

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER H2025-01

May 28, 2025

#### ALBERTA HEALTH SERVICES

Case File Number 029722

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

**Summary:** An individual (the Complainant) made a complaint to this Office under the *Health Information Act* (HIA or the Act), that her Electronic Health Records (EHR) were accessed by an employee of a hospital and disclosed to a Privacy Advisor in contravention of the HIA.

The Adjudicator determined that the employee was an affiliate of Alberta Health Services (the Custodian) and determined that the affiliate had authority to access and/or use the Complainant's health information to deal with the complaint made by the Complainant about a previous access to her EHR.

**Statutes Cited: AB:** *Health Information Act*, R.S.A. 2000, c. H-5, ss.1, 27, 28, 56, 62, 80  
*Provincial Health Agencies Act*, RSA 2000, c R-10

**Authorities Cited: AB:** Orders H2020-04, H2022-04

**Cases Cited:** *JK v. Gowrishankar*, 2019 ABCA 316

#### I. BACKGROUND

[para 1] An individual (the Complainant) made a complaint to this Office under the *Health Information Act* (HIA or the Act) that Alberta Health Services (AHS) (the Custodian) contravened the Act when its employee collected, used or disclosed her health

information. The Complainant states her Alberta Netcare Audit Log shows improper accesses to her Alberta EHR (Netcare) on two separate dates by an employee of Alberta Health Services.

[para 2] Alberta Health Services responded to the complaint and relied on section 27(1)(c) of the HIA to explain the accesses. It summarized that the accesses were a part of conducting investigations of privacy breaches previously alleged by the Complainant.

[para 3] The Commissioner authorized a senior information and privacy manager (SIPM) to investigate and attempt to settle the matter. At the conclusion of this process, the matter proceeded to inquiry.

## II. ISSUE

[para 4] The issue before this Inquiry is:

**Did the Custodian collect, use or disclose the Complainant's health information in contravention of the HIA on April 20, 2022, and June 22, 2022?**

## III. DISCUSSION OF ISSUE

### *Complainant's Submissions*

[para 5] On January 18, 2023, the Complainant made a complaint that an employee (Site Director) of the Custodian accessed her health information on Netcare.

[para 6] The Complainant alleges that the audit logs show that the Site Director accessed her health information on three occasions:

- i. April 20, 2022, at 12:22 pm: Netcare demographics screen and Event History were accessed.
- ii. June 22, 2022, at 1:34 pm: Demographics screen, operative report screen, and three operative reports were accessed.
- iii. June 22, 2022, at 1:56 pm: Demographics screen, operative report screen, three operative reports, and a consult report were accessed.

[para 7] I reviewed the audit logs and observed two entries of "VIEW-Operative" in the June 22, 2022 log. On February 27, 2025, I asked the Complainant the following question:

You have submitted that three operative reports were viewed by the Site Director, could you please explain to me how the logs show this? The [Custodian] has stated in its rebuttal, "AHS must emphasize that the audit does not indicate the exact report that was viewed, only the section of Netcare accessed."

The Complainant replied as follows:

The 3 Operative Reports viewed by the Site Director are displayed separately on the Netcare Log with the dates and times of each viewing of each separate Operative Report.

[para 8] The Complainant alleges that she was told that the access pertained to a previous privacy breach complaint, filed by her, against a different employee (the Manager) of the Custodian. The Complainant's Netcare was accessed on May 14, 2020 by the Manager.

[para 9] The Complainant submits that she was told that the May 14, 2020, access was part of the Custodian's reconciliation of physician billing and invoicing to the Workers' Compensation Board (WCB).

[para 10] The Complainant submits that she is concerned that her Netcare records were accessed three times by the Site Director to conduct an investigation. She further submits that a different health organization was able to conduct an investigation into a complaint made against it by her without accessing Netcare, thereby proving that the employee in this case acted improperly.

[para 11] The Complainant submits that two of the three operative reports "were not involved in the Physician Team discrepancy investigation"; she says that accessing reports that were generated after her WCB discharge date were not relevant to the AHS billing discrepancy investigation.

[para 12] The Complainant submits that the Site Director who accessed her health information, "improperly collected, used, and disclosed the complainant's personal and health information in contravention of Alberta's Privacy Laws." She states that the Site Director accessed her information and then disclosed it to an AHS Privacy Advisor.

