

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER F2024-06/H2024-01**

February 13, 2024

**ALBERTA HEALTH SERVICES**

Case File Numbers 022139 and 031795

**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 specified medical records. The requested records relate to the Applicant's mother. On the access request form, the Applicant indicated that he is a personal representative of the deceased individual (his mother), and that the information relates to the administration of the individual's estate.

The Custodian responded to the request, providing responsive records with some information withheld under sections 11(1)(b) and 11(2)(a) of the HIA.

The Applicant requested an inquiry into the Custodian's response. With his request for inquiry, the Applicant argued that the information he is seeking consists of allegations made about him, concerning his mother. The Applicant argued that this is not his mother's health information under the HIA.

The Adjudicator considered whether the HIA or the *Freedom of Information and Protection of Privacy Act* applied, determining that the HIA was the appropriate statute. The Adjudicator found that the Custodian properly applied section 11(1)(b) to the information in the records. As such, the Adjudicator didn't need to consider the application of section 11(2) to the same information.

**Statutes Cited: AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 4, 20, *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1, 11, 79, 80, 104

**Authorities Cited: AB:** Orders 99-010, H2006-002, H2018-01

**Cases Cited:** *Covenant Health v. Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562, *Governors of the University of Alberta v Alberta (Information and Privacy Commissioner)*, 2022 ABQB 316

## I. BACKGROUND

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

Doctor/Nursing notes, Med. List, Consent to debride

[para 2] The time frame for the request is September 6-20, 2018. The requested information is information about the Applicant's mother, who was deceased by the time of the request. On the access request form, the Applicant checked off the box stating that he is a personal representative of the deceased individual (his mother), and that the information relates to the administration of the individual's estate.

[para 3] The Custodian responded to the request, providing responsive records with some information withheld under sections 11(1)(b) and 11(2)(a) of the HIA.

[para 4] The Applicant requested a review of the Custodian's decision. Subsequent to the review, the Applicant requested an inquiry, arguing that the information he is seeking consists of allegations made about him concerning his mother. He argues that this is not his mother's health information under the HIA.

[para 5] Amongst the issues to be addressed in the inquiry is which Act applies to the responsive records (*Health Information Act* (HIA) or *Freedom of Information and Protection of Privacy Act* (FOIP Act)). Because two Acts will be considered, an additional file number was added to this inquiry (file #031795) as a matter of internal procedure.

[para 6] It was not clear from the Applicant's request for review or request for inquiry that the Applicant was entitled to exercise the right or power of his deceased mother to make an access request pursuant to section 104 of the HIA. Therefore, this issue was also added to the inquiry.

## II. INFORMATION AT ISSUE

[para 7] The information at issue in this inquiry is information severed from two pages of the responsive records.

### III. ISSUES

[para 8] The Notice of Inquiry, dated October 18, 2023, states the issues for inquiry as follows:

1. Is the information at issue health information of the Applicant's mother under the HIA, or the Applicant's personal information under the FOIP Act?
2. If the information at issue is health information of the Applicant's mother under the HIA, is the Applicant entitled to exercise the right or power of a deceased individual to make an access request pursuant to section 104 of the HIA?
3. If the information at issue is health information of the Applicant's mother under the HIA, and the Applicant is authorized to exercise the right or power of his mother to make an access request under the HIA,
  - a. Did the Custodian properly apply section 11(1)(b) of the HIA to the records/information?
  - b. Does section 11(2)(a) of the HIA apply to the records/information?

### IV. DISCUSSION OF ISSUES

#### *Preliminary issue – scope of the inquiry*

[para 9] The Applicant has provided lengthy submissions to this inquiry, much of which do not directly address the issues set out in the Notice of Inquiry. The Applicant has provided a significant amount of information about his mother's health issues, the health care services she received before her death, and the Applicant's opinions regarding the appropriateness of those health care services and the competence of the professionals providing those services.

[para 10] On December 21, 2023, the Applicant also made a request to provide an *in camera* submission to this inquiry. By letter dated January 5, 2024, I informed the parties that I would not be accepting the *in camera* submission for the reasons set out in that letter. One of those reasons was that the information in that submission did not directly relate to the matters at issue in this inquiry. The Applicant's *in camera* submission relates to a different proceeding that appears to relate to the care provided to the Applicant's mother by one or more physicians. The submission details the Applicant's position in that other proceeding.

