

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER H2002-002

May 02, 2002

CALGARY HEALTH REGION

Review Number H0005

Office URL: <http://www.oipc.ab.ca>

Summary: The Applicant made a request to the Calgary Health Region (“the Custodian”) under the *Health Information Act* (“the Act”), for access to correspondence about an internal review conducted after the Applicant made a complaint about a surgeon. At issue was a two-page letter. The Custodian refused to provide the letter to the Applicant on the grounds that it was practice review information, as provided by section 11(2)(b) of the Act.

The Acting Commissioner found that the letter met the requirements for practice review information under section 11(2)(b) of the Act and ordered the Custodian not to disclose the letter to the Applicant.

Statutes Cited: AB: *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1(1)(i)(i) and (ii), 1(1)(k), 7(1), 11(2)(b), 27(1)(c), 27(1)(g) and 80(2).

I. BACKGROUND

[para 1.] In an email dated May 04, 2001, the Applicant made an access request to the Calgary Health Region (“CHR”) or the Custodian. The request was for materials relating to a complaint made by the Applicant to the CHR about a surgeon.

[para 2.] The Applicant requested:

Copies of any and all materials that pertain to a complaint I made to the CRHA concerning the conduct of one [name of physician], regarding surgery he performed on me at the Peter Lougheed Hospital 5 May 1995, regardless of the manner in which these documents refer to the complaint and/or incident in question, and regardless of which person(s) are involved.

[para 3.] The CHR responded to the access request under the *Health Information Act* (the “Act”). The CHR provided the Applicant with access to some information, but refused access to the balance of the information on the basis that it contained practice review information and must not be disclosed pursuant to section 11(2)(b) of the Act.

[para 4.] On July 05, 2001, the Applicant requested a review of the CHR’s refusal to disclose the balance of the information. Mediation was unsuccessful and the matter was set down for a written inquiry. The Applicant, the CHR, two of the Affected Parties and three Intervenors provided written submissions. The Applicant and the CHR provided rebuttal submissions. As part of its rebuttal submission, the CHR provided affidavit evidence.

II. RECORD AT ISSUE

[para 5.] The record at issue is a two-page letter dated December 20, 1996, from one physician to another physician at the CHR.

III. ISSUE

[para 6.] There is one issue in this inquiry: Does section 11(2)(b) of the Act apply to the information/record?

IV. DISCUSSION: Does section 11(2)(b) apply to the information/record?

A. General

[para 7.] Section 11(2)(b) of the Act says:

11(2) A custodian must refuse to disclose health information to an Applicant

...

(b) if the health information sets out procedures or contains results of an investigation, a discipline proceeding, a practice review or an inspection relating to a health services provider,

[para 8.] Section 11(2) is a mandatory (“must”) exception to disclosure. This means that if the custodian determines that the information falls within the exception, the custodian

must refuse access. For section 11(2) to apply, the custodian must satisfy the following two-part test:

- a. There must be health information; and
- b. The health information must contain results of a practice review relating to a health services provider.

B. Is there health information?

[para 9.] Section 1(1)(k) of the Act defines health information to mean any or all of the following: diagnostic, treatment and care information; health services provider information; or registration information. The relevant part of section 1(1)(i) says:

1(1)(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;

...

and includes any other information about an individual that is collected when a health service is provided to an individual...

[para 10.] In its written submission, the CHR says the record that was refused contains information about a health service provided to an individual, who is the Applicant in this inquiry. The Applicant says the information sought is information about the health services that he received while a patient at the CHR.

[para 11.] The CHR says that custodians are authorized under the Act to use health information for purposes that include conducting investigations, practice reviews or inspections relating to members of a health profession (s. 27(1)(c)). Custodians are also authorized to use health information for internal management purposes including quality improvement, monitoring, audit and evaluation (s. 27(1)(g)). The CHR says the wording in section 27 shows that information in a practice review can be health information of an individual as defined in the Act.

[para 12.] Health information of an individual usually provides the basis for a practice review, which is a critique of the care provided by a particular health services provider to a particular individual. In a practice review, health information relating to the individual may be intertwined with statements, comments, observations, evaluations and opinions about the quality of care provided by the health services provider.

[para 13.] The right of access of an individual under the Act is limited to access to a ‘record containing health information about the individual’ (s. 7(1)). This means the Applicant can only make an access request for health information relating to the Applicant, not for health information relating to another individual. This right of access

does not extend to information where the custodian is required to refuse access under section 11.

[para 14.] I find that the entire record involves health information about a health service provided to the individual.

C. Does the health information contain results of a practice review relating to a health services provider?

[para 15.] In its submission the CHR says the record contains the results of a practice review, as the information was prepared following a complaint made to the CHR by the Applicant about medical treatment provided by [a named physician]. The Affidavit provided as evidence on behalf of the CHR says this particular complaint was handled as a practice review and the record refused falls within section 11(2)(b) of the Act.

[para 16.] The submissions of all the Affected Parties and the Intervenors argue in support of the policy basis for granting protection from individual access to practice review information in the Act. The main argument raised in favour of protecting practice review information is the public interest served by enabling effective and candid review to occur. The Act itself recognizes and protects practice review information by telling custodians that they must not disclose it.

[para 17.] In his submission, the Applicant disagrees with the content of section 11(2)(b) and argues that patients should have the right to full disclosure of any information that relates to the health services provided. Although the Applicant disagrees with this section it is however, the law. The Applicant says the CHR does not have ‘formal criteria’ as to what constitutes “practice review”.

[para 18.] However, the Act does not require formal criteria for a practice review. “Practice” is not a term used exclusively in conjunction with health care professionals or the provision of health services. Many other professions and occupations such as lawyers, engineers and architects review the practices of their members.

[para 19.] In its submission, the Canadian Medical Protective Association says that although the term ‘practice review’ is used in other health legislation, this term is not defined in those statutes either. Section 11(2)(b) of the Act requires that the health information set out procedures or results of an investigation, a discipline proceeding, a practice review or an inspection. These activities cover a fairly broad spectrum. None of these terms are defined within the Act

[para 20.] ‘Practice review’ in the context of the Act includes activities involved in the review of the quality of health services provided by a health services provider. Section 11(2)(b) of the Act includes other activities such as investigations and inspections.

[para 21.] I find that the entire record contains the results of a practice review relating to a health services provider. Therefore, the health information contains the results of a practice review relating to a health services provider, as set out in section 11(2)(b) of the

Act. I do not find it necessary to decide whether the record also involves an investigation or an inspection.

D. Conclusion under section 11(2)(b)

[para 22.] Section 11(2)(b) applies to all of the information in the record at issue. Therefore, I uphold the Custodian's decision to refuse to disclose the information/record to the Applicant.

V. ORDER

[para 23.] I make the following order under section 80(2) of the Act:

- ◆ I find that the information/record falls within section 11(2)(b) of the Act. I uphold the Custodian's decision to refuse to disclose that information/record. I order the Custodian not to disclose that information/record to the Applicant.

Frank Work, Q. C.
Acting Information and Privacy Commissioner