

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

REQUEST TO DISREGARD H2020-RTD-02

December 2, 2020

ALBERTA HEALTH SERVICES

Case File Number 008293

- [1] Alberta Health Services (“AHS” or the “Custodian”) requested authorization under section 87(1) of the *Health Information Act* (“HIA” or the “Act”) to disregard an access request from an individual whom I will refer to as the Applicant.
- [2] For the reasons that follow, I have decided to authorize AHS to disregard the access request.
- [3] I have also authorized AHS to limit the Applicant to one access request per year from the databases at issue for a period of five years.

Commissioner’s Authority

- [4] Section 87(1) of the HIA gives me the power to authorize a public body 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

- [5] The Applicant is a former employee of AHS. Prior to bringing this application under section 87(1), AHS states it had processed eight access requests from the Applicant under the HIA, and one under the *Freedom of Information and Protection of Privacy Act*.
- [6] There is a lengthy history of a large variety of disputes between the Applicant and the Custodian, including internal AHS processes, and applications before the courts and

administrative tribunals, including my office. I note that the Applicant has been declared a vexatious litigant by the Alberta Court of Queen’s Bench and is subject to broad court access restrictions.¹

[7] The access request at issue before me, 2017-H-156 is as follows:

As you have not complied with any of my requests for access to information I have cc ahs lawyer I requested and require a list of all current logs of clinibase/scm/netcare etc I have already filed yet another complaint with the Oipc and [name redacted] as per court rule information is continually [sic] shared and is very much relevant to both lawsuits.

[8] AHS submits that it previously processed the following access requests from the Applicant as set out below:

Request Number	Access Request
2016-H-038	<i>Would like audit of SCM, Clinibase, and Netcare</i>
2016-H-039	<i>Would like audit of SCM, Clinibase, and Netcare</i> [AHS notes that this request was made on behalf of a family member of the Applicant]
2016-H-040	<i>Would like audit of SCM, Clinibase, and Netcare</i> [AHS notes that this request was made on behalf of a family member of the Applicant]
2016-G-092	1) <i>my complete occ health and safety records from 1995 – present</i> 2) <i>my complete WCB records from 1995 – present</i> 3) <i>management personal files from unit [number redacted]</i> 4) <i>my complete human resources file from 1995 to present</i> 5) <i>my complete submissions to the bullying/harassment report a incident and safety learning reports from 1995 - present</i>
2016-H-231	<i>Would like audit of SCM, Clinibase, and Netcare.</i> Time frame: April 1, 2016 to July 27, 2016
2016-H-232	<i>Would like audit of SCM, Clinibase, and Netcare.</i> Time frame: April 1, 2016 to July 27, 2016 [AHS notes that this request was made on behalf of a family member of the Applicant]
2016-H-233	<i>Would like audit of SCM, Clinibase, and Netcare.</i> Time frame: April 1, 2016 to July 27, 2016 [AHS notes that this request was made on behalf of a family member of the Applicant]
2016-H-234	<i>Would like audit of SCM, Clinibase, and Netcare.</i>

¹ See, for example: *[Applicant] v Daniels*, 2019 ABQB 288

	<p><i>All records from Rockyview visit (approximately 2 years ago), [procedure name redacted]</i></p> <p>Time frame: April 1, 2016 to July 27, 2016</p> <p>[AHS notes that this request was made on behalf of a family member of the Applicant]</p>
2016-H-239	<p><i>Would like audit of SCM, Clinibase, and Netcare</i></p> <p>[AHS notes that this request was made on behalf of a family member of the Applicant]</p>

[9] AHS submits that four of the Applicant’s previous nine access requests have been the subject of a request for review before my office. AHS also states:

Furthermore, the Custodian wishes to advise that the Applicant has, as of May 8, 2017, 654 active labour grievances dating as far back as 2010 (see enclosure “Labour Grievances”). These are internal processed grievances in regards to various topics including employment, promotions/transfers, sick leave, and human rights complaints. The Applicant also has 2 active lawsuits (#1601 11735 and #1601 09192). One alleges AHS breached the health information of [the Applicant] and some of her family members, the other raises allegations surrounding the treatment of the Applicant during the course of her employment with the Custodian, namely, that the Applicant was bullied, harassed, sexually assaulted, defamed and slandered. The Custodian is also aware of numerous other legal matters with other Public Bodies in the province of Alberta. The Applicant additionally has requested for information twice from the Custodian’s internal department *Health Information Management (HIM)*. Her interactions with HIM go contrary to the agreed upon process for any requests for information by the applicant (see enclosure *Letter Nov. 5, 2016*)