[para 11] The care provided to the Applicant's mother before her death is not a matter that falls within my jurisdiction to comment on. Similarly, I do not have jurisdiction to comment on proceedings undertaken by other bodies in relation to the care provided to the Applicant's mother. That said, the records at issue relate to the care provided to the Applicant's mother and I have reviewed the Applicant's submissions in their entirety. I will address the arguments that are relevant to the issues set out in the Notice.

**1. Is the information at issue health information of the Applicant’s mother under the HIA, or the Applicant’s personal information under the FOIP Act?**

[para 12] Alberta Health Services is both a custodian under the HIA and a public body under the FOIP Act. Whether information under its custody or control is health information under the HIA or personal information under the FOIP Act will depend upon the particular circumstances of a given case.

[para 13] The definition of “personal information” in the FOIP Act includes information about an individual’s health and health care history (section 1(vi)). However, section 4(1)(u) of the FOIP Act specifically excludes from the scope of that Act

*(u) health information as defined in the Health Information Act that is in the custody or under the control of a public body that is a custodian as defined in the Health Information Act.*

[para 14] “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 15] “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;*
- (ii) a health service provided to 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 16] Section 1(1)(m) of the HIA defines “health services”. This provision states:

*1(1) In this Act,*

*(m) “health service” means a service that is provided to an individual for any of the following purposes:*

- (i) protecting, promoting or maintaining physical and mental health;*
- (ii) preventing illness;*

(iii) *diagnosing and treating illness;*  
(iv) *rehabilitation;*  
(v) *caring for the health needs of the ill, disabled, injured or dying,*  
*but does not include a service excluded by the regulations[...]*

[para 17] In *Covenant Health v. Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562 (*Covenant Health*) the Court discussed the scope of ‘health information’ under the HIA. It noted that health information includes diagnostic, treatment and care information, which is defined in section 1(i) as including “any other information about an individual that is collected when a health service is provided to the individual...” The Court considered various situations in which information about a patient’s family members might constitute the patient’s health information. It concluded (at paras. 78-79, footnotes omitted):

These hypotheticals suggest that “other information about an individual that is collected when a health service is provided to the individual” includes, at the very least, information about the mental or physical health of others that relates to the physical and mental health of an individual or a health service provided to an individual and is collected when a health service is provided to an individual. It may affect the diagnosis or the health service provided to the patient.

There is no reason to conclude from the *Health Information Act* as a whole, including the statement of purpose in s. 2, that the information about B may not in some circumstances be A’s health information. Had the Legislative Assembly wished to enact a more restricted definition of health information it could have stated that personal information about one may not be the health information of another.

[para 18] The Custodian argues that the information at issue relates to someone other than the Applicant’s mother, but that it also relates to the health of the Applicant’s mother, or the health services provided to her.

[para 19] I agree that the information at issue relates both to someone other than the Applicant’s mother, and to the Applicant’s mother. It is clear from the records that a health service was being provided to the Applicant’s mother. It is also clear from the context in which the information appears in the records, that the information was being provided to the Custodian in relation to the health services being provided to the Applicant’s mother, and that the Custodian collected the information as part of providing that health service. Following *Covenant Health*, the information at issue is health information of the Applicant’s mother, as defined in the HIA. Therefore, the HIA applies to this information.

**2. If the information at issue is health information of the Applicant’s mother under the HIA, is the Applicant entitled to exercise the right or power of a deceased individual to make an access request pursuant to section 104 of the HIA?**

[para 20] With respect to this issue, the Notice of Inquiry states:

The Applicant may exercise the right or power of his mother to make an access request if the Applicant is a personal representative of his mother, and if the information relates to the administration of his mother's estate (section 104(1)(d)). The Applicant must show that he is a personal representative and that the requested information relates to the administration of his mother's estate.

Order H2018-01 discusses what an applicant is required to show in order to satisfy the Commissioner that they are entitled to exercise the right or power of a deceased individual under the HIA. The parties should review this decision, and any other decision they believe to be relevant to this question. Orders can be found on our Office's website at <https://oipc.ab.ca/decisions/orders/> or on CanLII (<https://www.canlii.org/en/>).