#### *Custodian's Submissions*

[para 13] The Custodian submits that on April 20, 2022 and June 22, 2022, the Site Director, acting as an affiliate of Alberta Health Services (AHS), did access the Complainant's Netcare record, upon the direction of the Privacy Advisor. It further submits that this was done in response to a privacy complaint submitted by the Complainant.

[para 14] The Custodian acknowledges that the Site Director accessed the Complainant's Netcare record on the three occasions mentioned by the Complainant.

[para 15] The Custodian submits that there was no contravention of the section 28 of the HIA. It states that the Complainant's health information was accessed in relation to an investigation of a complaint made by the Complainant, and that the access was appropriate under section 27(1)(c) of the HIA.

[para 16]

The Custodian submits that:

- i. It is a Custodian under section 1(1)(f)(iv) of the HIA and is an authorized Custodian under section 56.1(b)(i) of the Act.
- ii. Accessing information in Netcare is a use of health information as per section 56.5 of the Act.
- iii. The AHS Site Director at the hospital acted as an affiliate under s. 1(1)(a)(i) of the Act.
- iv. Any collection, use or disclosure by an affiliate of a Custodian is considered to be collection, use or disclosure by the Custodian under section 62(2) of the Act.

[para 17]  
as follows:

The Custodian outlined the circumstances leading up to the three accesses

- On February 7, 2022, the Complainant received a Netcare audit and filed a complaint with AHS and the OIPC that a Manager at a hospital had inappropriately accessed her Netcare record on May 14, 2020.
- On April 7, 2022, the Site Director of the hospital confirmed that the Manager oversaw the Visiting Specialist Clinic at the hospital in May 2020. AHS Privacy initiated a privacy investigation to determine the appropriateness of the accesses. Prior to accessing the records, the Site Director had requested and received confirmation that she was authorized to access the Complainant's record to assist with the investigation.
- On April 20, 2022, the Site Director explained to the Privacy Advisor that it had been necessary for the Manager to access the Complainant's Netcare record to validate and reconcile the Complainant's operative procedure against physician billing and then submit invoices to WCB.
- On May 12, 2022, the explanation was provided to the Complainant, and the Complainant requested more information on why the access occurred 8 months after she was discharged from WCB on September 19, 2019.
- On June 3, 2022, a meeting was held with the Manager to gather more information on practices of reconciling billing for WCB claims and evaluate why it was done 8 months after the Complainant's procedure. The Manager explained this work is typically completed by the registered nurse in the clinic, but due to the nurse's absence, the Manager was assisting with these duties on May 14, 2020. The Manager is authorized to conduct this work.
- On June 22, 2022, the Site Director reviewed the activity in Netcare by the Manager on May 14, 2020, to confirm the validity of the

explanation provided for the billing reconciliation. Access to the Complainant's Netcare record on May 14, 2020 was related to medical procedures conducted in August 2019 by WCB providers. The Netcare searches were appropriate for validating and reconciling procedures against physician billing and submitting invoices to WCB for payment. The confidential contract between WCB and AHS has been reviewed by AHS Privacy and confirms statements in the contract allow a window of eight months for submission of billing invoices to WCB.

- On July 12, 2022, this explanation was provided to the Complainant and the OIPC.

[para 18] The Custodian submits that the Netcare audit report shows that the Operative Report section was accessed by the affiliate on June 22, 2022, and that there is no indication of which reports were viewed.

### *Analysis*

[para 19] The Act does not specify how investigations or complaints should be dealt with. One can reasonably assume that organizations such as the Custodian have robust policies and procedures outlining how it responds to complaints. The Complainant mentioned how a different health organization handled a different investigation (apparently without accessing such records), but no evidence as to the details of that investigation was provided for this inquiry. Furthermore, even if details had been provided, the investigative steps taken by one organization do not have to be mirrored by any other organization.

[para 20] The Complainant contends that her medical records were improperly accessed "in contravention of Alberta's Privacy Laws."

[para 21] I note that on April 7, 2020, the Privacy Advisor asked the Site Director to review the Manager's access and confirm that there was a legitimate reason for the access. The response back to the Privacy Advisor did not disclose any specific medical information, the Site Director confirmed that the Manager "would have had a relevant business reason to access the chart."

[para 22] The Custodian's authority to deal with privacy breach complaints is dealt with in the HIA.

[para 23] The *Provincial Health Agencies Act*, RSA 2000, c R-10, establishes Alberta Health Services (AHS) as a provincial health agency. Therefore, AHS is a custodian as defined in section 1(1)(f)(iv) of the HIA:

*1(1) In this Act,*

*[...]*

(f) “custodian” means

[...]

