

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDERS F2004-005 & H2004-001

March 16, 2006

### CALGARY HEALTH REGION

Review Numbers 2746 & H0210

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**Summary:** The Applicant requested his mental health records from three hospitals in the Calgary Health Region ("CHR"). During the course of the Inquiry by the Information and Privacy Commissioner, the CHR provided the Applicant with every page of his 549 pages of records but withheld the names, initials, signatures, position titles, professional designations and credentials about other individuals in the health, justice, law enforcement, corrections and legal systems.

The CHR processed the records under the *Health Information Act* ("HIA") and withheld the information about other individuals saying that sections 11(1)(a)(ii) and 11(1)(a)(iii) of HIA applied and the disclosure could reasonably be expected to threaten the mental or physical health or safety of other individuals and to pose a threat to public safety. Subsequently, the CHR said that only section 11(1)(a)(ii) of HIA applied and if the information withheld was not health information under HIA, then it was personal information under the *Freedom of Information and Protection of Privacy Act* ("FOIP"). The CHR said if the information fell under FOIP, the disclosure could reasonably be expected to threaten the safety or mental or physical health of anyone else under section 18(1)(a) of FOIP, or alternatively, would be an unreasonable invasion of a third party's personal privacy under section 17 of FOIP.

The Commissioner found that all of the information withheld was health information under HIA. The Commissioner considered the interface of HIA and FOIP including the deeming provisions and the HIA "carve out". The Commissioner found that the CHR had properly applied the harms test in section 11(1)(a)(ii) of HIA to the information withheld. Given the decision that the information withheld was health information under HIA and not personal information under

FOIP, the Commissioner found there was no information remaining to be considered under section 18(1)(a) or section 17 of FOIP.

**Statutes Cited:** *AB: Health Information Act*, R.S.A. 2000, c. H-5, ss. 1(1)(f)(iv), 1(1)(i), 1(1)(k), 1(1)(m), 1(1)(n), 1(1)(o), 1(1)(u), 11(1), 11(1)(a), 11(1)(a)(ii), 11(1)(a)(iii), 16(1), 16(3), 79, 80(2); *Health Information Regulation*, AR 70/2001, s. 3; *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(g)(v), 1(j)(ii), 1(n), 4(1)(u), 15.1(1), 15.1(2), 17, 18(1)(a), 71, 79; *Criminal Code*, R.S.C. 1985, c. C-46; *Interpretation Act*, R.S.A. 2000, c. I-8, s. 10.

**Authorities Cited:** Elmer A. Driedger, *Construction of Statutes*, 2<sup>nd</sup> ed., 1983, p. 87; Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4<sup>th</sup> ed., Butterworths, Markham Ontario, 2002, p. 1.

**Orders Cited:** AB Orders 96-004, 2001-010, H2002-001, H2003-001; BC Order 02-10.

**Cases Cited:** *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 (CanLII), paras 37 and 49; *Castillo v. Castillo*, 2005 SCC 83 (CanLII), paras 22-23; *R. v. C.D.*, 2005 SCC 78 (CanLII), para 27; *Canada (House of Commons) v. Vaid*, 2005 SCC 30 (CanLII), para 80; *Alberta Union of Provincial Employees v. Lethbridge Community College*, 2004 SCC 28 (CanLII), para 25; *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 10 (CanLII), para 8; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), paras 26-27; *R. v. Sharpe*, 2001 SCC 2 (CanLII), para 33; *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 SCC 837 (CanLII), paras 20-23; *L.M.B. v. I.J.B.*, 2005 AB CA 100 (CanLII), para 17; *Innovative Health Group Inc. v. Calgary Health Region*, 2005 ABQB 438 (CanLII), (paras 21-24, 33-34) (written reasons released June 16, 2005); *Innovative Health Group Inc. v. Calgary Health Region*, 2005 ABQB 266 (CanLII); *Innovative Health Group Inc. v. Calgary Health Region*, 2006 ABCA 7; *Canada Packers Inc. v. Canada (Minister of Agriculture)* [1989] 1 FC 47 (FCA) 59-60; *Canada (Information Commissioner) v. Canada (Prime Minister)* [1992] FCJ No. 1054 (Fed Ct. TD).

## I. BACKGROUND

[para 1] The Applicant requested his mental health records from three hospitals in the Calgary Health Region ("CHR" or "Custodian" or "Public Body"). The Applicant made three separate requests for access that were all dated November 26, 2002 and were respectively directed to the Foothills Hospital ("FHH"), the Rockyview General Hospital ("RGH") and the Peter Lougheed Centre of the Calgary General Hospital ("CGH").

[para 2] In each of his three requests, the Applicant asked for:

ALL FILE INFORMATIONS [sic] ON FILE INCLUDING

- (1) All MEMORANDUMS
- (2) All Psychological [sic] tests and scores (copies of tests)
- (3) All informations [sic] relayed to your hospital from any other sources regarding myself.
- (4) EVERYTHING.

I intend to bring CRIMINAL CHARGES regarding this matter and what has occurred. I have also requested my file before and not received my full file informations [sic]. DO NOT BLANK OUT ANYTHING.

[para 3] The request to the CGH was slightly different from the other two requests. In his request to the CGH the Applicant additionally requested, in the line that says "EVERYTHING", "EVERYTHING including my M.R.I. for examination elsewhere". This additional aspect of the request applies only to the CGH.

[para 4] In its letter of response to the Applicant dated February 6, 2003, the CHR said it was providing the information requested except for the information that it had severed pursuant to sections 11(1)(a)(ii) and (iii) of the *Health Information Act*, R.S.A. 2000, c. H-5 ("HIA") as disclosure of that information could reasonably be expected to threaten the mental or physical health or safety of other individuals and to pose a threat to public safety.

[para 5] Subsequently, the CHR said that only section 11(1)(a)(ii) of HIA applied and if any of the information withheld was not health information under HIA, then it was personal information under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ("FOIP"). The CHR said if the information fell under FOIP, the disclosure could reasonably be expected to threaten the safety or mental or physical health of anyone else under section 18(1)(a) of FOIP, or alternatively, would be an unreasonable invasion of a third party's personal privacy under section 17 of FOIP.

[para 6] Mediation was unsuccessful and the HIA and FOIP matters were set down together for written inquiry. During the course of the Inquiry, the CHR disclosed all of the substantive information about the Applicant's health to the Applicant. The only information that remained withheld was the information about other individuals. The CHR provided the Applicant with every page of his 549 pages of records.

[para 7] The Applicant and the CHR each provided written initial and rebuttal submissions at the Inquiry. The CHR's initial submission included an affidavit from a psychiatrist and a separate 'in camera' submission of the unsevered records. All of the submissions were exchanged between the parties with the exception of the 'in camera' submission that contained the information at issue.

[para 8] In its initial submission, the CHR said it had severed parts of pages 500 to 549 of the records before providing a copy to the Applicant. However, at the Inquiry it was not clear what information had been severed from those pages. Therefore, during the Inquiry, I wrote to the CHR for clarification about the information that had been severed on those pages. The CHR replied, saying that all of the information on pages 500 to 549 of the records had been provided to the Applicant.

## II. RECORDS AT ISSUE

[para 9] In its 'in camera' submission, the CHR provided the unsevered records in two volumes, which it numbered from pages one to 549, with the severed information highlighted. In its initial written submission, the CHR says that it withheld "all names

and other identifiers that could reasonably be expected to reveal the identity of any person (other than the Applicant)".

[para 10] During the course of the Inquiry, the CHR provided the Applicant with additional information including most of the information that had previously been withheld in pages one to nine of the records. The CHR provided the Applicant with all of the information in pages 500 to 549 of the records. Therefore, the information that remains at issue is located in pages one to 499 of the records.

### **III. ISSUES**

[para 11] The following three issues are before me in this Inquiry:

A. Did the CHR properly apply section 11(1)(a)(ii) of HIA (threat to mental or physical health or safety of another individual) to the records?

B. Did the CHR properly apply section 18(1)(a) of FOIP (threat to anyone else's safety or mental or physical health) to the records?

C. Does section 17 of FOIP (unreasonable invasion of a third party's personal privacy) apply to the records?

[para 12] When a custodian or a public body refuses to provide an applicant with access to all or part of a record, the custodian or public body has the burden of proof to show that the applicant has no right of access to the record. In other words, the custodian or public body has the onus to show why the record or the part of the record should not be released (HIA section 79, FOIP section 71). The exception is section 17 of FOIP, in which an applicant has the burden.