[para 21] Section 104(1)(d)(i) of the HIA sets out the circumstances in which the rights conferred on an individual under the HIA may be exercised by someone else. It states:

*104(1) Any right or power conferred on an individual by this Act may be exercised*

*(d) if the individual is deceased,*

*(i) by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate...*

[para 22] The Applicant has provided a copy of his deceased mother's will, clearly naming him as the executor of the will. In its initial submission, the Custodian concedes that the Applicant provided sufficient evidence (a copy of his mother's Will) to show that he is the executor of the will and therefore his mother's personal representative.

[para 23] Having reviewed the will provided by the Applicant, I am satisfied that the Applicant is the administrator of his mother's estate. In addition to the Applicant being his mother's personal representative, the Applicant's access request must also relate to the administration of his mother's estate, in order to satisfy the terms of section 104(1)(d). The Custodian argues that while the Applicant has *indicated* that his access request relates to the administration of his mother's estate, he failed to provide sufficient information to *establish* that this is the case.

[para 24] Order H2018-01 discusses this same issue with similar circumstances to the case here. The following discussion in that Order is instructive to the case here (at paras. 17-22):

In Order MO-2137, to which the Custodian drew my attention, an adjudicator of the Office of the Information and Privacy Commissioner of Ontario held:

In order to satisfy this part of the test, the requester must demonstrate that the request "relates to the administration of the estate". To meet this requirement, the requester must demonstrate that he/she is seeking access to the records for the purpose of administering the estate [Order MO-1315; *Adams v. Ontario (Information and Privacy Commissioner)*].

Requests have been found to “relate to the administration of the estate” where the records are:

- sought to assist in prosecuting a civil claim brought on behalf of the estate for damages that would be recoverable by the estate rather than the surviving family members [MO-1803, MO-2042]
- required in order to defend a claim against the estate [Order M-919]
- relevant to determining whether the estate should receive benefits under a life insurance policy [Order MO-1315]
- relevant to the deceased financial situation and allegations of fraud or theft of the deceased’s property [Order MO-1301]

Requests have been found *not* to “relate to the administration of the estate” where the records are:

- sought to support a civil claim by family members under the *Family Law Act*, where any damages would be paid to the family members and not to the estate [Order MO-1256]
- sought for personal reasons, for example, where the requester “wishes to bring some closure to . . . tragic events” [Order MO-1563]

The appellants state that as the deceased’s personal representatives it is their “obligation to ensure that all financial records can be reconciled.” The appellants state that they are seeking a “proper accounting to the estate” regarding “services paid for and received” by the deceased at the facility.

The appellants also state that they “may wish to prosecute a claim” against the deceased’s “healthcare providers” for damages resulting from injuries or harm incurred by her prior to her death. In regard to this possible action, the appellants emphasize that this would not be a claim for wrongful death but rather a “possible malpractice suit.” The appellants also submit that a review of the medical file would permit them to “determine whether or not the proper medical care was provided given the language barriers and possible lack of communication.” The appellants submit that the records at issue would provide sufficient information to determine whether or not a medical malpractice suit should be pursued.

[...]

Following and expanding on the reasoning of Adjudicator Liang in Order MO-1525, in my view, where there is some reasonable basis for considering a record or records relevant to a determination of whether the estate should undertake litigation, the requester is entitled to have access to them under section 54(a) in order to make his/her own determination on their possible significance to such a claim.

The appellants in this case have asserted allegations of wrongdoing against the deceased's "healthcare providers" and they are contemplating a tort claim on behalf of the deceased's estate in regard to these allegations. Clearly, they are now looking for evidence to support their allegations and, in their view, the information at issue may be relevant to a determination of whether or not the estate will ultimately proceed with such a claim. In my view, the application of the section does not depend on the relative importance of the records to the allegations being asserted on behalf of the estate, since the extent of their importance can only be determined upon a review of them by the appellants, in their capacities as estate executrices, possibly with the assistance of their legal counsel. Finally, the claim contemplated by the appellants is one that they are entitled to pursue, at law, as plaintiffs. I am satisfied that the records sought are potentially relevant to a determination of whether or not the estate will proceed with such a claim.

