

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER H2004-002

March 6, 2007

PALLISER HEALTH REGION

Case File Number H0062

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Summary: The Applicant made multiple requests including many requests for access to health information to Palliser Health Region ("PHR" or the "Custodian"). PHR responded to the nine access requests remaining at issue, under the *Health Information Act* ("HIA") as well as under the *Freedom of Information and Protection of Privacy Act* ("FOIP"). PHR responded to the Applicant under HIA by disclosing a total of 1,150 pages of the Applicant's Medicine Hat Hospital ("MHH") mental health record with some severing, which is not at issue. The Applicant requested access to names, birthdates and home addresses of the "takedown" team staff at the MHH but at the Inquiry the Applicant was no longer pursuing access to names, as names of the takedown team staff had been disclosed to the Applicant.

PHR refused to disclose birthdates and home addresses of takedown team staff under HIA, saying the Applicant did not have a right of access to the information under section 7 of HIA (record containing health information about the individual), as that information was not in a record containing the Applicant's health information. PHR said that even if the Applicant had a right of access to the information under section 7 of HIA, it was allowed to refuse to disclose the information under section 11(1)(a) of HIA (reasonable expectation of harm or threat to health or safety), and it must refuse to disclose the information under section 11(2)(a) of HIA (health information about another individual).

The Applicant asked for a review of PHR's decisions under HIA. The Commissioner declined to exercise his discretion to decide the moot issue under section 7(1) of HIA as to whether the Applicant had a right of access to names of health services providers. The Commissioner found that under section 7(1) of HIA, the Applicant did not have a right of access to birthdates and

home addresses of health services providers in records that do not contain the Applicant's health information. Given the decision under section 7 of HIA, there was no information/records remaining to be considered under section 11(1)(a) and section 11(2)(a) of HIA.

The Inquiry was held in conjunction with the inquiry for Case File Number 2677, which involves PHR and the same Applicant in Order F2004-008.

Statutes Cited: *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1(1)(i), 1(1)(k), 1(1)(o), 1(1)(t), 1(1)(u), 2(a), 2(d), 7, 7(1), 7(1), 8(1), 11(1)(a), 11(2)(a), 79, 80, 80(2); *Health Information Regulation*, A.R. 70/2001 section 3); *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25.

Orders Cited: **AB:** Orders: H2006-003, H2006-002, F2006-021 & H2006-001, F2005-017 & H2005-001, F2004-005 & H2004-001, F2002-015 & H2002-006, H2002-003, H2002-002.

I. BACKGROUND

[para 1] The Applicant made multiple requests for access to information to Palliser Health Region ("PHR" or the "Custodian"). PHR responded to the nine requests remaining at issue under the *Health Information Act*, R.S.A. 2000, c. H-5 ("HIA" or the "Act") as well as under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ("FOIP"). PHR responded to the Applicant under HIA by disclosing a total of 1,150 pages of the Applicant's Medicine Hat Hospital ("MHH") mental health record with 289 pages severed. The severing is not at issue.

[para 2] The Applicant initially requested access to names, and then later also requested access to birthdates and home addresses, of the "takedown" team staff at the MHH. The "takedown" team responds to situations where a mental health patient is out of control. PHR inadvertently disclosed names of the takedown team staff contained in the Applicant's MHH mental health record to the Applicant. The Applicant also received names from other sources. Therefore, at Inquiry the Applicant was no longer pursuing access to names of the takedown team staff at the MHH, as that information had already been disclosed to the Applicant.

[para 3] PHR refused to disclose birthdates and home addresses of takedown team staff under HIA, saying the Applicant did not have a right of access to the information under section 7 of HIA (record containing health information about the individual), as that information was not in a record containing the Applicant's health information.

[para 4] PHR said that even if the Applicant had a right of access to the information under section 7 of HIA, it was allowed to refuse to disclose the information under section 11(1)(a) of HIA (reasonable expectation of harm or threat to health or safety), and it must refuse to disclose the information under section 11(2)(a) of HIA (health information about another individual). The Applicant asked for a review of PHR's decisions under HIA, but the Applicant was not satisfied with the outcome of the mediation that I authorized.