### **IV. PRELIMINARY PROCEDURAL ISSUES**

#### **A. Further Submissions**

[para 13] After the Inquiry was completed, the Applicant continued to send me further submissions. The first package was returned to the Applicant with a letter from my Office explaining that the Inquiry had been concluded and that unless I specifically requested further information, I was unable to consider further submissions. However, the Applicant continued to send me additional submissions. As I will not consider further submissions when I have informed an applicant of that decision, I have not considered the Applicant's submissions that were provided after the conclusion of the Inquiry.

## **B. Request for Meeting**

[para 14] The Applicant requested a face-to-face meeting with me and “all parties” who have been involved in compiling records or information about him. The Applicant asked me to convene such a meeting to review all of the records and information held by the various entities he is involved with, in order to address a variety of issues and to determine whether all of the records and information he is requesting should be disclosed to him.

[para 15] I carefully considered the Applicant’s request and elected to hold a written inquiry to address the above-described issues. Additionally, as I have already mentioned, with one exception, it is the custodian/public body that has the burden of proof to justify its refusal to provide the information at issue to the Applicant. Furthermore, I do not have jurisdiction over all the other issues the Applicant raises or over all of the other entities involved with the Applicant.

## **C. Late Raising of Issue**

[para 16] In his written initial submission, the Applicant says that his records contain inaccuracies and errors and should be corrected and amended. In its written rebuttal submission, the CHR objected to the late raising of this issue during the course of the Inquiry. The CHR said the Applicant has not made a request for correction or amendment or gone through the process set out in sections 13 and 14 of HIA.

[para 17] I accept the submission of the CHR that the issues of correction or amendment are not before me because the Applicant has not made a correction request to the CHR. Therefore, I have no jurisdiction to consider those issues at the Inquiry. There is nothing to preclude the Applicant from proceeding with a request for correction and amendment after the conclusion of the Inquiry.

## **V. DISCUSSION OF THE ISSUES**

### **ISSUE A: Did the CHR properly apply section 11(1)(a)(ii) of HIA (threat to mental or physical health or safety of another individual) to the records?**

[para 18] The CHR refused to provide the Applicant with access to the information at issue, saying that section 11(1)(a)(ii) of HIA applied.

#### **A. General**

[para 19] Section 11(1)(a)(ii) of HIA says:

11(1) A custodian may refuse to disclose health information to an applicant

(a) if the disclosure could reasonably be expected

.....

(ii) to threaten the mental or physical health or safety of another individual.

[para 20] In order for section 11(1)(a)(ii) of HIA to apply, the following two criteria must be satisfied:

- The information at issue must be health information; and
- The disclosure of the health information to the applicant could reasonably be expected to threaten the mental or physical health or safety of another individual.

## **B. Type of Information**

[para 21] I must first consider whether the information that the CHR withheld from the records is health information.

### **1. Argument and Evidence**

[para 22] The Applicant did not express a view about the type of information at issue. Similarly, in its submissions, the CHR did not explicitly address the type of information at issue. However, the CHR's response to the Applicant said information was being severed under section 11(1)(a) of HIA, inferring that in CHR's view the information withheld was health information. Subsequently in its submissions at the Inquiry, the CHR says the information withheld is either health information under HIA or alternatively is personal information under FOIP.

[para 23] In both its written initial and rebuttal submissions, the CHR says that it withheld the information from the records based on the expert medical opinion of a psychiatrist that "states unequivocally that all names of any personas [sic] contained in the Applicant's health record (including initials, signatures or any references that could lead to the identification of the individuals) are to be severed out of the records in question before they are disclosed to the Applicant".

### **2. Description**

#### **a. Pages One to Nine of the Records**

[para 24] All of the information in pages one to nine of the records consists of notations made by CHR hospital staff. Two types of information were severed in pages one to nine of the records. The first type of information withheld consists of the names, initials, signatures, position titles, professional designations and credentials of CHR staff.

[para 25] The second type of information withheld consists of two notations made on the dates of February 24, 1986 and on May 7, 1993. One of the notations pertained to when a member of the hospital staff was to be away on vacation and described the arrangements that were in place to deal with the Applicant while that person was away. The other notation pertained to a staff member's dealings with the Applicant in the context of responding to his previous access requests and included the author's comments about the Applicant.

[para 26] I have carefully reviewed pages one to nine of the records. I am satisfied that the information that has been severed from those pages is the names, initials, signatures, position titles, professional designations and credentials of other individuals. All of the information severed either pertains to the individuals who prepared the records or to other individuals mentioned in the records. All of this information pertains to individuals other than the Applicant. However, the Applicant's information is intertwined with other individuals' information.

#### **b. Pages 10 to 499 of the Records**

[para 27] Pages 10 to 499 of the records relate to CHR services, requests for CHR services and the corresponding background information that was provided to the CHR by other individuals in the health, justice, law enforcement, corrections and legal systems. These pages include internal records that were prepared by CHR staff as well as external records that were collected by the CHR from other health facilities and other health professionals located in Alberta, British Columbia and Saskatchewan. These pages of the records date from 1966 to 1993.

[para 28] Some examples of the types of records that were prepared by the CHR, by other health facilities and by other health professionals are as follows:

- Forensic Assessments and Outpatient Services Progress Notes
- Forensic Assessments and Outpatient Services Consultation Notes
- Form 1, Admission Certificates, Mental Health Act
- Clinical Notes
- Progress Notes
- General Notes
- Initial Assessments
- Information about Specific Events
- Histories and Physical Examinations
- Patient Progress Records
- Patient Data Bases
- Forensic Nursing Histories
- Reports of Psychiatric Assessments

[para 29] Some examples of the types of records that were *not* prepared by the CHR, by other health facilities or by other health professionals are as follows:

- Requests for Assessment of Fitness to Stand Trial

- Requests for Pre-Trial Assessment under Warrant of Remand under the Criminal Code for Assessment of Fitness to Stand Trial (*Criminal Code*, R.S.C. 1985, c. C-46 (“Criminal Code”))
- Requests for Pre-Trial Assessment on Re-Remand and under a Warrant of Remand under the Criminal Code for Assessment of Fitness to Stand Trial
- Remands in Custody
- Court Transcripts
- Court Orders
- Offender Profiles
- Assessment Orders
- Letter from Crown Prosecutor (request for a medical opinion about whether Applicant should be able to possess firearms)
- Letters from Lawyers
- Letters from the Alberta Crimes Compensation Board
- Permanent Restraining Order (prohibits the Applicant from coming onto the premises or communicating with CGH employees)

[para 30] I have carefully reviewed pages 10 to 499 of the records. I am satisfied that the information that has been severed from those pages is the names, initials, signatures, position titles, professional designations and credentials of other individuals. The information severed either pertains to the individuals who prepared the records or to the individuals who were mentioned in the records. All of this information pertains to individuals other than the Applicant.

### **3. Application**

[para 31] HIA applies to “health information”. “Health information” is defined in HIA as information that falls within any of the three categories of health information that are registration information, health services provider information and diagnostic, treatment and care information (HIA section 1(1)(k)).

#### **a. Registration Information (“RI”)**

[para 32] RI is defined in HIA as information relating to an individual that is demographic information including the individual’s personal health number, location information, telecommunications information, residency information, health service eligibility information and billing information (HIA s. 1(1)(u); *HIA Regulation*, AR 70/2001 (“HIA Reg”), section 3). I find that although there is RI in the information that has already been provided to the Applicant, there is no RI in the information that has been withheld.

#### **b. Health Services Provider Information (“HSPI”)**

[para 33] HSPI is defined in HIA to mean any of the following types of information relating to a health services provider (“HSP”): name; gender; type of health services



provider; education completed including entry level competencies, educational degrees, diplomas and certificates completed; continued competencies including any specialty or advanced training acquired; profession; job classification; employment status; employer and municipality where the HSP's practice is located (section 1(1)(o); refer to Appendix for full text). A HSP is an individual that provides health services (HIA section 1(1)(n)).

[para 34] A "health service" is a service that is provided to an individual that is directly or indirectly and fully or partially paid for by the Department of Alberta Health and Wellness ("Department") for purposes that include protecting, promoting or maintaining physical and mental health, preventing illness, diagnosing and treating illness and caring for the health needs of the ill, disabled or injured (HIA section 1(1)(m)).

[para 35] Much of the information withheld in pages one to 499 of the records is the names, initials, signatures, position titles, professional designations, credentials and other identifying information about CHR hospital staff. Some of the information describes the type of health services provider as well as the individual's profession. For example, the information says whether the individual was a health record administrator, psychologist, registered nurse ("RN"), registered psychiatric nurse ("RPN"), social worker ("SW") or physician ("Dr.')

