

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER H2023-07

August 23, 2023

DR. ANDREW MAMO

Case File Number 030937

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request under the *Health Information Act* (HIA) for access to health information related to health care services provided to the Applicant at two facilities operated by the Central Alberta Medical Imaging Services (CAMIS), in Stettler and Red Deer. Specifically, the Applicant requested five reports related to imaging conducted in 2016 and 2017.

The custodians responsible for responding to the Applicant's request are the radiologists who created the reports. Three radiologists from CAMIS were involved in the reports identified by the Applicant. This inquiry relates to records created by Dr. Mamo (the Custodian).

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 conducted an adequate search for records.

Statutes Cited: **AB:** *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1, 10, 80, Health Information Regulation, Alberta Regulation 70/001, s. 2

Authorities Cited: **AB** Orders H2005-003, H2006-003

I. BACKGROUND

[para 1] An Applicant made an access request under the *Health Information Act* (HIA) to Central Alberta Medical Imaging Services (CAMIS) for access to health information related to health care services provided to the Applicant at two facilities operated by CAMIS, in Stettler and Red Deer.

[para 2] From the Stetter clinic the Applicant requested:

- A report for an August 31, 2016 ultrasound;
- A report for a June 5, 2017 ultrasound; and
- A disclosure report for all disclosures of the above exams from the date of creation to the date of the request (March 6, 2020).

[para 3] From the Red Deer clinic the Applicant requested:

- A July 25, 2017 mammography report;
- A July 25, 2017 ultrasound report;
- An August 21, 2017 bone mineral density report
- A disclosure report for all disclosures of the above exams from the date of creation to the date of the request (March 6, 2020).

[para 4] CAMIS provided records to the Applicant in response to the request. The Applicant requested a review of CAMIS's search for records. Subsequent to the review, the Applicant requested an inquiry.

[para 5] In her request for inquiry, the Applicant states that all or portions of the August 2016 and June 2017 ultrasound reports were not provided to her. The Applicant also states that the July 2017 ultrasound and August 2017 bone mineral density report were not on her file; possibly the Applicant means that she did not receive these reports.

[para 6] In the course of the inquiry, it became clear that CAMIS was not the appropriate respondent in the inquiry.

[para 7] The HIA allows applicants to make access requests for their own health information to custodians. A custodian is defined in section 1(1)(f) of the HIA. Custodians are obligated to respond to an access request in the manner set out in the HIA.

[para 8] CAMIS does not fall within the definition of custodian set out in the HIA. Section 1(1)(f)(ix) of the HIA states that a custodian includes "a health services provider who is designated in the regulations as a custodian, or who is within a class of health services providers that is designated in the regulations for the purpose of this subclause."

[para 9] Section 2(2)(i) of the Health Information Regulation states that "regulated members of the College of Physicians and Surgeons of Alberta" are designated as

custodians for the purposes of section 1(1)(f)(ix) of the HIA. Given this, it appeared that one or more of the radiologists at the relevant clinic was the custodian responsible for responding to the Applicant's access request.

[para 10] The file was referred back to the Senior Information and Privacy Manager who conducted the initial review. The Manager confirmed that the radiologists associated with the relevant medical imaging requested by the Applicant are the custodians responsible for responding to the relevant portion of the Applicant's access request. As such, the radiologists are also the appropriate respondents for an inquiry.

[para 11] The original file listing CAMIS as the respondent (file #018282) was closed, and three new files were opened. This file, #030937, relates to Dr. Mamo. The record identified in the Applicant's request for which the Custodian is responsible is an August 21, 2017 bone mineral density report.

[para 12] Once the correct Custodian was identified, an amended Notice of Inquiry was sent to the Custodian. The issue in the amended Notice was the same as the issue set out in the original Notice for file #018282. The Applicant had already provided a submission to the original inquiry, which was appended to the amended Notice. The Applicant requested permission to make an additional submission once the amended Notice was issued, and was allowed to do so.

[para 13] The Custodian also provided a submission.