[10] In response to the Custodian’s application, the Applicant sent an email to my office which came in with the subject line “OIPC File 008293 (Request to Disregard)”. As such, I consider this email to be the Applicant’s submission, which is quoted verbatim:

As mentioned repeatedly to the oipc, general information and to various oipc staff. As well as completing a address change through your office X 3

My address since May 2018 is
[redacted]

As [name redacted] can confirm the numerous mail that she has sent to me at the current address. Please correct all your records to reflect the proper address.

Secondly, I have provided on numerous occasions requests to ahs as there have been continued and numerous staff breaching mine and my childrens medical by staff within AHS.

Which the oipc ([name redacted] successor) has placed firewalls to protect our privacy which [name redacted] has removed.

I can confirm that [names of health professionals redacted] had said their was safety walls and showed me in there offices.

Safety measures on my records(and children)that somehow have now been removed, and [name redacted] is denying that safety measures were in place, her emails suggests she had zero knowledge even though she took the file over.

Lastly, if oipc removed these without my knowledge as its what I agreed to with your office, to stop the numerous requests by me, then it is my right to question who is accessing mine and children's information. Then it is my right to access the information and hold AHS accountable for not managing there computer security as it stands now ANY EMPLOYEE can access clinibase, scm, netcare etc, we have seen this before just look at my original oipc complain in 4 yrs 65 breaches is UNACCEPTABLE

Since I taught the moa/ uc program for ahs and preceptor and as a advocate for my children safety as I already proved to oipc that [name redacted] who accessed our records 35 times and is a ahs employee and best friends with my ex who has NO PARENTAL Guardianship and having that we have never been to a Cochrane division of ahs..... gave him information which he also provided in court
This is a clear breach.

As a survivor and my children survivor of domestic violence I have a right to protect my family since I know how easy it is to obtain information such as treatment, drs, dates, adresse etc

AHS has not complied with any of my requests for * [name redacted] has all these files
Please don't make me look up these files as that tells me the oipc is further mismanaged
[1-3 list of names and requests for the Applicant's children redacted]
4) they have not provide the YEARLY request that I made to ensure the safety of our personnel medical information
To which ahs has had 65 breeches prior to 2017
5) it has taken oipc 4 years to investigate and in 2016 the firewalls were indeed in place whether your staff " remembers" or not.

I've included [name redacted] office as she is well aware of the struggles and advocates for the victims.

I've included Jason Kenney so hopefully as premier he will continue to investigate such agencies who can't even locate my correct address and use that as an excuse to dismiss my FOIPP requests because frankly no one wants to do there job. As there certainly needs to be a review of the oipc. I'm sure the amount of money being wasted at oipc level could greatly be reduced when ahs actually spends the money on the software that flags when someone accesses without authority like the previous BHIS system that WAS in place.

Literally blocked you if you a) had no authority (b) blocked you if patient not registered to your department.

You bet I'm offended and disgusted at both AHS behavior and oipc behavior

Again the oipc has not sent to whom in AHS am I to send my objection or cc that information as your request stipulates????

As I've already been told by AHS lawyers it is not them?

So who am I to cc before nov 28?

Funny how both oipc and ahs trying to block me from obtaining as you know my experience and expertise in this area lol
Is laughable!

On a side note what's the oipc doing about the medical examiners reports that are being altered without the examiners knowledge to protect ahs in lawsuits???? RIGHT!!!!!!!!!!!!

I apologize if you don't like my tone however I'm on stress leave from having to deal with ahs bullshit constantly.

Analysis

Section 87(1)(a) *Request is repetitious or systematic and amounts to an abuse of the right to make an access request*

[11] "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.

