

INFORMATION AND PRIVACY COMMISSIONER OF ALBERTA

Report of an investigation concerning found medical records

August 17, 2010

Dr. Anthony John Ford

Investigation Report H2010-IR-002

(Investigation H3321)

Introduction

- [1] On January 28, 2010, Vanalta Management Limited (“Vanalta”) contacted our office to report that staff had found 10 boxes of records in the former office space of the Highland Park Medical Centre rented by Dr. Anthony Ford of Red Deer. Apparently, a Vanalta employee was inspecting the property before turning it over to a new tenant and discovered the records in Dr. Ford’s former office space. The employee boxed the records and put them in secure storage in a warehouse owned by Vanalta.
- [2] Dr. Ford and his colleagues at the Highland Park Medical Centre were former tenants of Vanalta, a property management company.
- [3] Of note, our office investigated a similar incident in July of 2009, involving Dr. Ford and Vanalta. After receiving the report of this second incident in January 2010, the Information and Privacy Commissioner decided to initiate an investigation under section 84(a) of the *Health Information Act* (HIA), appointing me to investigate the matter and report back to him. Section 84(a) of the HIA allows the Commissioner to conduct investigations to ensure compliance with any provisions of the HIA.

Background

- [4] The focus of this investigation is the incident that was reported in January 2010. However, it is useful to review the previous incident from July 2009 to understand how these reports are related.

First Incident – July 2009

- [5] Dr. Ford's clinic, the Highland Park Medical Centre, was a tenant of office space owned by Vanalta. Dr. Ford's lease expired on June 30, 2009 and he had decided to move to new premises. On July 8, 2009, the Commissioner received a report from Vanalta that staff had found approximately 200 records that, according to Vanalta, had been "abandoned" on their property by Dr. Ford. Vanalta reported that staff discovered the records on July 3, 2009 and later removed and securely stored them in the Vanalta warehouse on July 6, 2009.
- [6] The day after receiving Vanalta's report, our office received a letter from Dr. Ford's legal counsel, questioning Vanalta's legal authority to hold the records. The Commissioner assigned me to investigate the matter and report back to him (our file H2916).
- [7] Dr. Ford told me he understood he would be able to take some time beyond the end of his lease to clean out his offices. He completed most of the clean-up and left some equipment and the records in question in the office to pick up later. When he returned to his former office on July 4, 2009, he found that the locks had been changed. In contrast, Vanalta told me, "at no time was Dr. Ford given nor did Dr. Ford ask for an extension to his lease agreement."
- [8] It was not within the Information and Privacy Commissioner's jurisdiction to determine whether Dr. Ford had made an arrangement with Vanalta to clean out his office after his lease expired. To resolve the matter, I advised Vanalta that it had no authority to retain these health records and that they should be returned to Dr. Ford, who was responsible for their safekeeping. Dr. Ford made arrangements to pick up the records from Vanalta's warehouse. I received confirmation on July 10, 2009 that the records had been returned and that Dr. Ford had verified that none were missing.
- [9] Under these circumstances, it was difficult to conclude that the records had been "abandoned." Rather, I concluded that this incident resulted from a business dispute between Vanalta and Dr. Ford. Therefore, I did not find that Dr. Ford had contravened the HIA. I considered the matter settled until I heard from Vanalta again in January of 2010.

Second Incident – January 2010

- [10] After receiving the second report from Vanalta, I visited its warehouse on February 1, 2010 to review the records. Vanalta said staff found the records when preparing the offices for new tenants. I saw 10 large boxes of medical files from the Highland Park Medical Centre, which I estimated to be equivalent to 20 archive boxes (i.e. "bankers' boxes"). The records were stored in Vanalta's warehouse, which had a number of security measures in place.
- [11] Vanalta would not return the records directly to Dr. Ford. After a period of negotiation, Vanalta agreed to transfer the records to the Office of the Information

and Privacy Commissioner on May 26, 2010. The records were then turned over to Dr. Ford the same day.

Application of HIA

- [12] The *Health Information Act* applies to health information in the custody or control of custodians.
- [13] I examined a sample of the records that Vanalta reported finding in January 2010. The records consisted of patient charts from the Highland Park Medical Centre. The records included diagnostic, treatment and care information, along with patient names, contact information and Personal Health Numbers. This information falls within the definition of “health information” under section 1(1)(k) of the HIA.
- [14] Dr. Ford is a health services provider paid under the Alberta Health Care Insurance Plan to provide health services and consequently falls under the definition of “custodian” set out in section 1(1)(f)(ix) of the HIA. Dr. Ford was named on the records as the primary physician for some of the individuals concerned, along with other physicians who also practice(d) at Highland Park. Dr. Ford is responding to this investigation on behalf of the other physicians at the Highland Park Medical Centre.
- [15] Since the records in question are “health information” and Dr. Ford is a “custodian,” the HIA applies to this case. Custodians have a duty to take reasonable measures to safeguard health information from unauthorized disclosure.

Issue

- [16] Did the custodian fail to safeguard health information in contravention of section 60 of the HIA?

