

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER H2023-11

November 17, 2023

COVENANT HEALTH

Case File Number 020824

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request under the *Health Information Act* (HIA) to Covenant Health (the Custodian) for all records relating to her admission to the Misericordia Community Hospital, including the ambulance transfer.

The Custodian provided responsive records to the Applicant. The Applicant requested a review of the Custodian's search for responsive records, noting that nursing notes for January 19 and 20, 2021 were missing. The Applicant subsequently requested an inquiry.

The Adjudicator found that the Custodian conducted an adequate search for responsive records.

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 Covenant Health (the Custodian) for all records relating to her admission to the Misericordia Community Hospital, including the ambulance transfer. The relevant dates are January 15-25, 2021.

[para 2] The Custodian provided responsive records to the Applicant on February 26, 2021, with some information withheld under section 11(1)(b) of the HIA. The Applicant requested a review of this response. The Applicant also requested a review of the Custodian's search for responsive records, noting that nursing notes for January 19 and 20, 2021 were missing.

[para 3] Prior to the review, the Custodian agreed to withdraw its application of section 11 to information in the records provided to the Applicant. The Custodian provided a new copy of records without redactions. However, the Custodian was unable to locate the nursing notes for January 19 and 20, 2021.

[para 4] The review conducted by the Senior Information and Privacy Manager addressed the Custodian's search for the nursing notes. Following the review, the Applicant requested an inquiry. The Commissioner decided to conduct an inquiry into this file.

[para 5] Many of the concerns raised in the Applicant's request for inquiry do not relate to this file, including concerns that relate to other files at this office. This inquiry will address only the adequacy of the Custodian's search for the nursing notes from January 19 and 20, 2021. The Notice of Inquiry instructed the parties to limit their submissions to this issue. The parties were notified that submissions unrelated to these issues may not be considered in the inquiry.

II. INFORMATION AT ISSUE

[para 6] 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 7] The issue in this inquiry, as set out in the Notice of Inquiry dated September 7, 2023, 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 8] 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 9] 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 10] Regarding the test for whether an adequate search was conducted, former Commissioner Work stated the following in Order 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 11] 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) has 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 12] 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 13] This approach has also been followed with respect to a custodian’s duty to assist under the HIA (see Order H2021-11).

[para 14] With its submission, the Custodian provided an affidavit sworn by RB, who is the supervisor of the Access and Disclosure Specialist who processed the Applicant's access request. The affiant states that she ensured the Specialist followed the Custodian's standard procedure for locating all responsive records, which includes the following steps affidavit, at para. 4):

- Access the appropriate information systems to determine if and where records responsive to the request were located. Typically, VAX (the Admission, Discharge, Transfer system) and the PowerTrac system would be reviewed; and
- Access any or all of the possible storage areas where records may be held to locate the records responsive to the request including, but not limited to, Physical records, Microfilmed records, Off-site records, Alberta Netcare Portal, Connect Care, or other health information systems.

[para 15] The affiant states that the VAX and PowerTrac system were viewed in this case. The affiant further states that the Custodian determined that all responsive records would be located on-site at the Misericordia Hospital Health Records Department filing system. The search terms routinely used are the personal health number, where available (the affiant states the Custodian had this information in this case); the date of birth; and full name of the applicant.

[para 16] The affiant states that on February 26, 2021, it provided the Applicant with 256 pages of responsive records. An additional record – a Discharge Summary – was provided to the Applicant on March 24, 2021. This record was not complete at the time of the Custodian's initial response.

[para 17] The Applicant then advised the Custodian that a Nursing Assessment and Patient Care Records 24 Hour Booklet for January 19 and 20, 2021 was missing. I understand that this is the record referred to in the Custodian's submission as the missing nursing notes. Although it has not expressly stated as much, the Custodian's submission indicates that this record (the missing nursing notes) had been created and ought to exist. Adopting the terminology of the Custodian, I will refer to this record as the missing nursing notes in the remainder of this order.

[para 18] The affiant states that she sent an email to the supervisor of the unit where the Applicant had received the relevant health services, asking for the missing nursing notes. The affiant states that the unit supervisor conducted a search of the care unit and did not locate the missing notes. The email chain of the affiant's request and the unit supervisor's response were attached to the affidavit.

[para 19] The affiant states that the Specialist who processed the Applicant's request again checked the Applicant's records held by the Health Records Department to determine if the missing nursing notes were located there. By letter dated April 19, 2021, the Custodian informed the Applicant that the missing notes were not located.

[para 20] The affiant states that around March 4, 2022, the Custodian undertook a review of the records of all patients admitted to the relevant unit at the Misericordia Hospital at the same time the Applicant was admitted, to determine if the missing nursing notes had been misfiled on another patient's health record. This review did not result in locating the notes.

[para 21] Following the review by this office, the Custodian provided the Applicant with a letter detailing the searches that had been conducted to locate the missing nursing notes.

[para 22] In her submission, the Applicant objects to various statements contained in the materials provided by the Custodian; for example, the Applicant objects to statements made by staff of the Custodian in correspondence attached to the affidavit about the importance of properly filing patient records. A significant portion of the Applicant's submission relates to matters outside the inquiry. The Applicant did not provide reasons directly related to whether the Custodian's search for records described in its submission was adequate. The Applicant's submission appears to accept that the missing nursing notes may have been destroyed.

Analysis

[para 23] It seems clear from the Custodian's submission that the missing nursing notes did exist; however, whether those notes continue to exist is unclear. The Custodian outlined the various steps taken to locate the notes when the Applicant informed the Custodian that they were missing from the responsive records that had been provided to her.

[para 24] I am satisfied from the Custodian's submission that it conducted an adequate search to locate the missing notes. The Custodian searched the area where the notes ought to have been located, and searched the files of other patients from the relevant time frame, in the event that the notes had been misfiled. Nothing before me indicates that any further searches could reasonably be expected to locate the missing notes. As such, I find that the Custodian met its duty under section 10.

V. ORDER

[para 25] I make this Order under section 80 of the Act.

[para 26] I find that the Custodian conducted an adequate search for responsive records.

Amanda Swanek
Adjudicator