[12] AHS submits as follows:

Clearly, the requests are repetitious as evidenced by the common wording threads within the requests themselves:

The Applicant has repeatedly requested her "*audit of SCM, Clinibase, and Netcare*", and has made numerous allegations of missing records in relations to her work colleagues.

The Custodian asserts that the Applicant's nine (9) access requests, over a period of 18 months are also systemic in nature as they are part of a pattern of conduct that is regular or deliberate on the part of the Applicant. The Custodian maintains that Request 2017-H-156 continues this deliberate pattern on the part of the Applicant.

Under section 87(1)(a), the requests must also unreasonably interfere with the operations of the Custodian or amount to an abuse of the right to make those requests. The former Commissioner defined "abuse" to mean misuse or improper use. Additionally, the Custodian acknowledges that it has the burden to prove that the Applicant's request amounts to an abuse.

The Custodian asserts that at the point at which the focus of the access requests changed from information relating directly to the Applicant (i.e. her employment records and the records of her managers/supervisors relating to the Applicant), to information regarding to the [sic] supervisors/managers themselves, the requests now amount to an abuse of the right to make those requests. The change in the context of the requests demonstrates that the Applicant is not using the Act for the purpose for which it is intended as per section 2(c), but as a weapon to harass and intimidate the Custodian as a result of her termination and subsequent employment grievances. The

Custodian maintains that the context of the Applicant's requests have evolved from exercising her rights under the Act to abusing of that right.

It is the Custodian's position that the current request and previous requests submitted by the Applicant under the Act are repetitious and systematic in nature and amount to an abuse of the right to make these requests.

- [13] AHS has processed two previous access requests from the Applicant for an "*audit of SCM, Clinibase and Netcare*" (2016-H-038 and 2016-H-231). One request provided no timeline and the other request provided a specific time frame. The current access request before me has no time frame and is for "*a list of all current logs of clinibase/scm/netcare etc a list of all current logs of clinibase/scm/netcare etc*". Although the wording is not identical, this access request is clearly repetitive, as AHS notes it is for the same records that it has already processed in the Applicant's prior access requests.
- [14] Section 87(1) of the HIA serves to ensure the proper functioning of the Act. Section 87(1)(a) clearly contemplates that in and of itself, the repetitive nature of a request may be an abuse. In this case, the Applicant has made a number of repetitive requests for the same records relating to her SCM, Clinicare, and Netcare information. AHS has already processed two previous requests for this information. I find that by making repetitive requests for the same records, the Applicant is abusing her right of access under the HIA. As such, I find AHS has met its burden under section 87(1)(a) of the HIA.

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

- [15] As AHS has established that the conditions of section 87(1)(a) are met, there is no need for me to determine if the Applicant's access request is frivolous or vexatious under section 87(1)(b).

Request for Authorization to Disregard Future Correction/Amendment Requests

- [16] AHS also requested authorization to disregard future requests from the Applicant as follows:

... to disregard future requests from the Applicant in relation to audit logs, SCM and Clinibase (noting that Netcare is a databased [sic] managed by Alberta Health), for a period of three (3) years effective the date your office renders its decision. The Applicant is not to be denied access to her medical records and should proper documentation be provided the Custodian will process any future requests. Upon the completion of the 3 year period the Applicant is allowed 1 request per calendar year from any succeeding or aforementioned databases for a period of 5 years.

- [17] I agree with AHS that limitations are required to manage the Applicant's behaviour; however, I am not prepared to grant AHS's requests as set out above. As the Applicant has demonstrated abuse of her right to make access requests, I authorize AHS to

disregard any future requests for the “*clinibase/scm/netcare*” information that is the subject of this decision, and has already been processed by AHS. Future access requests for information that has not already been provided to the Applicant should be processed by the Custodian. However, as AHS requests, I will put a limit on how often requests for information from those databases may be made, which is one request per year for five years.

Decision

[18] AHS is authorized to disregard the Applicant’s access request 2017-H-156 under section 87(1)(a) of the HIA.

[19] AHS is further authorized to disregard future access requests for the same information that has already been processed and to limit the Applicant to one access request per year from those databases for a period of five years.

Jill Clayton
Information and Privacy Commissioner

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