(iv) a provincial health agency or regional health authority under the Provincial Health Agencies Act;

[para 24] By virtue of being an employee at the hospital, the Site Director is an affiliate of the Custodian as per section 1(1)(a)(i) of the HIA:

1(1) In this Act,

(a) “affiliate”, in relation to a custodian, means

(i) an individual employed by the custodian,

[...]

[para 25] In Order H2020-04, The Adjudicator commented on the use of employees/affiliates by a Custodian:

[para 66] Unlike Drs. E.C. and S.D., neither C.H. nor G.M. were personally involved in the court proceeding. However, the Custodian (AHS) was named in the proceeding. While both C.H. and G.M. are affiliates in their own right under the Act, in this case, they were acting under the instruction of the Custodian, on its behalf. **The Custodian cannot act except via its own employees** (or contractors). This includes accessing the EHR. Only affiliates can access the EHR (as opposed to an employee who is not also an affiliate). The HIA grants affiliates their own authorities for accessing the EHR; however, I do not interpret this to mean that every access by an affiliate must be under their own authority. **Where an affiliate is acting on behalf of the Custodian, they can rely on the Custodian’s authority to access the EHR.** In this case, the Custodian had the same authority as Drs. E.C. and S.D. to access the Complainant’s health information under section 27(1)(a); that C.H. and G.M. performed that function does not alter this authority.

[emphasis mine]

[para 26] Section 28 deals with the use of health information by an affiliate:

28 An affiliate of a custodian must not use health information in any manner that is not in accordance with the affiliate’s duties to the custodian.

[para 27] Alberta EHR (Netcare) and authorized custodian is defined in section 56.1

56.1 In this Part,

(a) “Alberta EHR” means the integrated electronic health information system established to provide shared access by authorized custodians to prescribed health information in a

*secure environment as may be further defined or described in the regulations;*

(b) *“authorized custodian” means*

*(i) a custodian referred to in section 1(1)(f)(iii), (iv), (xii), (xii.1), (xiii) or (xiii.1), and*

[para 28] Section 56.5 deals with the use of prescribed information:

*56.5(1) Subject to the regulations,*

(a) *an authorized custodian referred to in section 56.1(b)(i) may use prescribed health information that is accessible via the Alberta EHR for any purpose that is authorized by section 27;*

[...]

(2) *For greater certainty, the use pursuant to subsection (1) of prescribed health information that is accessible via the Alberta EHR does not constitute collection of that information under this Act.*

(3) *For greater certainty, the use pursuant to subsection (1) of prescribed health information that is accessible via the Alberta EHR does not constitute a disclosure of that information by*

(a) *the regulated health professional or authorized custodian who originally made that information accessible via the Alberta EHR pursuant to section 56.3,*

(b) *any other authorized custodian,*

(c) *the information manager of the Alberta EHR, or*

(d) *any other person.*

[para 29] Section 62(2) defines the collection, use or disclosure of health information by an affiliate:

*62(2) Any collection, use or disclosure of health information by an affiliate of a custodian is considered to be collection, use or disclosure by the custodian.*

[para 30] In *JK v. Gowrishankar*, 2019 ABCA 316 (*Gowrishankar*), the Court contemplated the collection and use of information by a custodian or its affiliate:

[26] This section contemplates that affiliates will be collecting, using, and disclosing health information. As a number of the defined custodians are entities, such as the department of the responsible Minister, **it is the employees and contractors of those entities that collect, use, and disclose the information as prescribed by the Act.** Because the *Act* permits a custodian to collect, use, and

disclose information for specific purposes, its affiliates are also permitted to collect, use, and disclose the information for those same purposes. Indeed, this is the interpretation previously adopted by the OIPC: *Re Alberta Health and Wellness* (March 25, 2008), 2008 CanLII 88791 (AB OIPC), Order H2007-005 and Order P2007-013.

[27] The nature of an affiliates relationship with the custodian imposes limitations on how an affiliate may collect, use, and disclose health information. An affiliate may only collect, use or disclose health information in accordance with its duties to the custodian. This must be inferred from the provisions that prohibit affiliates from collecting, using or disclosing health information in a manner that is not in accordance with the affiliate's duties to the custodian: ss 24, 28, 43. Affiliates must also comply with any policies or procedures established by the custodian: s 63(4)(b).