[para 36] The information withheld includes similar types of information about CHR staff who provided services that were integral to the provision of diagnostic, treatment and care services. Names and titles are severed from CHR covering correspondence that disclosed the Applicant's hospital records to external health professionals and health facilities.

[para 37] Similarly, the names, signatures and professional designations of CHR staff were severed in a request that was addressed to an individual at the CHR for the Applicant's health records in a "Request for Patient Information" form. Similar information was severed from an authorization that was received at the CHR that requested psychiatric assessment results to be sent to "Forensic Assessment & Community Services".

[para 38] In a record marked "RCMP Prisoner Record", the signature and professional designation of the CHR staff member who took over the Applicant's care is severed. The name of the individual to whom the letter was addressed is severed in a letter to the CHR from the Applicant's lawyer, who was representing the Applicant in a Workers' Compensation Board matter and an appeal of a criminal mischief charge.

[para 39] In a letter addressed to the Provincial Court of Alberta from an individual at the CHR the name, signature and credentials of the sender were severed. In that letter, the sender referred to a medical examination of the Applicant that was conducted in the Remand Center and a recommendation that the Applicant be admitted to a Forensic Unit under a 30-day Warrant of Remand.

[para 40] The records include a covering letter from an individual at the CHR who was requesting past medical history records from a health facility in Saskatchewan. In that letter the name of the requestor is severed. Similar information about a CHR staff member is severed in a letter that was received by the CHR from another health facility in Saskatchewan.

[para 41] The name and professional designation of a member of the CHR staff that is written in a "Progress Note" is severed. The notation describes a lengthy meeting of the Applicant with an individual at the CGH to discuss the information in his hospital chart. Another record has severed the name and position description of the CHR staff member who met with the Applicant.

[para 42] In my view, signatures and initials that refer to the names of CHR staff are merely alternative ways of describing a HSP's name. Therefore, that type of information is a HSP's name and falls within the definition of HSPI. I find that the above described information about CHR hospital staff on pages one to 499 of the records that consists of names, initials, signatures, position titles, professional designations and credentials falls within the definition of HSPI and therefore is health information under HIA.

[para 43] I will deal with similar information about other individuals below. As I have determined that some of the information that was withheld in pages one to 499 of the records falls with the definition of HSPI, I do not find it necessary to determine if that information is also DTCI.

### **c. Diagnostic, Treatment and Care Information ("DTCI")**

[para 44] DTCI is explicitly defined to include "other information", rather than "other health information". In that respect, the definition of DTCI is broader than the other two categories of health information under HIA. In particular, DTCI includes information about the physical and mental health of an individual and the health services 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. (HIA section 1(1)(i))

[para 45] In considering whether information is DTCI, I must interpret what is meant by "and includes any other information about an individual that is collected when a health service is provided to the individual".

### **Modern Principle**

[para 46] The "modern principle" is the preferred approach to the interpretation of legislation. The "modern principle" was reiterated in the most recent edition of the text

(Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4<sup>th</sup> ed., Butterworths, Markham Ontario, 2002) (“*Driedger*”) at page 1. This approach was recently confirmed by the Supreme Court of Canada in the decision written by Justice Bastarache in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 (CanLII) (“*ATCO Gas*”).

[para 47] In *ATCO Gas*, Bastarache, J., confirmed that the following principle as set out by Elmer A. Driedger in *Construction of Statutes*, 2<sup>nd</sup> ed., 1983, is the approach to be utilized in Canada for statutory interpretation:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. [p. 87] (para 37)

[para 48] The “modern principle” (referred to interchangeably as the “modern approach” and the “modern rule”) has been repeatedly affirmed by the Supreme Court of Canada. For example, see *Castillo v. Castillo*, 2005 SCC 83 (CanLII), paras 22-23; *R. v. C.D.*, 2005 SCC 78 (CanLII), para 27; *Canada (House of Commons) v. Vaid*, 2005 SCC 30 (CanLII), para 80; *Alberta Union of Provincial Employees v. Lethbridge Community College*, 2004 SCC 28 (CanLII), para 25; *United Taxi Drivers’ Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 10 (CanLII), para 8; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), paras 26-27 (“*Bell Express Vu*”); *R. v. Sharpe*, 2001 SCC 2 (CanLII), para 33 and *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 SCC 837 (CanLII), paras 20-23.

[para 49] Justice Iacobucci, who delivered the judgement of the Supreme Court of Canada in the *Bell Express Vu* case, stated:

The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article, “Statute Interpretation in a Nutshell” (1938), 16 *Can. Bar Rev.* 1, at p. 6, “words, like people, take their colour from their surroundings”. This being the case, where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive. (para 27)

In *ATCO Gas*, Bastarache, J., most recently cited the *Bell Express Vu* case and reiterated the importance of examining the “context that colours the words” when interpreting legislation (*ATCO Gas*, para 49).

[para 50] In Alberta, the “modern principle” to statutory interpretation has recently been affirmed by the Alberta Court of Appeal in *L.M.B. v. I.J.B.*, 2005 AB CA (CanLII) 100, para 17. This common law approach is reinforced by the interpretation acts in the various jurisdictions. The Supreme Court of Canada cases on appeal from the Alberta Court of Appeal (e.g., *ATCO Gas*, *AUPE*, *United Taxi*) say that the modern principle in *Driedger* is to be applied in conjunction with the *Interpretation Act*, R.S.A. 2000, c. I-8 (“*Interpretation Act*”).

[para 51] Section 10 of the *Interpretation Act* says:

10. An enactment shall be construed as being remedial, and shall be given the fair large and liberal construction and interpretation that best ensures the attainment of its objects.

[para 52] Following the “modern principle” to interpretation of legislation, I must read the words in HIA “in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament” (*Driedger*, p. 1). I must read the words of the Act as part of the “entire context”, which includes the evolving legal norms found in legislation (*Ibid.*, p. 2). I must give the words a “fair large and liberal construction” (*Interpretation Act*, s. 10) In regard to the context, I must consider the “surroundings that colour the words” (*Bell Express Vu*, para 27).

### **Balance of Pages One to Nine of the Records**

[para 53] The information that remains to be considered under DTIC in pages one to nine of the records consists of the two notations made by CHR staff. As previously mentioned, one notation was about a HSP’s vacation and the interim arrangements that were in place at CHR to respond to the Applicant when that individual was away. The other notation consisted of comments about an individual’s reaction to the behavior of the Applicant. In its submissions, the CHR refers to this information as “references that could lead to the identification of the individuals”.

[para 54] Do these two notations fall within the definition of DTIC under HIA? DTIC includes “any other information about an individual that is collected when a health service is provided to the individual” (HIA section 1(1)(i)). The information withheld from those pages is not the information typically found in access request forms that an applicant now uses under HIA or FOIP to make an access request for their own information.

[para 55] Pages one to nine of the records are a series of notations made by CHR staff about their dealings with the Applicant as a forensic mental health patient. The notations were made in conjunction with the Applicant’s ongoing treatment and care and pertained to ongoing discussions about the content of the records and access to the information as a part of the provision of health services to the Applicant. These unresolved issues between the parties are mentioned throughout the records.

[para 56] At the time the records were created, it appears that the Applicant’s requests were not only extensively intertwined with his treatment and care, but were not viewed as anything other than as a part of the provision of health services to the Applicant. The records include a number of appointments with the Applicant’s physician and discussions with CHR staff to discuss the information in the hospital records. Although most of the information in those pages has been disclosed, the CHR has withheld the information about individuals other than the Applicant.

[para 57] These notations were made in the context of providing the Applicant with mental health services, which were provided in conjunction with ongoing discussions and communications about the Applicant's previous access requests. After considering the principles of statutory construction, the records and the arguments, in my view the information in the two notations at issue is any "other information about an individual that is collected when a health service is provided to the individual". This is DTIC under section 1(1)(i) of HIA. Consequently, I find that the balance of the information at issue in pages one to nine of the records falls within the definition of health information in HIA.

### **Balance of Pages 10 to 499 of the Records**

[para 58] The information that remains to be considered under DTIC in pages 10 to 499 of the records consists of the names, initials, signatures, position titles, professional designations and credentials about other individuals who were not CHR hospital staff. Some of the other individuals were out-of-province health professionals, whereas other individuals were not health professionals at all. Although neither of these categories of individuals were HSPs under HIA, does their information fall within the definition of DTIC?

[para 59] The records at issue are forensic psychiatric records that include information provided to the CHR from external sources in conjunction with the provision of mental health services to the Applicant. In particular, the remaining information at issue is the names, initials, signatures, position titles, professional designations, credentials and other information about other individuals in the health, justice, law enforcement, corrections and legal systems. The records from external sources include the requests for health services and the background information that enabled the CHR to provide the health services to the Applicant.

