

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

REQUEST TO DISREGARD HIA2026-RTD-01

May 4, 2026

Custodian – Radius Community Health & Healing

Case File Number 040322

- [1] The Custodian of Radius Health and Healing (the “Custodian”) is a “custodian” as defined under section 1(1)(f) of the *Health Information Act*, RSA 2000, c H-5 (“HIA”). The Custodian requested authorization under section 87(1) of the HIA to disregard an access request (“Request”) made by an applicant (the “Applicant”). To avoid disclosing the Applicant’s identity through gender, while the Applicant is singular, the Applicant is referred throughout as they/them/their.
- [2] For the reasons outlined in this decision, I find that because of its repetitious nature, the Request is an abuse of the right to make requests and have decided to grant the Custodian authorization under section 87(1)(a) of the HIA to disregard the Request.

Commissioner’s Authority

- [3] Section 87(1) of HIA gives me the power to authorize a custodian to disregard certain requests. Section 87(1)(a) and (b) state:

87 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.

- [4] An individual’s right of access to their health information and to request correction of their health information under the HIA is not absolute. Where a custodian establishes that the conditions of section 87(1)(a) or (b) are met, I may authorize the custodian to disregard that request.

Background

- [5] The Applicant is a former client of the Custodian. On two previous occasions, in November 2023 and in January 2025, the Applicant requested and received a complete copy of their medical file. On August 13, 2025, the Applicant made a third request for a copy of their medical file (the Request).
- [6] On August 21, 2025, the Custodian requested authorization to disregard the Applicant’s request under section 87(1) of the HIA and explained there have been no changes to the Applicant’s file – the Request is for the same health information as what the Applicant has already been provided twice.
- [7] The Applicant provided a submission on April 2, 2026, stating that they have requested the “file on a few different occasions because I believe the file has changed”. The Applicant did not provide any further information as to why they believed their file had changed. The Applicant provided additional submissions although their relevance to this matter is unclear, and some of which, as I explained in a letter to the parties dated April 22, 2026, would not be considered in this application.

Burden of Proof

- [8] The HIA is silent on the burden of proof associated with an application to disregard a request under section 87(1). In prior decisions, I have held that:¹

The proposition that “he who asserts must prove” applies across all areas of law, unless there is a specific reverse onus: for example, see *Garry v Canada*, 2007 ABCA 234, para 8; and *Rudichuk v Genesis Land Development Corp*, 2017 ABQB 285, para 27. The proponent of a motion needs evidence.

As the moving party requesting my authorization, the onus is on the Public Body to prove, with evidence, the requirements of section 55(1)(a) or (b), on a balance of probabilities. As I stated in the *MacEwan University Decision* under section 55(1) Decision (September 7, 2018), “I cannot make arguments for any party before my office.

¹ Citing former Commissioner Clayton, F2019-RTD-01 (Alberta Justice and Solicitor General, February 1, 2019); 2019 CanLII 145132 (AB OIPC), at pp. 7 and 8.

I must make a decision based on the arguments and evidence the parties put before me”.

Under section 55(1)(a), I am permitted to authorize the Public Body to disregard one or more of the Applicant’s requests if they are repetitious or systematic in nature, and would unreasonably interfere with the operations of the Public Body or amount to an abuse of the right to make those requests. Under section 55(1)(b), I may authorize the Public Body to disregard one or more of the requests if they are frivolous or vexatious.

Because section 55 provides that I “may” give authorization, if the Public Body meets its burden I must then decide whether to exercise my discretion to authorize the Public Body to disregard the requests.

Applying this reasoning to section 55, if a public body meets its burden, I will then go on to consider whether there is any compelling reason not to grant my authorization to disregard a request.

- [9] While these findings were made under section 55(1) of the repealed *Freedom of Information and Protection of Privacy Act* (the FOIP Act), they are equally applicable to the equivalent provision, section 87(1) of the HIA. Therefore, it is up to the Custodian to establish, on a balance of probabilities, that the threshold in section 87(1)(a) is met in this case and on doing so I must exercise my discretion about whether to authorize the Custodian to disregard the access request.
- [10] This Office’s 2011-2012 Annual Report reported an oral decision of the Court of Queen’s Bench, a judicial review of a section 55(1) decision issued under the FOIP Act.² In quashing that section 55(1) decision of former Commissioner Work, the Court expressed its view that an application to disregard an access request amounts to a summary dismissal (or disposition) application. Given the similarity of a request for authorization to disregard an access request and a summary disposition application, Alberta’s case law provides some guidance as to the evidentiary requirements of section 55(1) of the FOIP Act, or as here section 87(1) of the HIA. The law in Alberta is clear that parties to a summary disposition application must ‘put their best foot forward’.³ However, in the *Bonsma* decision, the Court further expressed its view that a person defending what amounted to a summary dismissal under the FOIP Act, or as here under section 87(1) of

² *Clarence J Bonsma v The Office of the Information and Privacy Commissioner and Alberta Employment and Immigration Information and Privacy Office*, an oral decision of Clackson J. in Court File No. 1103-05598.