Analysis and Findings

- [17] Vanalta says its staff found the records in question in room 8 of the former Highlands Park Medical Centre. Vanalta provided print-outs of digital photographs showing room 8, which they say were taken after Dr. Ford moved out of the premises. The photographs show a large number of records piled in cabinets located at the back of the room. According to Vanalta, the records were boxed and transported to their warehouse after the photographs were taken in January 2010.
- [18] Dr. Ford remains puzzled about how these records came to be outside his custody. Dr. Ford also took photographs of the office prior to leaving in July 2009. He gave me a photograph of room 8, but it was taken from a different angle and does not show the cabinets where Vanalta says the records were found. Whatever the cause,

ultimately the records fell outside of Dr. Ford's custody and into the custody of Vanalta.

- [19] Section 60 of the HIA says that custodians must protect the confidentiality of health information in their custody or control and reads, in part, as follows:

Duty to protect health information

60(1) A custodian must take reasonable steps in accordance with the regulations to maintain administrative, technical and physical safeguards that will

- (a) protect the confidentiality of health information that is in its custody or under its control and the privacy of the individuals who are the subjects of that information,
- ...
- (c) protect against any reasonably anticipated
 - (i) threat or hazard to the security or integrity of the health information or of loss of the health information, or
 - (ii) unauthorized use, disclosure or modification of the health information or unauthorized access to the health information,

- [20] Section 60 says that custodians need to take reasonable measures to protect against unauthorized loss or disclosure of health information. These measures do not need to be perfect, but must be "reasonable" and must protect against "reasonably anticipated" threats.

- [21] I asked Dr. Ford to outline the measures he took to secure the transport of his records when he moved offices. Dr. Ford says that he and his physician partners along with their staff moved the records in their personal vehicles and unloaded them directly at the new office. The entire process was supervised by physicians. Dr. Ford says he conducted a final walk-through to ensure everything had been transferred on July 9, 2010. Dr. Ford did not conduct an inventory of records after the move.

- [22] I also asked Dr. Ford how he could be missing a large number of records (approximately 1000, according to Dr. Ford) without noticing their absence. Dr. Ford explained that the physicians at this clinic maintain the current year and two previous years of records as active files. The two years of records prior to the active files are stored on site (in the former office space, in room 8), but are not considered active files. The files that were found by Vanalta fell into this category. (Older records are stored offsite in a secure storage facility.)

- [23] In my opinion, it is reasonable to anticipate that health records may be either lost in transit or mistakenly left behind when moving offices. A reasonable safeguard to protect against this threat would be to take an inventory of records after a move to ensure that all records are accounted for. Dr. Ford does conduct an annual clean-up of older files and it is possible that the missing files would have been noticed at this

point. However, the fact remains that the missing files were not noticed between July 2009 and January 2010.

- [24] By failing to conduct an inventory of health records after moving offices, I find the custodian failed to safeguard health information, in contravention of section 60 of the HIA.

Assessment of Risk to Patient Privacy

- [25] Dr. Ford maintains that the risk to patient privacy resulting from this incident is low. He bases this on the following analysis. On discovering the files, Vanalta informed our office and took measures to store the files in a secure facility. If Vanalta intended to review the records, they would not likely have contacted the Information and Privacy Commissioner immediately after discovering them. The records were transported back to Dr. Ford by an OIPC investigator, ensuring a secure chain of transfer.
- [26] Generally, I agree with Dr. Ford's conclusion. There is no evidence to indicate Vanalta staff reviewed the records, nor do I believe they were motivated to do so. However, there is no way to prove conclusively that the records were not viewed while out of Dr. Ford's custody. Further, the records were in a vacant office space for approximately 6 months before they were discovered by Vanalta. This office space was locked and unused for this period but realtors, potential renters and various workers hired by Vanalta had access.
- [27] The fact that Vanalta reported the incident to our office and cooperated with my investigation is a mitigating factor in this case. Further, I visited the Vanalta warehouse where the records were stored and agree that it was reasonably secure. If there had been a long gap between the time the records were found and when the incident was reported, or if the records were not stored securely, I would likely come to a different conclusion on patient privacy risk. It cannot be said the risk to patient privacy is zero, but I do agree the risk is low.

Recommendations

- [28] I am pleased to report that Dr. Ford has implemented the following recommendations:
- a. Conduct an inventory of records for his clinic to ensure no further files are missing.
 - b. In any future office moves, conduct an inventory to ensure no records have been lost in transit or left behind.
 - c. Catalogue the records in question so that Dr. Ford and his colleagues can quickly identify the records that were in Vanalta's custody and respond to inquiries from patients who want to know whether they were affected by this incident.

Conclusion

- [29] This investigation has revealed the importance of keeping track of patient records, especially when moving offices. Under the HIA, custodians need to implement reasonable controls to protect the privacy of health information in their custody or control. As part of any office move, it is reasonable to expect custodians to conduct an inventory of records to determine whether all health information is accounted for.
- [30] I would like to thank Dr. Ford and Vanalta for their cooperation with my investigation.

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