Therefore, based on all of the evidence before me, I find that the appellants' request for access is "related to the administration" of the deceased's estate and that the appellants have met the requirements of section 54(a). Accordingly, the appellants are entitled to have the same access to the information in the records as the deceased would have had.

In Order MO-2137, the office of the Information and Privacy Commissioner of Ontario held that the phrase "relates to the administration of the individual's estate" includes activities such as reviewing records for the purposes of determining whether to pursue litigation on behalf of an estate. I agree with its analysis.

I turn now to the question of whether section 104 of the HIA authorizes the Applicant to make an access request for his deceased mother's health information.

While the Custodian questioned in its submissions whether the Applicant was entitled to make an access request for his deceased mother's health information, it also appeared to acknowledge that the Applicant was in fact entitled to do so, given the following statement in its response: "You have received a copy of the Discharge Summary which is sufficient documentation for the administration of the estate". If the Custodian considered that the Applicant was not entitled to make a request for his mother's health information or obtain it, its purpose in providing a discharge summary to the Applicant is inexplicable.

In any event, a copy of the Applicant's mother's will is before me. The will names the Applicant as the executor of her will and authorizes the Applicant as administrator of his mother's estate.

The Applicant is clear in his submissions that he requires the records to determine whether a legal action should be brought on behalf of his mother's estate. Order MO-2137, on which the Custodian relies, and with which I agree, is clear that an applicant, such as the Applicant, who is the executor of his mother's will, is entitled to make an access request for his mother's health information in order to determine whether the estate will proceed with a claim. I find accordingly that the Applicant is entitled, as the executor of his mother's will, to make an access request for his mother's health information under section 104 of the HIA.



[para 25] By letter dated January 5, 2024, I asked the Applicant to tell me how or why the information he requested relates to the administration of his mother's estate.

[para 26] In his response, the Applicant states that "the redacted records at issue are of paramount importance to the Applicant as Executor and the deceased individual he represents and the possibility of pursuing a legal claim on behalf of the Estate of the Late [Applicant's mother]" (January 18, 2024 response of the Applicant, at page 14).

[para 27] In its initial submission, the Custodian argued that litigation brought by the estate of the Applicant's mother will not correct any errors that may have occurred in the course of providing health care services to the Applicant's mother. It also argued that the estate may face a limitation issue in bringing litigation (Custodian initial submission, at paras. 30-31).

[para 28] In Order H2018-01, the adjudicator also noted that section 104 of the HIA does not require a custodian to assess the relevance of the records at issue to any possible litigation that may be brought on behalf of an estate. She said (at para 25):

I do not interpret section 104 as authorizing a custodian to step into the shoes of an executor so as to assess, on a record-by-record basis, which particular records he or she needs, once an executor has established he or she is an executor and indicated the request *relates* to the administration of the estate. Section 104 confers the rights or powers of a deceased person on an executor provided *the exercise of the right or power* relates to the administration of the estate. Once the executor of a will has established that *making the access request* – the exercise of a right in this case – *relates* to the administration of the estate, the executor may exercise the right. A custodian may then withhold health information from the executor only if it would be authorized to withhold the information from the testator under section 11 of the HIA.

[para 29] In my view, I am not required to assess whether the information at issue will ultimately be relevant to any litigation brought on behalf of the estate of the Applicant's mother, in determining whether the requirements of section 104 are met. I am also not in a position to determine whether any contemplated litigation will face limitation issues.

[para 30] I am satisfied that the Applicant has authority under section 104 of the HIA to exercise the right or power of his deceased mother to make the access request.

**3. If the information at issue is health information of the Applicant's mother under the HIA, and the Applicant is authorized to exercise the right or power of his mother to make an access request under the HIA,**

**a. Did the Custodian properly apply section 11(1)(b) of the HIA to the records/information?**

[para 31] The Custodian applied section 11(1)(b) to a small amount of information on both pages of the records at issue.

[para 32] Section 11 of the HIA authorizes a Custodian to withhold health information from an applicant 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 33] 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 34] 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).

#### *Custodian's arguments*

[para 35] 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 in that case 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 at issue describes the relationship between the Applicant's mother and the person discussed, "together with detailed information, the nature of which only a limited number of people would have been in a position to know" (Custodian initial submission, at para. 41).

[para 36] The Custodian also argued that while there is no explicit indication in the records that the information was provided in confidence, it is apparent from the records themselves that this is the case.

