

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER HIA2025-02

September 2, 2025

ALBERTA HEALTH SERVICES

Case File Number 029671

Office URL: www.oipc.ab.ca

Summary: On October 24, 2022, the Applicant submitted a request to an Alberta Health Services (AHS) hospital's Admitting & Health Records Information Management Office (Information Office), that information on her Discharge Summary be corrected. The Information Office sent the request to the treating specialist (Specialist) to consider the correction to the information. The Specialist asked for clarification of the request, as she was unsure of what the Applicant was requesting to be corrected or amended.

The Information Office did not ask the Applicant to clarify her request for correction and sent her a refusal letter quoting the Specialist's request for clarification.

The Adjudicator found that AHS did not provide clear and understandable reasons as required by section 13(5) of the *Health Information Act* (HIA/the Act) and ordered it to process the request as required by section 13 of the Act.

Statutes Cited: **AB:** *Health Information Act*, R.S.A. 2000, c. H-5, ss. 13, 14 and 80;
Provincial Health Agencies Act, RSA 2000, c P-32.5

Cases Cited: *Covenant Health v. Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562 (CanLII)

I. BACKGROUND

[para 1] On April 14, 2018, the Applicant was admitted to the hospital. She was diagnosed and discharged on April 20, 2018. The Specialist outlined her care and diagnosis during this period in the Discharge Summary, dated April 20, 2018, along with relevant background information that informed the diagnosis.

[para 2] The Specialist is a qualified physician licensed to practice in the Province of Alberta and during the time she treated the Applicant (April 14-20, 2018), she practiced as a Specialist at the hospital to which the Applicant had been admitted.

[para 3] On October 24, 2022, the Applicant submitted a “Request to Correct or Amend Health Information” form to the hospital. The Applicant requested that certain statements pertaining to her employment be corrected/amended on her Discharge Summary.

[para 4] Upon receipt of the request for correction, the Information Office provided the request for correction to the Specialist.

[para 5] In her correction request, the Applicant did not state how the information should be corrected or amended. She attached several documents, without explanation of their significance, to her request. These documents consisted of correspondence regarding past work-related issues. On November 10, 2022, counsel for the Specialist wrote to the Information Office seeking clarification, as she was “unable to properly respond to the Request to Correct or Amend Health Information pursuant to the *Health Information Act*.”:

Unfortunately, on the basis of the information provided by [Applicant], we are unable to properly respond to the Request to Correct or Amend Health Information pursuant to the *Health Information Act*.

The request is inconsistent between the letter from [Applicant] dated October 24, 2022 and the notations on the medical record. We seek clarification whether [Applicant] is just requesting the removal of [certain words] or if her request is broader than that. If her request is broader than that, then we need to understand exactly which words [Applicant] says are inaccurate. With this further information, we should be in a position to properly assess the request.

[para 6] On November 30, 2022, and again on December 19, 2022, the Specialist (through her counsel), asked the Information Office for a response to her November 10, 2022, correspondence. The Information Office responded to the Specialist’s counsel on December 23, 2022, stating that a refusal of correction letter was sent to the Applicant.

[para 7] The refusal of correction letter was sent to the Applicant on November 25, 2022. It stated:

Upon careful review of your request and the corresponding health records, we have determined that we are unable to make the corrections as you have requested.

Specifically, AHS denied your request for correction or amendment in respect of the professional opinion or observation made by the AHS health services provider about you at the time of treatment.

The letter also included the Specialist's request for clarification as set out in paragraph 5 above.

[para 8] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. At the conclusion of this process, the matter proceeded to inquiry.

[para 9] The Specialist did not hear anything on this matter until she was asked to prepare an affidavit on September 24, 2024, for the purposes of responding to the Request for Inquiry. The affidavit was affirmed on October 11, 2024.