[para 60] Some of the remaining information pertains to other individuals who were out-of-province health professionals. For example, in the covering communication from the CHR for the release of health records to a mental health team and the release of health records to a Health Department, the names, signatures and professional designations of British Columbia health facility staff were severed.

[para 61] Similarly, in a "Report of Examination" that was sent to the CHR and attached to a covering letter from a health centre, the name of the individual who wrote the report is severed. The names of the individuals who prepared a "Conference Report" and a "Psychological Report" at a hospital in Saskatchewan are severed. In the covering letter as well as in a similar letter, the names and titles of individuals at a health facility in Saskatchewan are severed. This information was collected when a health service was being provided to an individual.

[para 62] All of the remaining information pertains to other individuals in the justice, law enforcement, corrections and legal system. Many of the documents in pages 10 to 499 of the records were created as a result of court orders and other formal requests

to the CHR from individuals in the criminal justice, corrections, law enforcement and legal systems. There were requests to the CHR for remands for observation, for assessments for fitness to stand trial and for medical opinions. These records indicate the reasons for the CHR hospital admissions and hospital services.

[para 63] As an example, information about other individuals was severed from records that were prepared by the RCMP and from records of Medical Information Transfers (“Transfers”), which were created by the Correctional Services Division. The CHR received the Transfers when Correctional Services transferred the care of the Applicant to the CHR. Therefore, this information was provided to the CHR when a health service was being provided to the Applicant.

[para 64] The records include documents from the Solicitor General’s Department such as “Offender Profiles”, “Medical Information Requests” and “Medical Information Transfers”. There is an Information in regard to an allegation that the Applicant obstructed and assaulted a peace officer. Another Information relates to an allegation that the Applicant was involved in a child abduction and breached a custody order. In these and similar documents, the names, initials and signatures of peace officers and Justices of the Peace were withheld.

[para 65] The signature and name of the individual at Alberta Justice who sent the letter, the names of all the Crown Prosecutors listed on the letterhead and the name of the individual to whom a letter is addressed at CHR have all been severed from a letter. In that letter, a Crown Prosecutor requested the views of a CHR staff member for purposes of providing evidence at a court hearing where the Crown Prosecutor stated his intention to oppose the Applicant’s application for a Firearms Acquisition Certificate (“FAC”). These records were information that was collected when a health service was being provided to the Applicant.

[para 66] The records include Queen’s Bench and Provincial Court documents such as warrants, remands and court orders for the Applicant to be detained in the custody of the Forensic Unit at the CGH. There are court transcripts of evidence given in court proceedings involving the Applicant where the names of the individuals giving evidence are severed. Some of these court proceedings resulted in the Applicant being remanded back into the custody of CHR facilities.

[para 67] The signature and the name of the Clerk of the Court who filed a Court Order, the name of the Justice who issued a Court Order and the name of the individual who provided an Affidavit in support of a Court Order, have been severed from a Permanent Restraining Order that precluded the Applicant from having any contact with CHR staff members. The name and signature of the lawyer at a law firm who was representing the Applicant, as well as all of the lawyers on the law firm’s letterhead were severed from a letter.

[para 68] There is a letter to the Medical Records Department of the CGH from the Alberta Crimes Compensation Board requesting information relevant to the Applicant’s claim for compensation for personal injuries sustained during a crime. The name of the

individual who wrote the letter is severed. An earlier letter to the FHH from the Alberta Crimes Compensation Board had similar information severed.

[para 69] A letter was addressed to the FHH from the College of Physicians and Surgeons of Alberta (“CPSA”), which requested records in regard to a complaint that the Applicant had made about the medical care he had received at that hospital. The name, signature and position description of the individual who sent the letter from the CPSA was severed. This information was collected by the CHR when a health service was being provided to the Applicant.

[para 70] DTIC includes “any other information about an individual that is collected when a health service is provided to the individual” (HIA section 1(1)(i)). The Applicant moved back and forth between the justice, corrections, legal and health systems. All of the above described information, including the information at issue, became part of the hospital records for the sole purpose of providing health services to the Applicant.

[para 71] The records that pertained to the requested services accompanied the Applicant into the health system. Information prepared by non-custodians may not only be relevant but may well be essential to enable custodians and health services providers to provide safe and appropriate health services. Custodians must obtain sufficient information to provide the health services that are required by individuals, such as psychiatric assessments.

[para 72] For example, the court order that remanded the Applicant for assessment for fitness to stand trial accompanied him to the CHR in order for that custodian to provide the health services. The letter from the Crown Prosecutor requesting a medical opinion about possessing firearms formed the basis for the CHR to provide a subsequent medical opinion. This information provided the basis for the provision of health services to the Applicant by the CHR.

[para 73] These kinds of records formed the basis for and the *raison d’être* for the provision of subsequent health services to the Applicant. In my view, the balance of the information at issue in the records is other information about an individual that was collected when a health service was provided to the Applicant. I find that this information falls within the definition of DTIC in section 1(1)(i) of HIA. Therefore, this is health information.

#### **4. Conclusion**

[para 74] For all of the above reasons, I find that all of the information that was severed from the records is health information. This includes the information that pertained to previous access requests, the two notations and the names, initials, signatures, position titles, professional designations, credentials and other information about other individuals in the health, justice, law enforcement, corrections and legal systems.

[para 75] This approach is consistent with the view that has been taken by the courts where health information under HIA has been broadly interpreted (see for example, Justice Park in *Innovative Health Group Inc. v. Calgary Health Region*, 2005 ABQB 438 (CanLII) (ABQB) (written reasons released June 16, 2005; appealed, but on different issues: on August 12, 2005, the Alberta Court of Appeal granted a stay of the Order (*Innovative Health Group Inc. v. Calgary Health Region*, 2005 ABQB 266 (CanLII) (ABCA)). On January 17, 2006, the Alberta Court of Appeal amended the original Sealing Order (*Innovative Health Group Inc. v. Calgary Health Region*, 2006 ABCA 7).

[para 76] In *Innovative*, Justice Park described the health records that pertained to the services that were partially paid for by the CHR custodian as “hybrid” health information files. Park, J., held that it was not just the part of the record that related to the services that were fully paid for by a custodian but additionally the part of the record that related to services that were partially paid for by a custodian, which are subject to HIA (paras 21-24, 33-34).

## 5. Deeming Provisions

[para 77] The Inquiry involves the legislative interface of HIA and FOIP. Initially, in its response to the Applicant, the CHR said all of the information at issue falls under HIA. However, the CHR later said that the information at issue is either health information under HIA or alternatively is personal information under FOIP. Therefore, I will consider the application of the deeming provisions and the HIA carve out on the information at issue.

[para 78] Both HIA and FOIP have provisions that “deem” an access request to have been made under the other piece of legislation. The deeming provision in HIA says:

16(1) If a written request is made under section 8(1) for access to a record that contains information to which the *Freedom of Information and Protection of Privacy Act* applies, the part of the request that relates to that information is deemed to be a request under section 7(1) of the *Freedom of Information and Protection of Privacy Act* and that Act applies to that part of the request as if it had been made under section 7(1) of that Act.

.....

16(3) This section does not apply if the custodian that receives the request is not a public body as defined in the *Freedom of Information and Protection of Privacy Act*.

[para 79] The parallel deeming provision in FOIP says:

15.1(1) If a request is made under section 7(1) for access to a record that contains information to which the *Health Information Act* applies, the part of the request that relates to that information is deemed to be a request under section 8(1) of the *Health Information Act* and that Act applies as if the request had been made under section 8(1) of that Act.



15.1(2) Subsection (1) does not apply if the public body that receives the request is not a custodian as defined in the *Health Information Act*.

[para 80] The deeming provisions only apply where the entity with custody and control over the information requested is both a custodian and a public body. It is not in dispute that the CHR is both a “custodian” under HIA (section 1(1)(f)(iv)) and a “public body” under FOIP (sections 1(g)(v), 1(j)(ii)).

[para 81] The effect of these mirror provisions is that a custodian/public body is not limited to considering an access request under only one piece of legislation; that is under either HIA or FOIP. A custodian/public body can respond to an access request under the applicable piece of legislation regardless of which piece of legislation an applicant has used to make the access request. The Applicant in this matter did not specify under which statute he was making the access request; he merely asked the CHR for his records.

[para 82] The practical effect of the deeming provisions is that applicants and custodians/public bodies do not need to start the access request process all over again if it is eventually determined that all or part of the information in the records requested falls under the other privacy statute. The deeming provisions streamline access requests for applicants as well as for custodians/public bodies. The deeming provisions in HIA and FOIP create a logical conduit between the two provincial privacy regimes that apply in the public sector.