³ See, for example, *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd.*, 2019 ABCA 49 at para 37; *Alberta Energy v Alberta (Information and Privacy Commissioner)*, 2024, ABKB 198 at para 21 (rev’d 2025 ABCA 163 on an unrelated ground).

the HIA, need do no more than show merit. In other words, that person did not have a burden to show that the request was for a legitimate purpose.

- [11] I interpret this decision as meaning that an applicant is not obligated to make a submission in response to a custodian's request for authorization to disregard their access request made under the HIA.
- [12] Although the Custodian has the burden of proof, the British Columbia Information and Privacy Commissioner has previously observed (with respect to British Columbia's equivalent provision under its *Freedom of Information and Protection of Privacy Act*), "if a public body establishes a *prima facie* case that a request is frivolous or vexatious, the respondent bears some practical onus, at least, to explain why the request is not frivolous or vexatious."⁴ What this means in terms of a section 87(1) application made under the HIA is if an applicant chooses to provide a submission in response to an application to disregard an access request, that submission may be considered along with that made by the custodian.
- [13] In this case, I have also considered the submissions and evidence provided by the Custodian and the Applicant, other than the information the parties were told would not be considered.

Purpose and Application of Section 87(1) of the HIA

- [14] Section 2 sets out the purposes of the HIA, which includes, in section 2(d) "to provide individuals with a right of access to health information about themselves, subject to limited and specific exceptions as set out in this Act". However, this right is not unlimited. Section 87(1) of the HIA is an important tool to curb abuse of an individual's right of access to health information about themselves.⁵

Section 87(1)(a) – Is the Request repetitious or systematic?

- [15] Section 87(1)(a) authorizes me to exercise my discretion to authorize a custodian to disregard an individual's request for their health information where the custodian has established, on a balance of probabilities, that "because of their repetitious or systematic nature" one or more of the requests "would unreasonably interfere with the operations of the custodian or amount to an abuse of the right to make those requests".

⁴ Auth (s. 43) (02-02), [2002] BCIPCD No. 57 at para 4.

⁵ F2025-RTD-02 at paras 21 – 25.

[16] “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.

[17] The Custodian stated as follows:

- On two previous occasions, [the Applicant] requested and was sent a complete copy of [their] medical file. Once in November 2023 and a second time in January 2025.
- The second copy was sent as [the Applicant] stated [they] were unable to pick up the first copy from the post office, so [they] were requesting a second copy.
- [The Applicant] confirmed receipt of the copies via email sent from [them] to Radius on January 22, 2025:
 - *The last medical file you sent was over twice as many pages. I feel there are things missing in this one. Can you confirm the medical file you most recently sent me is everything that has ever been put in my file for any reason?”*
 - It was confirmed via email to [the Applicant] that everything had been including in both copies and that nothing had changed in [their] file since the first copy was sent in November, 2023.
- Nothing has changed (additions or amendments) since either of the previous two copies were sent to [the Applicant].

[18] The Applicant responded, stating their belief that their medical file had changed, but did not provide any basis for that belief. The Applicant provided additional information about their relationship with the Custodian, but did not explain the relevance of that information to this application under section 87(1) of the HIA. The Applicant also appeared to suggest that I confirm the veracity of some of the information provided by “googling” it for myself.

[19] If the Applicant wants me to consider evidence, it is up to the Applicant to provide it to me for my consideration.

[20] The evidence before me is that the Applicant has three times requested and twice received the same medical file with their health information. I find that the Request is repetitious under section 87(1)(a).

Section 87(1)(a) – Would responding to the Request unreasonably interfere with the operations of the custodian or amount to an abuse of the right to make the Request?

[21] The Custodian has not argued that responding would unreasonably interfere with its operations, therefore I will not consider this point further.

[22] Previous decisions have held that the repetitiousness of a request, in and of itself may be an abuse of the right to make requests (See, for example: F2025-RTD-02 at para 38, F2025-RTD-01 at para 34, and H2022-RTD-01 at para 20).

[23] As the Applicant has provided no basis for their belief that their medical file may have changed, I accept the Custodian's evidence that the medical file is the same. As the Applicant has already received the same health information twice, I find that this third Request is an abuse of their right to make a request for their health information.

[24] The Custodian has met its burden under section 87(1)(a) of the HIA. The Request is repetitious and an abuse of the right to make the request.

Decision

[25] After consideration of the relevant circumstances, and for the reasons stated above, the Custodian is authorized, under section 87(1)(a) of the HIA to disregard the Applicant's Request.

Diane McLeod
Information and Privacy Commissioner