[28] In summary, the collection and use of health information by a custodian (including an authorized custodian) and its affiliates is authorized by the *Act* so long as i) it is for a purpose permitted by the *Act*; and ii) the information is essential to carry out the intended purpose. An affiliate is subject to further limitations based on the affiliate's duties to the custodian, and any policies or procedures put into place by the custodian. Custodians and affiliates are permitted to disclose health information with or without consent, depending on the circumstances.

[emphasis added]

[para 31] When the Complainant sought an explanation from AHS for the accesses to her Netcare that had been done by a Manager on May 20, 2020, the complaint was received by the Privacy Advisor, who contacted the Site Director to ascertain whether the Manager's access was warranted (Appendix A and B of the Custodian's Initial Submission).

[para 32] The Site Director was told by the Privacy Advisor that she was authorized to access the Complainant's Netcare as per section 27(1)(c) of the Act:

*27(1) A custodian may use individually identifying health information in its custody or under its control for the following purposes:*

[...]

*(c) conducting investigations, discipline proceedings, practice visits or inspections relating to the members of a health profession or health discipline;*

[para 33] I find that section 27(1)(c) would only apply if the Manager was a member of a health profession or discipline. It is stated that the Manager reported to the Site Director, who is a registered nurse, but it is unclear what the Manager's designation is in this case. On February 27, 2025, I wrote to the Custodian and asked:

Could you please confirm if the manager who accessed the Netcare file in May 2020 was a member of the health profession or health discipline as described in section 27(1)(c) of the HIA

On March 5, 2025, the Custodian replied as follows:

At the time of her access to the complainant's Netcare record, the individual was in a position of authority as the manager at Leduc Community Hospital. Being a regulated member under the Health Professions Act is not required for positions of authority.

[para 34] It would seem to me, that the answer to my question is that the Manager was not a member of the health profession or health discipline as described in section 27(1)(c) of the Act. Section 27(1)(c) does not apply.

[para 35] However, I find that access would be permissible as per section 27(1)(g) of the Act:

*27(1) A custodian may use individually identifying health information in its custody or under its control for the following purposes:*

*(g) for internal management purposes, including planning, resource allocation, policy development, quality improvement, monitoring, audit, evaluation, reporting, obtaining or processing payment for health services and human resource management.*

[para 36] The Site Director was essentially being asked to check on the activities of an employee under her supervision and her actions would fall under the purview of human resource management or internal management purposes as discussed in Order H2022-04. The Site Director was also ensuring that the manager's access was for the purposes of proper billing for health services, which also falls under section 27(1)(g).

[para 37] Section 56.5(1)(a) authorizes the Site Director to access information via Netcare "for any purpose that is authorized by section 27." The Privacy Advisor requested that the Site Director review the access by the Manager and confirm whether the Manager had "a clinical/work reason for accessing" the Complainant's records. The Site Director complied with the request on April 20, 2022, and confirmed that there was a valid reason.

[para 38] Like the April 20, 2022 access, the Site Director's access on June 22, 2022, was also authorized. The Complainant sought a further explanation into why the May 2020 access happened eight months after her discharge from WCB. I find that this would have necessitated another look at her Netcare information by the Site Director.

[para 39] In my view, the Privacy Advisor correctly asked the Site Director to assist her with the complaint about the access to the Complainant's Netcare. It was the Site Director, an employee of the Custodian, and the supervisor of the Manager (whose access complained about), who made the initial access to Netcare on May 14, 2020. Once the

Site Director verified the information, she reported it to the Privacy Advisor, who was then able to compose a response to the Complainant.

[para 40] The Complainant also expressed a concern as to why billings were being looked at eight months after her procedure was performed. I accept the Custodian's response that it reviewed the confidential contract between it and WCB and that the contract allows a window of eight months for submission of billing invoices to WCB.

[para 41] The Complainant's position on how the Custodian should have handled her complaint (without accessing her Netcare) is unreasonable. As stated above, the Act authorizes the Custodian to access Netcare information via its affiliate to engage in human resources management responsibilities, and its actions did not contravene the HIA.

#### Netcare Audit Logs

[para 42] Next, I will look at the Complainant's assertion that her specific operative reports were accessed by the Site Director.

[para 43] The Complainant is particularly concerned with the alleged access to operative reports that were associated with procedures that occurred after her discharge from WCB and, had no relationship to the physician billing and invoicing to WCB. The Complainant is further concerned that the Site Director sent her information to the AHS Privacy Advisor, thereby further violating her privacy. There is no information in the logs suggesting that individual reports were accessed.