[para 83] Applicants do not have to know the nuances of the application of HIA and FOIP in order to make a successful access request. Obviously, an applicant may not be able to predict which statute applies to records/information they do not yet have. Indeed the custodian/public body may not even know the appropriate statute until a particular access request is made, the responsive information is identified and the records have been thoroughly analyzed.

[para 84] I find that the deeming provisions apply to the CHR as it is both a custodian under HIA and a public body under FOIP. This means that the CHR is free to respond to the Applicant’s requests under either HIA or FOIP, regardless of which statute the Applicant’s request was made under. However, the CHR must respond under the statute which applies to the information at issue.

## **6. HIA Carve Out**

[para 85] FOIP applies to “personal information” whereas HIA applies to “health information”. Could these definitions apply to the same information? If so, how is the potential overlap in the scope of the legislation addressed in these two privacy statutes? HIA defines “health information” as any or all of the three categories of health information that are: diagnostic, treatment and care information, health services provider information and registration information (HIA, section 1(1)(k)). These categories have already been discussed.

[para 86] FOIP defines “personal information” as recorded information about an identifiable individual that includes the individual’s name or contact information; age, sex, marital status or family status; an identifying number, symbol or particular assigned to the individual; biometric information, blood type, genetic information or inheritable characteristics; information about health and health care history including information about a physical or mental disability; information about educational, financial or employment or criminal history; anyone else’s opinions about the individual and the individual’s personal views or opinions (FOIP, section 1(n)).

[para 87] These definitions have some common ground as they both pertain to health information and identifying information about an individual. It is obvious that these definitions, on their face, could both apply to the same information including the information at issue. The information caught in the apparent overlap in these definitions is addressed in the “HIA carve out” in FOIP.

[para 88] As discussed above, the CHR is a hybrid or dual entity. The CHR is both a public body under FOIP and a custodian under HIA. Section 4(1)(u) of FOIP says:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:  
.....  
(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 89] The effect of the “HIA carve out” is that in situations where information could fall under either HIA or FOIP, FOIP does not apply where the information is properly categorized as health information as that term is defined in HIA. The effect of the “HIA carve out” is that FOIP ends where HIA begins.

[para 90] I have determined that all of the information at issue in pages one to 499 of the records is health information. This means that all of the information at issue falls within the HIA carve out and is thereby carved out of FOIP. Therefore, FOIP does not apply to the information. Consequently, I will now consider the application of section 11(1)(a)(ii) of HIA to that information, which is health information.

### **C. HIA Section 11(1)(a)(ii)**

[para 91] The issue left to consider under section 11(1)(a)(ii) of HIA is whether disclosure of the health information to the Applicant could reasonably be expected to threaten the mental or physical health or safety of another individual.

#### **1. Argument and Evidence**

[para 92] In his written submissions, the Applicant has generally denied that disclosure of the information could reasonably be expected to threaten the mental or

physical health or safety of another individual. The Applicant made the following statement in his written rebuttal submission:

There is no proof of any danger to anyone in the CHR brief. There is no proof of anything. I submit the submissions are groundless and a “smoke screen”, to keep from releasing the file informations [sic] to truly seek. As my file informations [sic] show, I already have the names of many people involved and no harm or even threat has occurred over many years already.

[para 93] In its initial written submission, the CHR says it has properly severed the records and properly withheld the information from the Applicant under the exceptions to access under HIA. In particular, the CHR says it is refusing to provide the Applicant with access to the information under the authority of section 11(1)(a)(ii) of HIA, as disclosure to the Applicant could reasonably be expected to threaten the mental or physical health or safety of another individual.

[para 94] In its initial submission, the CHR said the evidence provided in the psychiatrist’s affidavit in his “expert medical opinion” is sufficient evidence and provides the authority to refuse to disclose the severed information under section 11(1)(a)(ii) of HIA. The CHR says it has properly withheld the information from the Applicant on the basis of the medical opinion of a psychiatrist.

[para 95] In particular, the CHR says:

The CHR received an expert medical opinion that states unequivocally that all names of any personas [sic] contained in the Applicant’s health record (including initials, signatures or any references that could lead to the identification of the individuals) are to be severed out of the records in question before they are disclosed to the Applicant. ...

The expert medical opinion further states that there is a reasonable expectation of harm if the records are not severed, that this harm would be serious or even grave, and that there is a direct causal connection between disclosure and harm.

Based on this expert medical opinion, the CHR severed all names and other identifiers that could reasonably be expected to reveal the identity of any person (other than the Applicant). It is submitted by the CHR that the facts of the present case fit squarely within the test set forth by the Commissioner in Order H2002-001.

[para 96] The CHR provided the affidavit of a psychiatrist in support of its position that the test in section 11(1)(a)(ii) of HIA is met in this case. In his affidavit, the psychiatrist states:

3. I have reviewed the health record of the Applicant and have had discussions regarding this case with my forensic psychiatry team and with health records staff at the Calgary Health Region. Based on the above, it is my medical opinion that all names of any persons contained in the Applicant’s health record, including initials, signatures and any reference that could lead to the identification of the individual in question should be removed from the said record before it is released to the Applicant.

4. Furthermore, it is also my medical opinion that the severing of the record described above is necessary as disclosure of the identity of persons in the Applicant's health record would threaten the physical health and safety of those individuals and so pose a threat to public safety.

5. Based on my review, it is my medical opinion that there is clearly a reasonable expectation of harm if the severing described in paragraph 3 were not performed prior to disclosure of the record. Furthermore, it is my opinion that the harm referenced in the preceding paragraph would be quite serious (and even grave) and that there is a clear and direct connection between the disclosure and the anticipated harm.

[para 97] In its written submission, the CHR said that the psychiatrist's affidavit was "intentionally vague" so the affidavit could be exchanged between the parties to this Inquiry. The CHR did not provide a more detailed affidavit 'in camera'. The CHR maintained that the affidavit was a sufficient basis and provided sufficient evidence to justify its refusal to disclose the information to the Applicant.

[para 98] In his initial submission, the Applicant says that the individuals whose identifying information he requests have forfeited their right to privacy because they gave information or opinions about him to third parties who use the information to assess and form opinions about him. In reply, the CHR said there is "no basis in law" for the Applicant's statement and that all third parties whose identifying information had been severed from the Applicant's records have forfeited their privacy. In my view, the right to privacy is governed by HIA and all individuals including third parties have the privacy rights as set out in the Act; no more, no less.

[para 99] The Applicant provided me with extensive law enforcement and corrections records in the attachments to his written initial and rebuttal submissions. I have carefully reviewed the information that the Applicant has provided in these attachments. For the most part, the information pertains to the Applicant's dealings with the police and the justice system such as situations where criminal charges have been laid but not sustained.

[para 100] I appreciate the Applicant's efforts to assist me by providing all of the information I need to decide the issues before me at this Inquiry. However, I find that the information in the attachments is not relevant and therefore does not assist me in addressing the HIA and FOIP issues that are before me at this Inquiry.

## **2. Harms Test**

[para 101] HIA creates the general rule of a right of access for individuals to their own health information, although this right is not absolute. The exceptions to access are to be applied in a limited and specific manner. As the context of this refusal is a personal safety exception, the interests at stake are serious and compelling. However, where the custodian refuses access, the custodian bears the burden of proof to show why access should not be given.

[para 102] Section 11(1) is a discretionary (“may”) exception to the general right of access to health information that exists under section 7 of HIA. When a discretionary section applies, a custodian has the authority to refuse access but must properly exercise its discretion. Under subsection 11(1)(a)(ii) of HIA, the CHR can refuse to disclose health information to the Applicant if the disclosure could reasonably be expected to “threaten the mental or physical health or safety of another individual”. Section 11(1)(a) of HIA sets out the personal safety exceptions to access, which are interpreted using the harms test.

[para 103] The harms test was developed under FOIP in Alberta from principles established at common law, such as by the Federal Court of Appeal in *Canada Packers Inc. v. Canada (Minister of Agriculture)* [1989] 1 FC 47 (FCA) 59-60, and by the Federal Court Trial Division in the *Canada (Information Commissioner) v. Canada (Prime Minister)* [1992] FCJ No. 1054 (Fed Ct. TD) case. I have previously interpreted section 11(1)(a)(ii) of HIA in Orders H2002-001 and H2003-001. In both of those Orders I adopted the FOIP harms test as the appropriate standard of proof for harm under HIA in Alberta.

[para 104] The harms test criteria that I have previously adopted in Order H2002-001 as the appropriate test for harm under section 11(1)(a)(ii) of HIA, is as follows:

- there must be a reasonable expectation of probable harm;
- the harm must constitute damage or detriment, and not mere inconvenience; and
- there must be a causal connection between disclosure and the anticipated harm (Order H2002-001, para 18).