[para 10] In the affidavit submitted by the Specialist, she stated that since she "never received any clarification as to what [the Applicant] wants corrected or amended...[she] is forced to make an assumption for the purposes of [her] Affidavit." The assumption that the Specialist made in her affidavit was that the Applicant wants the entirety of the statements outlined in the request removed from the Discharge Summary. She goes on to affirm at paragraphs 25 and 26 of her affidavit as follows:

25. These portions of the Discharge Summary are necessary to the opinions and observations summarized for the course in hospital as at the date of discharge. The observations, impressions and understanding informed my opinions on the most reasonable diagnosis of [the Applicant].
26. As such, I refuse to correct or amend the information requested by [the Applicant].

[para 11] I note that the Specialist only made this determination at the time of affirmation of her affidavit on October 11, 2024, and not in response to the initial request by the Applicant on October 24, 2022.

II. ISSUES

[para 12] Did the Custodian properly refuse to correct or amend the Applicant's health information, as authorized by section 13 of the HIA?

III. DISCUSSION OF ISSUES

[para 13] "Affiliate", "custodian" and "health information" are defined in the Act as follows:

1(1) In this Act,

(a) "affiliate", in relation to a custodian, means

[...]

(iii) *a health services provider who is exercising the right to admit and treat patients at a hospital as defined in the Hospitals Act,*

[...]

(f) *“custodian” means*

[...]

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

[...]

(ix) *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;*

[...]

(k) *“health information” means one or both of the following:*

(i) *diagnostic, treatment and care information;*

(ii) *registration information;*

Role of AHS

[para 14] The *Provincial Health Agencies Act*, RSA 2000, c P32.5, establishes Alberta Health Services as a provincial health agency. Therefore, AHS is a custodian as defined in section 1(1)(f)(iv) of the HIA.

Role of the Specialist

[para 15] The Specialist admitted and treated patients at the hospital and is therefore an affiliate as defined by section 1(1)(a)(iii) of the Act.

Health Information

[para 16] The Discharge Summary is health information as defined by the Act, as it detailed the diagnosis, treatment and care information received by the Applicant during her stay at the hospital. Health information is further defined by the Court in *Covenant Health v. Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562 (CanLII) (*Covenant Health*):

[79] 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. There is no such statement in the *Health Information Act*. The *Freedom of Information Act*, says just the opposite. Section 4(1)(u) of the *Freedom of Information Act*, in effect, states that personal information which is health information under the *Health Information Act* is for all purposes treated as health information.

[80] Using this standard to determine whether any of the information in the records of Covenant Health about [the Respondent] is classified as health information under the *Health Information Act*, the adjudicator must ask two questions. First, is there any information in Covenant Health's records about [the Respondent] that relates to or may directly affect the physical and mental health of [the Respondent's] parents or a health service provided by Covenant Health to [the Respondent's] parents? Second, if so, was this information collected when Covenant Health provided a health service to her parents?

[para 17] The Court in *Covenant Health* determined that information that relates to a patient's mental or physical health, is health information and therefore subject to the HIA. In the case at hand, the Applicant's health struggles were related to her employment and correlated to why she was hospitalized. Information pertaining to her need to be examined by a Specialist would be relevant and would be captured by section 1(1)(k) of the HIA.

[para 18] Section 13 of the Act allows an applicant to request a correction or amendment of health information. Section 13 also states what a custodian must do if it refuses to correct or amend a record:

13(1) An individual who believes there is an error or omission in the individual's health information may in writing request the custodian that has the information in its custody or under its control to correct or amend the information.

(2) Within 30 days after receiving a request under subsection (1) or within any extended period under section 15, the custodian must decide whether it will make or refuse to make the correction or amendment.

[...]

(5) If the custodian refuses to make the correction or amendment, the custodian must within the 30-day period or any extended period referred to in subsection (2) give written notice to the applicant that the custodian refuses to make the correction or amendment and of the reasons for the refusal.

(6) A custodian may refuse to make a correction or amendment that has been requested in respect of

- (a) a professional opinion or observation made by a health services provider about the applicant, or*
- (b) a record that was not originally created by that custodian.*

[...]

[para 19] If a custodian refuses to make a correction or amendment, section 13(5) of the Act provides what the custodian **must** do:

- i. give the applicant written notice within the specified timelines; and
- ii. give the applicant reasons for the refusal.