[para 44] The Site Director accessed the Complainant's Netcare once on April 20, 2022, and twice on June 22, 2022.

[para 45] The Site Director accessed the Complainant's Netcare on April 20, 2022, after the Complainant complained about the Manager accessing her Netcare on May 14, 2020. On this date, patient demographics and event history screens were accessed; The operative report screen was not accessed on April 20, 2022.

[para 46] Both the Complainant and the Custodian provided me with the Netcare audit logs, dated April 20, 2022 and June 22, 2022. The Complainant included the logs in her request for Inquiry, her initial submissions as well as in her rebuttal submission. The Custodian provided the logs in its initial submission. I note that the log entries (time stamps, dates, and function) do not differ from one another.

[para 47] The logs are a series of entries that have the following descriptors: Trans Date/Time, Application (Alberta Netcare), Facility (Alberta Health Services), User Name, Role/Profession (of the user), Function (VIEW-Patient Demographics, VIEW-Operative etc), Viewed ULI (unique lifetime identifier) and Last Name (patient's).

[para 48] After the Complainant requested a further explanation of the previous access that took place on May 14, 2020, and why billing reconciliation occurred 8 months after her procedures, the Site Director accessed the Complainant's Netcare again on June 22, 2022 (this Inquiry is not dealing with the May 14, 2020 access by the Manager for the purpose of billing reconciliation). This time, the log shows the following entries: patient demographics, operative, single transcribe, viewer frames, and consultation. The Site Director clicked on more menu items on June 22, 2022, than she did on April 20, 2022.

[para 49] On February 27, 2025, I asked the parties for some clarification on how to read the audit logs, the Custodian provided the Netcare User Guide (user guide) and replied as follows:

- "VIEW-operative" refers to operative reports
- If "VIEW-operative" appears in the audit log, that means that Operative was selected in the Clinical Portal Menu (page 10 of the user guide)
- A listing of documents will appear under specific folders (page 12 of the user guide)
- There is a hover function, which means that a user does not have to click on an individual report, but can hover over that report to access brief information (page 23 of the user guide)
- The audit log does not show when a specific report was accessed only that a folder was accessed.

[para 50] The Complainant submitted that three operative reports were viewed twice on June 22, 2022. The June 22, 2022 log shows two entries with respect to "operative"; the Function reads: VIEW-Operative. The first one is at 13:34:36 and the second one is at 14:56:35.

[para 51] According to the user guide, the menu bar appears on the far left of the patient file, the clinical document tree includes all available clinical documents. Additional information on each type of document can be viewed by clicking on the drop-down list for each type of document. By clicking on the operative menu, all operative reports would be listed. The user would then have to click on the individual reports to gain access to the whole report or hover over the report to obtain brief information. The logs do not indicate that the reports were individually accessed. Furthermore, the time stamps indicate that each access lasted seconds. On June 22, 2022 the first access occurred at 13:34:14-13:34:36 (22 seconds) and the second access occurred at 14:56:27-14:56:48 (21 seconds). The operative reports screen was accessed once during each access along with other screens.

[para 52] Looking at the time stamps on the logs for both April 20, 2022 and June 22, 2022, the Site Director spent only seconds looking at the information in the Complainant's Netcare.

[para 53] The Complainant insists that three operative reports were accessed twice on June 22, 2022. She maintains that the logs show the access to the separate operative reports. I asked for a clarification of this as indicated in paragraph 7. The Complainant insists that there was access; however, there is no support or indication in the logs that she submitted or the logs provided by the Custodian, that the individual reports were accessed. As stated in paragraph 52 above, the time stamps on the logs indicate that the Site Director's access lasted seconds, I find it improbable that the Site Director was viewing individual reports on June 22, 2022.

[para 54] In conclusion, I find that the Site Manager's access to the Netcare logs was authorized and given the limited amount of time she spent viewing the logs, there is no probable reason to believe that individual operative reports were accessed and viewed by the Site Manager.

#### **IV. ORDER**

[para 55] I make this Order under section 80 of the Act.

[para 56] I find that the Custodian and its affiliates had authority to access and/or use the Complainant's health information to deal with the complaint made by the Complainant about the May 14, 2020 access to her Netcare.

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Pam Gill  
Adjudicator  
/kh