[para 105] Also in Order H2002-001, I adopted from FOIP Order 2001-010 the requirement for evidence of a direct and specific threat to a person and a specific harm flowing from the disclosure of the information. Consistent with FOIP Order 96-004, I also adopted the requirement for detailed evidence to show that the threat and disclosure of the information are connected and that there is a probability that the threat will occur if the information is disclosed.

[para 106] In Order H2002-001, the applicant requested his entire patient record from the Alberta Mental Health Board. I ordered disclosure of most of the applicant’s mental health records, but upheld the custodian’s decision to withhold some of the information under section 11(1)(a)(ii) of HIA that pertained to staff names, signatures and initials. I found that the custodian did not discharge its burden of proof for most of the information withheld.

[para 107] In Order H2002-001, the custodian provided evidence in the form of a written ‘in camera’ affidavit from a psychiatrist as well as the sworn oral ‘in camera’ testimony of one psychiatrist; a hospital staff member provided oral testimony at the oral inquiry. The applicant provided sworn oral testimony on his own behalf. The applicant’s family physician and the applicant’s wife provided sworn oral testimony on behalf of the applicant at the oral inquiry.

[para 108] In Order H2003-001, the applicant requested portions of her mental health records including history and nursing notes from Alberta Hospital Edmonton. The custodian refused to disclose any of the information in the records pursuant to section 11(1)(a)(ii) of HIA. In that Order, I again adopted the harms test and the sufficiency of evidence that I have previously required in Order H2002-001.

[para 109] In H2003-001, the applicant had been admitted to the Forensics Unit at Alberta Hospital Edmonton for assessment of fitness to stand trial, and was found not criminally responsible on account of mental disorder. The applicant was subsequently committed and remained at Alberta Hospital Edmonton under Part 20.1 of the *Criminal Code*. In that Order, I found that the custodian had met its burden of proof for all of the information withheld.

[para 110] In that Inquiry, the custodian provided evidence of the threat to health or safety under section 11(1)(a)(ii) of the Act with written evidence in the form of 'in camera' affidavits from two psychiatrists, which described a number of incidents where the applicant had physically harmed other individuals and continued to threaten and attempt to harm other individuals up to the time of the inquiry.

### **3. Application**

[para 111] The Applicant denies that disclosure of the information to him could reasonably be expected to threaten the mental or physical health or safety of another individual. The CHR says disclosure of the information to the Applicant could reasonably be expected to threaten the mental or physical health or safety of another individual.

[para 112] The CHR relies heavily upon the psychiatrist's medical opinion in the affidavit. In his affidavit the psychiatrist says, "it is my medical opinion that all names of any persons contained in the Applicant's health record, including initials, signatures and any reference that could lead to the identification of the individual in question, should be removed from the said record before it is released to the Applicant". In its written submission, the CHR concedes that the affidavit is "intentionally vague".

[para 113] The psychiatrist provided his qualifications in his Curriculum Vitae ("CV"). Based on his CV, I accept the deponent as an expert who is qualified in the area that is addressed in the affidavit. I have no qualms about the qualifications of this psychiatrist to provide a professional opinion about the issue of a threat to mental or physical health or safety.

[para 114] However, the affidavit merely makes bald assertions that the criteria in section 11(1)(a)(ii) of HIA and the harms test are satisfied. The affidavit merely urges me to reach a particular conclusion. The affidavit does not provide me with any details or evidence that assist me to independently determine whether the criteria in section 11(1)(a)(ii) of HIA are satisfied.

[para 115] In particular, the affidavit provides me with no evidence whatsoever about whether the following criteria are met in the circumstances of this case:

- reasonable expectation of probable harm,
- harm that is damage or detriment,
- causal connection between disclosure and harm,
- evidence of direct and specific threat or harm, and
- detailed evidence of connection between disclosure and threat.

[para 116] I usually give considerable weight to sworn affidavit opinion evidence that has been provided by a professional with expertise in the area under discussion. However, for the above reason, I cannot give this affidavit much, if any, weight. This affidavit reiterates the criteria in the three part harms test but does not provide me with any facts, examples or illustrations to show me that the section 11(1)(a)(ii) criteria are met. Therefore, I find there is a paucity of evidence provided by the CHR.

[para 117] Having said this, I acknowledge that it can be difficult for a custodian to discharge the burden of proof for personal safety exceptions to access. It can be difficult to establish the probability that the threat or harm envisaged will occur. There may be a further practical difficulty for the CHR that is unique to this case due to the Permanent Restraining Order, as the parties are prohibited from contact with each other.

[para 118] As the Custodian has refused to provide the Applicant with access to part of a record, the CHR has the burden of proof to show that the Applicant does not have a right of access to the information at issue (HIA, section 79). A custodian can meet the burden of proof by providing records as evidence.

[para 119] Excerpts from the records created by the CHR that pertain to information about other individuals that has been withheld from the Applicant under section 11(1)(a)(ii) of HIA are as follows:

- Forensic Assessment and Outpatient Services Progress Note (CGH) - His view of things is restricted and narrow and he attaches meaning and significance to things that other people would not. ...
- Clinical Note (CGH) - [Name of Applicant] was very angry at the beginning of the interview and accused me of having changed my forensic report from the Forensic Unit because he says there were key words on the report read to him that do not appear in the copy he got. ...
- Progress Note (CGH) - I note in this report that [name of Applicant] does have access to firearms, and he says he has been out target shooting quite frequently lately as this helps him to deal with the stress he is presently under. [Name of Applicant] denies being at all dangerous, however, and says he would never shoot at or attempt to kill a person as this is very much against his Christian values. ...
- Clinical Note (CGH) - Today he is accusing me that I somewhat managed to change the records in the court regarding the proceedings for the psychiatric remand. I mentioned to him that there is some elements in his personality that make him see injustice where

possibly there is none, and that he is spending indeed a tremendous amount of energy to prove this injustice. I told him that I believe he has a paranoid type of personality which at times make him become psychotic. ...

- Forensic Assessment and Outpatient Services Consultation Note - [Name of Applicant] has a past conviction for shooting up a police station claiming that the police had been shooting at him prior to that occurrence. Although I would not describe him as being impulsive I am of the opinion that there could be aggressive outbursts directed towards a cohabiting spouse and perhaps others.
- Progress Note - I then showed him the original General Hospital charts, including inpatient and outpatient medical and legal. I provided him with a complete photocopy of these charts. He adamantly denied any ideas of wanting to harm others (or himself), and felt that people took him the wrong way. I gave him the feedback that when he is upset he does get louder, and that people may well perceive him as being quite intimidating at these times although he may not intend that.
- General Note - He said he was going to med records at exactly noon and if the chart wasn't handed over to him, then the whole hospital would have to be closed for at least 6 months, if not longer. .... He was yelling that he's coming to med records at noon sharp, that the room there has no security, there isn't enough security to stop him and he doesn't care what it costs him, it would be worth it. He said that he might not do anything at noon today, but that he would be back and destroy the medical record room either today or later because then the whole hospital would have to be shut down if there were no records and no one else would have any records either. I said making threats isn't going to help your situation and that's when he said we better be ready for him and that there isn't enough security in this whole hospital to stop him.
- Initial Assessment (FHH) - He is very angry with [name of individual] for testifying against him in court and believing he had a mental health problem. The summary stated he was diagnosed as a paranoid personality disorder. This again angers him as he cannot see why or how he was labeled as such. Last Friday, he attempted to gain access to his records at the CGH. He was met by security there and asked to leave. An altercation broke out and he assaulted the security officers there. He was charged and taken to the Remand Centre.
- Information Re Events ... - The security staff had confiscated his pool cue and police had discovered a small knife that he had concealed on his person. Once on the Unit, it was discovered that he had another knife also concealed.
- Form 1, Admissions Certificate, Mental Health Act (FHH) - Extremely verbally aggressive man, threatening staff in medical records at Calgary General with a "minute of madness", stating he has nothing to lose. Very paranoid about the judicial system, fear of being assaulted, unsure by whom.
- History and Physical Examination (FHH) - Today stated his life was worthless; he had nothing to lose, might as well act as badly as people expect. He described a "moment of madness" in CGH record room if he doesn't get what he wants. Would go in boots, overalls and gloves to records - didn't finish sentence - but implied serious harm.
- Patient Progress Record (CGH) - Patient remains very angry and admits that he is having difficulty not "losing it". States that he is afraid of ever losing control of his anger



because he could severely injure those around him. States that he had no intention of carrying through with these actions and was just stating what he fantasized about doing because of how angry he is. States that the police read intent into his talk of violent actions when no intent was indicated by patient.