[para 20] Providing reasons enables an applicant to understand the reasons for the decision, and make an informed decision of whether to request a review by the Commissioner or submit a statement of disagreement as stated in section 14 of the Act:

14(1) Where a custodian refuses to make a correction or amendment under section 13, the custodian must tell the applicant that the applicant may elect to do either of the following, but may not elect both:

- (a) ask for a review of the custodian's decision by the Commissioner;*
- (b) submit a statement of disagreement setting out in 500 words or less the requested correction or amendment and the applicant's reasons for disagreeing with the decision of the custodian.*

[...]

[para 21] The Information Office did not ask for a clarification despite the Specialist, asking it to do so. It is clear from AHS's submissions that the Specialist is in the best position to assess whether any corrections or amendments to a record that "is intended to record the opinions, observations and understandings of the health care provider at the time care was provided to the Applicant"¹ should be made.

[para 22] The Information Office did not have the expertise to ascertain whether a correction to the information was warranted. Had the Information Office waited for the Specialist to make a decision after receiving clarification on the request, it could then have responded to the Applicant. But making a response without finding out what the Specialist thought should be done in the circumstances, was premature.

[para 23] The Information Office made an uninformed decision. The purpose of consulting with the Specialist was to understand what the treating physician's opinion on the request was and whether the information could be corrected. Once the Specialist reviews the request and informs the Information Office, the Information Office is then in a position to provide a response with reasons to the Applicant. Without the input from the Specialist, the Custodian does not have the requisite knowledge to make a decision pursuant to section 13(6). An informed decision requires the Custodian to ask and clarify with the Affiliate.

¹ Respondent's Initial submission, paragraph 23

[para 24] I am uncertain why the Information Office did not seek out a clarification when it was asked to do so, or why there wasn't a time extension. The written notice the Custodian gave to the Applicant pursuant to section 13(5) is dated November 25, 2022; this date is within the legislated 30-day time period to respond. Section 15(1)(a) of the Act allows the Custodian to extend the time for a response.

[para 25] It seems to me that the letter was written by the Information Office to meet statutory requirements. I find that while the November 25, 2022, refusal letter was written within the 30-day period, the reason for refusal is confusing. The one person qualified to make the determination (as indicated by the fact that the Information Office asked the Specialist to make that determination when the request to correct was sent by the Applicant on October 24, 2022) asked for a clarification and none was provided, (this request is included in the refusal letter). The Applicant was told that the request to amend/correct was denied and in the very next paragraph was told that more information had been sought to understand the Applicant's request.

[para 26] Reasons for refusal are required by legislation, case law clearly establishes that reasons given by a decision maker must be justifiable, transparent and intelligible. They must be clear and understandable to the reader.

[para 27] The Information Office did not provide a proper response with clear reasons as per section 13(5) of the Act, and in turn, the Applicant could not make an informed choice as specified by section 14(1).

[para 28] I find that AHS failed to correctly process the Applicant's request to correct or amend her health information. In order to rectify the situation, I find that the process should be restarted.

[para 29] Arguably, at the end of the restarted process, the Specialist may take the same position after clarification is received from the Applicant as to what she wants corrected, and the Custodian may reach the same decision about correction, that is, it may refuse to make any corrections to the Discharge Summary.

[para 30] However, I note that the Specialist made assumptions that might not be warranted, and it is not out of the question that given further clarification as to what the Applicant wanted, she might take a different position.

[para 31] Regardless of the decision made, re-starting would be important, because once the Custodian has made an informed decision and given clear reasons, the Applicant must be given an opportunity under section 14 to decide if she wants to again request a review from this office, or whether she would prefer to submit a statement of disagreement that will be attached to her file. It is important that in making her decision, the Applicant has a clear idea of the reasons for refusal, so that she may assess her course of action.

[para 32] Consequently, I must order the steps to be taken that will ensure the Applicant has the opportunity to make well informed decisions as to how to exercise her

rights under the Act. I order AHS to process the Applicant's correction request again as required by section 13 of the HIA.

IV. ORDER

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

[para 34] I order AHS to process the request for correction as authorized by section 13 of the Act.

[para 35] I further order AHS to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Pam Gill
Adjudicator
/rm