[para 37] The Custodian again cites Order H2006-002, which contains a detailed discussion regarding when information can be considered to have been supplied in confidence. The adjudicator considered the following factors and concluded (at paras. 36-39):

When determining whether a provision applies in specific circumstances, I must consider the surroundings and the "context that colours the words". The request before me

pertains to information that was provided to health services providers about a patient in a mental health setting. The hospital records state that the Applicant became “quickly agitated & aggressive in behavior” when told that he needed to stay in hospital. The information at issue might well affect health services provided and the Applicant’s length of stay in hospital.

The information in the Record at Issue was provided in circumstances where it is stated in the hospital records that the Applicant expressly objected to CHR obtaining information from other individuals. The Applicant’s stated diagnosis was “paranoid delusional with psychomotor agitation” with “auditory hallucinations”. CHR and the person who provided the information did not tell the Applicant about the information that person provided. Notwithstanding the Applicant’s documented express objection, a person nonetheless came forward and provided health information to CHR.

In my view, the above circumstances in which the information was provided to CHR imply that the information was provided in confidence and with an expectation of confidentiality. It was understood between CHR and the person who provided the information that CHR would not disclose the identity of the source of the information. The person provided the information to CHR on the assurance that his or her identity would remain secret. The context in which this information was provided in the mental health setting further implies that the person entrusted CHR not to disclose the source of the information.

For all of the above reasons, I find that the person who provided the health information to CHR provided the information implicitly in confidence under section 11(1)(b) of HIA. It is not possible to provide more detailed reasons, in light of the risk of revealing the very information that is sought to be protected.

[para 38] The Custodian states that the relevant factors to consider in determining whether information was provided implicitly in confidence are as follows (initial submission):

47. It is submitted that the facts and circumstances relevant to a determination as to whether there was an understanding of confidentiality when the third party or parties provided the 11(1) Information include: the nature and content of the 11(1) Information itself, particularly in the context of the Information at Issue as a whole; other details found in the Records at Issue, including in regards to the Patient’s capacity, cognition and relationship with the Applicant (including the quote at the bottom of the second page of the Records at Issue); the 11(1) Information contained very personal and sensitive details; the ramifications of providing the 11(1) Information were potentially serious for the Patient, for the individual(s) who provided the 11(1) Information and for one or more other individuals; and the emotional state of the individual(s) who provided the 11(1) Information was likely heightened at the time.

48. The “surroundings” and “context” of the 11(1) Information include the “facts and circumstances” outlined above. Specifically, the 11(1) Information is informed by the 11(2) Information and the rest of the information contained in the Records at Issue which, read altogether, reveal the sensitive and emotionally charged nature of the situation at hand and of the relationship(s) involved.

49. It seems very likely that the 11(1) Information would not have been provided by the third party or parties if they had not understood that such details were accepted by the Respondent in confidence and would not be divulged to the Patient or, by extension, to the Applicant on the Patient's behalf.

[para 39] Lastly, the Custodian argues that given the context of the information at issue, it properly exercised its discretion to apply section 11(1)(b).

*Applicant's arguments*

[para 40] Although the Applicant has provided detailed submissions to the inquiry, his submissions regarding the application of section 11(1)(b) are limited. The Applicant has raised tests from past Orders and other sources regarding provisions that are not at issue in this inquiry. For example, the Applicant discusses the burden of proof a public body must meet when a particular exception to access under the FOIP Act requires harm before it can be applied. However, section 11(1)(b) of the HIA does not include a requirement that the Custodian show that harm could reasonably be expected to occur if the information at issue is disclosed. The Applicant also refers to specific sections of the FOIP Act, such as sections 17 and 34, which are not at issue in this inquiry and are otherwise not relevant to the discussion at hand.

[para 41] Regarding the application of section 11(1)(b), the Applicant cites tests from past Orders of this office regarding the application of section 11(1)(b) and questions what relevant circumstances the Custodian considered in determining that the information at issue was provided implicitly in confidence. He also argues that affiliates of a custodian cannot be considered "confidential sources" for the purposes of section 11(1)(b), citing Order 99-010.

*Conclusions regarding section 11(1)(b)*

[para 42] I have found that the information at issue is the health information of the Applicant's mother.