- Patient Progress Record (CGH) – Patient states that the more he thinks about how unjust his situation is the more he fantasizes about committing violent acts such as setting off “Molotov Cocktails” in the hallway of the Calgary General Hospital. Adamant that these are just fantasies and he is too in touch with reality to actually follow through with any of these ideas. States that by telling writer his idea about the “Molotov Cocktails” it is another barrier he is putting up so that he doesn’t act out this fantasy. “You would know who did it because of what I have told you. States that he doesn’t want to lose this temper as he could be a very dangerous man if he ever let himself go. 1400: States he has never been angrier than he is at this moment. States that was totally unfair that he had only one day to get rid of his gun collection. States that he did keep one of the guns and it is buried in the country.
- Patient Data Base – Anger is focused on court letter stating he is paranoid.
- Patient Progress Record - Stated “I end up here for a God damn 30 days all because some damn police officers lie.” ... He believes police officers perjured themselves in court. Adamant that he will not strike or hurt anyone.
- General Note - Continues insistent that he has been “unfairly treated” and expresses his intention to “settle the score.” Denies that he would harm authority figures, stating, “it’s against my religion and I wouldn’t want to hurt my mother.” Did accept feedback regarding writer’s initial interpretation of him, and agreed that his angry presentation often is intimidating and inappropriate.
- Forensic Nursing History complete. Lengthy criminal history beginning at age 16 and including charges of dangerous driving, possession of an offensive weapon, contravening a custody order, assaulting a police officer, resisting arrest, causing a disturbance, public mischief, possession of narcotics, impaired driving, and assault. Psychiatric History includes a 10 day psychiatric assessment at age 16 following dangerous driving charge. A 30 day assessment was ordered at age 18 following a weapons charge.
- Report of Psychiatric Assessment - There were angry confrontations from there on. These confrontations usually took the form of extremely loud shouting of accusations and innuendos at the staff and which required the use of security and isolation. He was advised that people whether professionals or not, had a limit in taking so much shouting and especially accepting his threatening demeanour during these outbursts.
- General Note - He made comments like “I sometimes get so angry at the people in this Hospital that I feel like coming into the Hospital and start shooting, killing everyone and anyone I see. I could get away with this quite easily because it would take the SWAT team at least a half hour to get here from the time I start shooting. Nobody knows whether I am capable of doing this or not. I am telling you that I won’t do this, but can you be sure of that?” He also made mention of a time when he was at the Foothills Hospital, he felt like shooting the legs out from the nurses and doctors so that they couldn’t run but they would have to listen to him. Even though this confrontation went rather smoothly today, I felt very uneasy and rather disturbed about the content of this

conversation. I personally felt that [name of Applicant] is a very volatile individual who is unpredictable in his actions.

- General Note - An appointment was arranged with [name of Applicant] for one hour today in order to discuss issues that he has against the Hospital, myself, the city police, the court and the Foothills Hospital. We had also arranged to give him a copy of his file except materials obtained from third parties or agencies. [Name of Applicant], as usual was extremely loud-voiced, pointed his finger right in my face, pushing his body right in front of my face, and in fact very threatening. As usual as well, he indicated that this is the way he is and that he does not mean to be threatening or be damaging to anybody. I told him that this is the way others perceive his behaviour.

[para 120] Examples of the types of external records that contain the information at issue are as follows:

- Medical History - Psychiatric Unit at the North Battleford Hospital, Saskatchewan, for an assessment of fitness to stand trial as the Applicant had been charged with mischief and endangering life; the records state that the Applicant and another individual fired 22 shots at a police station and the adjacent living quarters for police officers' families.
- Warrant of Remand - Forensic Unit at the CGH for a Pre-Trial Assessment under Warrant of Remand under the Criminal Code for assessment of fitness to stand trial; the Applicant was charged with abduction of his daughter.
- Letter from Crown Prosecutor - Request for a medical opinion about whether Applicant should be able to possess firearms; Crown advises it is opposing the Applicant's application for a Firearms Acquisition Certificate ("FAC").
- Permanent Restraining Order prohibiting the Applicant from coming onto the premises or communicating with employees of the CGH.

[para 121] The Applicant sent a letter with each of his three access requests. An excerpt from the Applicant's letter to the FHH states:

(Dr.) [name of doctor] is deeply involved in the matters of concern, as are Foothills Hospital security personnel and other Foothills Hospitals staff, including (Dr.) [name of doctor]. I believe I have been slandered, and also assaulted by Foothills Hospital staff and security. I intend to make criminal accusations in the near future and to do so by private information if need be. This will occur if Alberta Justice Management and Leadership Services will not do as I expect and request.

[para 122] An excerpt from the Applicant's letter to the RGH says:

I consider (Dr.) [name of doctor's] so called psychological report of myself to be unprofessional to say the least. ... In short, (Dr.) [name of doctor] added to the over all problem by his unprofessional conduct, giving assistance to the criminal misconduct of certain others in his so called profession.

[para 123] An excerpt from the Applicant's letter to the CGH states:

Your blanking out of information on the pretext of protecting staff from someone you are trying to suggest is mentally ill, is not acceptable and degrading to myself. Such conduct is the result of your own paranoia, and demonstrates your own lack of understanding of what has really occurred, due to some people's lack of professional training and ability to do their jobs. ...I expect criminal charges to be laid in the future involving Calgary General Hospital staff and security personnel. So any holding back of file information may well be considered to be Obstruction of Justice if it occurs. Many many people may well be in a lot of deep trouble if my concerns prove to be true.

[para 124] The Applicant's letters and written submissions and attachments describe his current and ongoing dissatisfaction with many individuals in the health, justice, law enforcement, corrections and legal system. Although the hospital records were written many years ago, the Applicant's access requests, letters and written submissions were written relatively recently.

[para 125] In his written submissions, the Applicant says the individuals who have compiled his records are guilty of "criminal conduct". The Applicant says he wants the information about other individuals that has been withheld because he intends to take "actions that will come before the Courts" against those who compiled his records and who are guilty of "criminal conduct". The Applicant says he wants to take these individuals "to task" for the "false and misleading" information they have written about him that "may well be slanderous and thus criminal in nature".

[para 126] The records contain notations that describe the Applicant as "angry" and "threatening". The records say that the Applicant made statements to the CHR staff about blowing up the health records department, about throwing Molotov cocktails at the staff and about whether the Applicant would actually shoot at or attempt to kill a person. The Applicant's interest in weapons and firearms is mentioned a number of times in the records. CHR staff notations state that on occasion the Applicant said he didn't know how far he would go and whether he would be able to control his anger.

[para 127] The notations in the records describe the CHR staff's perception of events and the Applicant at the time. Right or wrong, these notations describe in the words of the staff how they viewed the Applicant. The records contain many statements to the effect that the Applicant was viewed by the CHR staff as being threatening. In one instance, the staff explicitly recorded that they specifically told the Applicant that he was "threatening".

[para 128] The CHR records provide a detailed description of the Applicant's pattern of behavior as viewed through the eyes of the CHR hospital staff and other individuals. The entries are particularly valuable as they are candid observations and statements made in the ordinary course of business without regard to the current issue of whether or not the information at issue should be disclosed to the Applicant or whether particular criteria in HIA are met.

[para 129] Notwithstanding the receipt of all of his substantive health information, the Applicant persists with his request to learn the identity of all of the individuals who prepared notations and who are mentioned in the records. Indeed, it appears that the

Applicant is not pursuing the information to learn about his own health, but rather to pursue his perceived injustices against all of the individuals who would be identified through the records. The Applicant clearly describes this intention in his submissions.

[para 130] This is not a case where a custodian has provided an individual with limited access to the individual's own information. Indeed, the Applicant has exercised his right of access and has already received all of his own substantive health information, albeit some during the course of this Inquiry. The Applicant knows exactly what has been written about him in the records. The only information withheld from the Applicant is the sum total of the identifying information about other individuals in the health, corrections, law enforcement, legal and justice systems.

[para 131] In his submissions, the Applicant maintains that he would not harm anyone and that he is misunderstood and his actions are misinterpreted. However, could disclosure of the entirety of the severed information reasonably be expected to threaten the mental or physical health or safety of another individual? Although each piece of the severed information in and of itself may be quite innocuous, disclosure of the sum total of all of the identifiable information about all of the individuals in the records does take on a different character.

[para 132] The case before me has similarities to the facts that were addressed in British Columbia Order 02-10, which upheld a public body's refusal of access under the personal safety exception. In that Order, the Information and Privacy Commissioner of British Columbia found although none of the applicant's behaviours on their own would have been determinative, taken together the behaviours created a history of behavior that legitimately raised personal health and safety concerns for the other individuals whose information was at issue.

