyone who may have provided information to the Custodian are the Applicant’s immediate family members.

*Analysis*

[para 27] Having reviewed the withheld information, I agree that it is health information of the Applicant. “Health information” is defined in section 1(1)(k) of the HIA as follows:

(k) *“health information” means one or both of the following:*

- (i) *diagnostic, treatment and care information;*
- (ii) *registration information;*

[para 28] “Diagnostic, treatment and care information” is defined in section 1(1)(i) of the HIA as follows, in part:

(i) *“diagnostic, treatment and care information” means information about any of the following:*

- (i) *the physical and mental health of an individual;*

...

*and includes any other information about an individual that is collected when a health service is provided to the individual, but does not include information that is not written, photographed, recorded or stored in some manner in a record;*

[para 29] It is clear from the records that a health service was being provided to the Applicant, and that the information at issue was collected as part of providing that health service.

[para 30] It is also clear from the records that disclosing the information withheld under section 11(1)(b) could reveal the identity of the individual who provided it to the Custodian. This is due to the amount of detail contained in the withheld information.

[para 31] Lastly, I agree with the Custodian that the context of the records suggests that the information was provided implicitly in confidence. It is reasonable to assume that calls to a crisis line would include information that is of the type that is intended to be provided in confidence; the reference to confidential services on the Custodian’s website

further supports an expectation of confidentiality. Lastly, the content of the withheld information supports a finding that it was provided to the Custodian in confidence.

[para 32] The Applicant argues that section 11(1)(b) does not apply because she knows the information must have been provided by one of a small number of individuals. However, this is not the same as knowing *which one* of those individuals did in fact provide the information.

[para 33] I find that section 11(1)(b) applies to the information withheld under that exception. Given the sensitivity of the information and that it was provided in confidence, I also accept that the Custodian properly exercised its discretion to apply that exception.

## **2. Does section 11(2) of the HIA (mandatory refusal of access) apply to the records/information?**

[para 34] The Custodian applied section 11(2)(a) to information appearing in two of the three pages of responsive records.

[para 35] Section 11(2)(a) is a mandatory exception. This means that if the exception applies, the Custodian is required to withhold that information from the Applicant. It states:

*11(2) A custodian must refuse to disclose health information to an applicant*

*(a) if the health information is about an individual other than the applicant, unless the health information was originally provided by the applicant in the context of a health service being provided to the applicant*

[para 36] As with section 11(1), the Custodian bears the burden of showing that section 11(2)(a) applies to the information withheld from the Applicant.

[para 37] Section 11(2)(a) requires a Custodian to withhold health information if the health information is about an individual other than the applicant, unless the health information was originally provided by the applicant in the context of a health service being provided to the applicant. Section 11(2)(a) applies to the *health information of an individual other than an applicant*, as opposed to information about an applicant that another person has provided to a Custodian.

### *Arguments of the Custodian*

[para 38] The Custodian's arguments regarding its application of section 11(2)(a) are minimal. It argues that it is clear from the records themselves that they contain health information of another individual, and that information was not provided by the Applicant.

### *Arguments of the Applicant*

[para 39] In her initial submission, the Applicant expressed confusion as to why a person would provide a third party's health information during a wellness check concerning her. The Applicant detailed health concerns of various relatives, noting that none of this information relates to her and should not be located in records about her. The Applicant argues that section 11(2)(a) could permit a custodian to avoid providing any individual with access to their own health information by asking relatives for their (the relatives') health information in the course of providing the individual with health services.

### *Analysis*

[para 40] It is difficult to discuss the application of this provision in detail without revealing any of the information to which it has been applied (or the identity of the individual it is about); presumably this is why the Custodian's submission on this point is minimal.

[para 41] As discussed earlier, information in the records was provided by individuals other than the Applicant. The information was collected in the course of the Custodian's provision of health services to the Applicant. I understand why the Applicant is questioning how it is that records relating to her would contain health information of another individual.

[para 42] Having reviewed the records, I agree that the few discrete items of information withheld under section 11(2)(a) consist of health information of another individual; specifically, information about the individual's physical or mental health. As to why such information would appear in records relating to the Applicant, I can say only that the records include discussions between employees of the Custodian and other individuals; while those discussions primarily relate to the Applicant, statements were made by the individuals pertaining to themselves. These statements were apparently made in order to provide context for other information the individuals had provided, pertaining to the Applicant.

[para 43] Regarding the Applicant's concern that the Custodian could withhold her health information from her by asking a family member about their own health and recording that information with the Applicant's health information, section 7(2) of the HIA requires a custodian to determine if information to which section 11 applies can reasonably be severed from a record such that the remainder of the record can be provided to an applicant. In other words, the Custodian can only withhold the items of information in the records that consist of health information of another individual; the Custodian cannot withhold entire records if section 11(2)(a) applies to only a portion of that record.

[para 44] I have reviewed the records and have determined that the Custodian applied this provision only to health information of other individuals, and not to health information of the Applicant. I find that the Custodian properly applied section 11(2)(a).

**V. ORDER**

[para 45] I make this Order under section 80 of the Act.

[para 46] I find that the Custodian properly applied sections 11(1)(b) and 11(2)(a) to information in the records.

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Amanda Swanek  
Adjudicator