[para 43] The Applicant has cited Order 99-010 in support of his argument that section 11(1)(b) does not apply if the source of the information is an employee or affiliate of the Custodian. In that Order, former Commissioner Clark discussed whether a public body could withhold the name of an employee who flagged a file as requiring additional investigation, and the name of an investigator contracted to conduct surveillance on behalf of the public body, under section 20(1)(d) (then section 19(1)(d)) of the FOIP Act. That provision permits a public body to withhold information where disclosure could reasonably be expected to reveal the identity of a confidential source of law enforcement information. The Commissioner determined that where an individual's job responsibilities for a public body (whether as employee or contractor) includes reviewing a file for possible further investigation, that individual is not a "source" of law enforcement information.

[para 44] Nothing in the records at issue or the Custodian's submissions indicates whether the person who provided the information at issue is an employee or affiliate of the Custodian or a third party unrelated to the Custodian. Therefore, it may or may not be the case that the individual whose identity is withheld in the records at issue is employed by the Custodian.

[para 45] Even if the individual who provided the information at issue in this case were an employee or affiliate of the Custodian, the circumstances of Order 99-010 are distinguishable from the case here. Section 20(1)(d) of the FOIP Act refers to a "confidential source of law enforcement information" and the Commissioner found that an individual whose job duties include flagging files for further investigation cannot be a source of the law enforcement information that is then to be investigated. There is no indication that such circumstances exist here.

[para 46] Moreover, in *Governors of the University of Alberta v Alberta (Information and Privacy Commissioner)*, 2022 ABQB 316, the Court discussed the application of section 18(3) of the FOIP Act, which contains language substantially similar to that of section 11(1)(b) of the HIA. Section 18(3) of the FOIP Act permits a public body to refuse to disclose information "that reveals the identity of an individual who has provided information to the public body in confidence about a threat to an individual's safety or mental or physical health." The Court disagreed that section 18(3) of the FOIP Act cannot apply where an employee of a public body provided the relevant information to another employee of that same public body. The Court found that such an interpretation overlooks the size and complexity of some public bodies.

[para 47] Given the similarity between the language of section 18(3) of the FOIP Act and section 11(1)(b) of the HIA, it is my view that the Court's interpretation of section 18(3) of the FOIP Act is applicable to the interpretation of section 11(1)(b) of the HIA. As such, I find that section 11(1)(b) can apply where the source of the information is an employee or affiliate of a custodian, or another third party. In other words, whether the individual who provided the information at issue in this case is an employee or affiliate of the Custodian is not relevant to my determination regarding section 11(1)(b).

[para 48] Having reviewed the records at issue, it is clear 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 limited number of people likely to know about the withheld information.

[para 49] In my view, the context of the records suggests that the information was provided implicitly in confidence. It is difficult to provide clear reasons for this conclusion without revealing the nature of the information being withheld, and revealing the nature of the information could reveal the identity of the individual who provided that information.

[para 50] The individual who provided the information clearly did so because they believed the information was relevant to the health services providers' decisions

regarding the ongoing care provided to the Applicant's mother. It is reasonable to conclude from the records that the third party the information relates to would not have been willing to provide the information themselves, or otherwise want it to be provided. In this context, it is reasonable to conclude that the individual who provided the information did so with an expectation that it was provided in confidence.

[para 51] I find that section 11(1)(b) applies to the information withheld under that exception. The information withheld under this provision is sensitive in nature, although I cannot provide detailed reasons for coming to this conclusion without possibly revealing the nature of the information and therefore the identity of the individual who provided it. Given this 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.

- 3. If the information at issue is health information of the Applicant's mother under the HIA, and the Applicant is authorized to exercise the right or power of his mother to make an access request under the HIA,**
- b. Does section 11(2)(a) of the HIA apply to the records/information?**

[para 52] The Custodian applied section 11(2)(a) to the same information that was withheld under section 11(1)(b). As I have found that the Custodian is authorized to withhold this information under section 11(1)(b), I do not need to consider the application of section 11(2).

## **V. ORDER**

[para 53] I make this Order under section 80 of the Act.

[para 54] I find that the Custodian properly applied section 11(1)(b) to withhold information in the records.

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Amanda Swanek  
Adjudicator