[para 133] There are entries in the record that say the Applicant has disagreed with certain medical opinions and has been upset with certain diagnoses such as "paranoid personality disorder". A notation in the records says the Applicant attaches significance to things that other people would not. Another notation in the records says the Applicant has been told he has elements in his personality that make him see injustice where possibility there is none.

[para 134] After carefully considering the evidence contained in the records and the arguments of the parties before me, and applying this to the criteria in the Act and the three-part harms test under section 11(1)(a)(ii) of HIA, I find that disclosure of the information at issue to the Applicant: would create a reasonable expectation of probable harm, the harm would constitute damage or detriment and not mere inconvenience; and that there is a causal connection between the disclosure and the anticipated harm.

[para 135] Additionally, after considering the records, the evidence and the arguments of the parties before me, I find that there is:

- Evidence of a direct and specific threat to a person and a specific harm flowing from the disclosure of the information or the record; and

- Detailed evidence to show that the threat and the disclosure of information are connected and there is a possibility that the threat will occur if the information is disclosed.

[para 136] In my view the hospital records themselves provide a trustworthy description of the views of the CHR staff about the Applicant at the time the records were created. The evidence before me from the CHR indicates that their view has not changed over time. Furthermore, the Applicant's access requests, accompanying letters and written submissions at this Inquiry are current, and describe the Applicant's present intentions and views about other individuals.

[para 137] The sum total of the information before me provides detailed examples of specific and direct threats to the mental or physical safety of other individuals should the information at issue be disclosed to the Applicant. It is the disclosure of the information to the Applicant that could reasonably be expected to threaten health or safety.

[para 138] Notwithstanding the paucity of evidence provided in the submission of the CHR, this is a case where the record speaks for itself. I find that the burden of proof has been discharged as the hospital records in particular show that disclosure of the information to the Applicant could reasonably be expected to threaten the health or safety of another individual under section 11(1)(a)(ii) of HIA.

[para 139] As this is a discretionary exception, a custodian may decide to disclose the information even if there is sufficient evidence to show that a section 11 exception exists. However, if a custodian decides not to disclose, it must show that it considered the objects and purposes of HIA and did not exercise its discretion for an irrelevant or improper purpose.

[para 140] There is no evidence before me to suggest that the CHR improperly exercised its discretion. Therefore, I find that the CHR has properly exercised its discretion. I also note the amount of information the CHR has disclosed to the Applicant.

#### **4. Conclusion**

[para 141] Applying all of the above-described considerations to the criteria in HIA, I find that disclosure of the severed information to the Applicant could reasonably be expected to threaten the mental or physical health or safety of another individual pursuant to section 11(1)(a)(ii) of HIA.

[para 142] I find that the CHR properly applied section 11(1)(a)(ii) of HIA to the information and thereby properly refused to disclose the information to the Applicant. Therefore, I intend to uphold the CHR's decision to refuse to disclose all of the information at issue to the Applicant pursuant to section 11(1)(a)(ii) of HIA.

**ISSUE B: Did the CHR properly apply section 18(1)(a) of FOIP (threat to anyone else's safety or mental or physical health) to the records?**

[para 143] Given my decision under HIA, there is no information remaining to be considered under section 18(1)(a) of FOIP.

**ISSUE C: Does section 17 of FOIP (unreasonable invasion of a third party's personal privacy) apply to the records?**

[para 144] Given my decision under HIA, there is no information remaining to be considered under section 17 of FOIP.

**VI. ORDER**

[para 145] I make the following Order under section 80(2) of HIA and section 79 of FOIP:

- I find that the CHR properly applied section 11(1)(a)(ii) of HIA (threat to mental or physical health or safety of another individual) to all of the health information withheld in the records. Therefore, I uphold the CHR's decision to withhold all of the health information under section 11(1)(a)(ii) of HIA.
- Given my decision under HIA, there is no information remaining to be considered under section 18(1)(a) of FOIP (threat to anyone else's safety or mental or physical health).
- Given my decision under HIA, there is no information remaining to be considered under section 17 of FOIP (unreasonable invasion of a third party's personal privacy).

[para 146] I commend the parties for their assistance throughout the Inquiry. In particular, I thank the Applicant for raising the important matters that I have now addressed in this Order.

Frank Work, Q. C.  
Information and Privacy Commissioner

## VII. APPENDIX

### A. *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1(1)(i), 1(1)(k), 1(1)(m), 1(1)(n), 1(1)(o), 1(1)(u)

1(1) In this Act,

.....

(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;
- (iii) the donation by an individual of a body part or bodily substance, including information derived from the testing or examination of a body part or bodily substance;
- (iv) a drug as defined in the *Pharmaceutical Profession Act* provided to an individual;
- (v) a health care aid, device, product, equipment or other item provided to an individual pursuant to a prescription or other authorization;
- (vi) the amount of any benefit paid or payable under the *Alberta Health Care Insurance Act* or any other amount paid or payable in respect of 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;

.....

(k) “health information” means any or all of the following:

- (i) diagnostic, treatment and care information;
- (ii) health services provider information;
- (iii) registration information;

.....

(m) “health service” means a service that is provided to an individual

(i) for any of the following purposes and is directly or indirectly and fully or partially paid for by the Department:

- (A) protecting, promoting or maintaining physical and mental health;
- (B) preventing illness;
- (C) diagnosing and treating illness;
- (D) rehabilitation;
- (E) caring for the health needs of the ill, disabled, injured or dying,

or

(ii) by a pharmacist engaging in the practice of pharmacy as defined in the *Pharmaceutical Profession Act* regardless of how the service is paid for,

but does not include a service that is provided to an individual

(iii) by an ambulance attendant as defined in the *Ambulance Services Act*,

(iv) by the Alberta Alcohol and Drug Abuse Commission continued under the *Alcohol and Drug Abuse Act*, or

(v) by a Community Board or a Facility Board, as those terms are defined in the *Persons with Developmental Disabilities Community Governance Act*;

(n) “health services provider” means an individual who provides health services;

(o) “health services provider information” means the following information relating to a health services provider:

(i) name;

(ii) business and home mailing addresses and electronic addresses;

(iii) business and home telephone numbers and facsimile numbers;

(iv) gender;

(v) date of birth;

(vi) unique identification number that

(A) is assigned to the health services provider by a custodian for the purpose of the operations of the custodian, and

(B) uniquely identifies the health services provider in relation to that custodian;

(vii) type of health services provider and licence number, if a licence has been issued to the health services provider;

(viii) date on which the health services provider became authorized to provide health services and the date, if any, on which the health services provider ceased to be authorized to provide health services;

(ix) education completed, including entry level competencies attained in a basic education program and post-secondary educational degrees, diplomas or certificates completed;

(x) continued competencies, skills and accreditations, including any specialty or advanced training acquired after completion of the education referred to in subclause (ix), and the dates they were acquired;

(xi) restrictions that apply to the health services provider’s right to provide health services in Alberta;

(xii) decisions of a health professional body, or any other body at an appeal of a decision of a health professional body, pursuant to which the health services provider’s right to provide health services in Alberta is suspended or cancelled or made subject to conditions, or a reprimand or fine is issued;

(xiii) business arrangements relating to the payment of the health services provider’s accounts;

(xiv) profession;

(xv) job classification;



- (xvi) employment status;
- (xvii) number of years the health services provider has practised the profession;
- (xviii) employer;
- (xix) municipality in which the health services provider's practice is located,

but does not include information that is not written, photographed, recorded or stored in some manner in a record;

.....

(u) "registration information" means information relating to an individual that falls within the following general categories and is more specifically described in the regulations:

- (i) demographic information, including the individual's personal health number;
- (ii) location information;
- (iii) telecommunications information;
- (iv) residency information;
- (v) health service eligibility information;
- (vi) billing information,

but does not include information that is not written, photographed, recorded or stored in some manner in a record.

**B. *Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25, s. 1(n)***

1 In this Act,

.....

- (n) "personal information" means recorded information about an identifiable individual, including
- (i) the individual's name, home or business address or home or business telephone number,
  - (ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,
  - (iii) the individual's age, sex, marital status or family status,
  - (iv) an identifying number, symbol or other particular assigned to the individual,
  - (v) the individual's fingerprints, blood type or inheritable characteristics,
  - (vi) information about the individual's health and health care history, including information about a physical or mental disability,
  - (vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,
  - (viii) anyone else's opinions about the individual, and
  - (ix) the individual's personal views or opinions, except if they are about someone else.

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