II. INFORMATION AT ISSUE

[para 14] 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 15] The issue in this inquiry, as set out in the amended Notice of Inquiry dated June 29, 2023, is:

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

IV. DISCUSSION OF ISSUES

[para 16] 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 17] 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 18] 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 19] 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 also 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 20] The Custodian states that CAMIS is owned and operated by several partner radiologists, with 2 managing partners. CAMIS has its own Medical Imaging System (RIS) and Picture Archiving System (PACS) “where all patient information for exams performed at CAMIS including reports and images are stored.” The Custodian further states that all images and reports are also transferred to Netcare. The Custodian confirmed that each radiologist is the custodian of health information they collect, use and disclose when providing diagnostic or treatment services.

[para 21] The Custodian states that requests for health information are addressed by CAMIS’ Director of Operations; this responsibility is delegated to the Director by each radiologist. The Director responded to the Applicant’s request and participated in the earlier review by this office.

[para 22] The Applicant's original 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. Some of the Applicant's submission is difficult to decipher, especially with respect to how it relates to her access request. Much of the Applicant's submissions relate to concerns that were not raised in her request for review and/or cannot be addressed by this Office.

[para 23] For example, the Applicant's original submission requests records that were not part of her access request (e.g. she requests that a copy of all exams completed at CAMIS to be copied from Netcare onto a CD). Any records not identified in the Applicant's access request are outside the scope of this inquiry.

[para 24] In her original submission, the Applicant also raised concerns about her records being altered or removed. This 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 25] The Applicant's additional submission raises concerns about the quality of medical care she received from various health care providers. Quality of care, such as whether a surgery is necessary, does not fall within the jurisdiction of this Office.

[para 26] With respect to the sole issue in this inquiry, the Applicant raises a concern about the bone mineral density report. In her original submission, the Applicant specified that she was seeking

Two spine images from August 21, 2017 Bone Mineral Density exam. I received one scan on the CD I requested. I was positioned by technician scanned then repositioned to slightly tilted on my left side and rescanned.

[para 27] The Custodian responded to this concern as follows:

The images provided to the patient are the only images from the Bone Mineral Density Exam submitted to CAMIS PACS. A Bone Density exam consists of 3 images; an AP (anterior-posterior) view of the Lumbar spine for Density measurement, an AP view of the hip for density measurement and a lateral view of the lumbar spine for fracture assessment. The patient's exam which was provided to her includes all of these images. There are 2 images of the spine; one AP image where the density measurements are calculated and reported and one Lateral more standard xray of the spine obtained for fracture assessment. The patient has enclosed the lateral view of her spine in her submission.

[para 28] The Custodian states that all requested records for which he is the responsible custodian have been provided to the Applicant.

[para 29] The Custodian also provided a statement signed by the Director of Operations regarding his response to the Applicant's request. With this statement, the Director provided a copy of all responsive records for which the Custodian is responsible, which had been previously provided to the Applicant.

[para 30] I have reviewed the records that have been provided to the Applicant. With respect to the bone mineral density exam, the Applicant asked only for the *report* in her access request, and not copies of the images used to create the report. As this inquiry relates to the Custodian's response to the Applicant's access request, only the bone mineral density report is at issue. The Custodian's report was provided to the Applicant.

[para 31] The Custodian has also explained that if a report were modified, the modification would appear at the top of the report as an addendum. This means that even if a report were modified, the modification (or addendum) appears at the top of the report, rather than a new report being generated. In other words, even if the reports were modified as the Applicant appears to believe, there would not be additional versions of the reports. I accept this explanation.

[para 32] Based on the information before me, I have no reason to expect that the Custodian has not provided all responsive records to the Applicant. As such, I find that the Custodian met its duty to assist the Applicant under section 10 of the HIA.

V. ORDER

[para 33] I make this Order under section 80 of the Act.

[para 34] I find that the Custodian met the duty to assist the Applicant under section 10 of the HIA.

Amanda Swanek
Adjudicator