[para 5] The matter was set down for a written inquiry (the "Inquiry"). The parties provided written initial submissions that included *in camera* submissions. PHR included an *in camera* submission from the Affected Parties within its *in camera* submission. The Applicant provided written and videotape *in camera* submissions.

[para 6] In its initial written submission, PHR provided a binder of legal authorities, two binders containing copies of the Applicant's nine requests for access remaining at issue and its responses pertaining to the information remaining at issue. PHR also provided a third binder of the "Documents at Issue". PHR provided Affidavit evidence from its Vice President Corporate and from its Regional Manager of Health Records and HIA/FOIP Coordinator. Both parties provided written rebuttal submissions.

[para 7] The Inquiry was held in conjunction with the inquiry for Case File Number 2677 and Order F2004-008, involving PHR and the same Applicant. The Applicant and PHR provided the same submissions for both inquiries.

II. RECORDS AT ISSUE

[para 8] There are no records at issue in the usual sense under HIA, as PHR has already provided the Applicant with access to all of the information requested that is contained in the Applicant's MHH mental health record; in particular, names of the takedown team staff at the MHH. The information remaining at issue under HIA is information that is *not* contained in the Applicant's record of health information; in particular, birthdates and home addresses of the takedown team staff at the MHH.

III. INQUIRY ISSUES

[para 9] The issues at the Inquiry, as set out in the Notice of Inquiry, are:

- A. Under section 7 of HIA, does the Applicant have a right of access to names of health services providers, in records that do not contain the Applicant's health information?
- B. Did the Custodian properly apply section 11(1)(a) of HIA to the information/records?
- C. Does section 11(2)(a) of HIA apply to the information/records?

[para 10] In order to bring finality in this matter and also because the parties have raised and addressed the broader issue of disclosure of birthdates and home addresses in their submissions, I am amending the first issue at the Inquiry to read as follows:

Under section 7 of HIA, does the Applicant have a right of access to names, *birthdates and home addresses* of health services providers, in records that do not contain the Applicant's health information?

[para 11] When a custodian refuses to provide an applicant with access to health information, the burden of proof to show why the information should not be released rests with the custodian under section 79 of HIA, as follows:

79 If an inquiry relates to a decision to refuse access to all or part of a record, the onus is on the custodian to prove that the person asking for the review has no right of access to the record or part of the record.

[para 12] As the Inquiry pertains to a decision to refuse access to a record, I find that PHR has the burden of proof at the Inquiry to justify the refusal of access to health information in the record.

IV. PRELIMINARY ISSUE

[para 13] In her submissions, the Applicant raises issues that fall outside of the matters that are the subject of the Inquiry, such as whether takedowns in the mental health setting are an abuse of power or compromise patient safety or quality care. For example, in her written initial submission, the Applicant states:

The risk of significant harm related to takedowns is validated by the documentation provided. The conditions for death to occur [sic] is prevalent in all takedowns and there is no safe way to do a takedown. Survivors are traumatized and many are scarred for life. The emotional, psychological and physical assault directed at the most damaged and troubled people in our society by Palliser's takedown team is a crime against humanity and can not be justified as medical treatment or necessary, especially under the circumstances from which they occur.

[para 14] In its written rebuttal submission, PHR states:

We believe her first concern regarding the care received has been addressed on many fronts. We have cooperated and worked with numerous professional bodies as they have completed several investigations into the professional conduct of her various care providers. We have worked with the Mental Health Patient Advocate, Health Facilities Review Committee, and Community Development through the *Protection for Persons in Care Act* as they have reviewed the care provided to [name of Applicant]. We have also been involved in investigations and review by the law enforcement agencies. In all cases, while there may have been a few recommendations, there have been no suggestions of inappropriate care or wrongdoing. With regards to her issues regarding care as defined in the brief, we have been unable to resolve these issues though we have worked to do so. Since these concerns are related to care received, we feel that the *Health Information Act* is not the governing legislation.

[para 15] I agree with PHR that HIA is not the governing legislation to address the patient care issues the Applicant raises throughout her submissions. My jurisdiction at

the Inquiry and the scope of this Order are restricted to the access requests made by the Applicant to PHR under section 8(1) of HIA. I do not have jurisdiction at the Inquiry to make decisions about the other matters raised by the Applicant that go beyond the access issues before me under section 7, section 11(1)(a) and section 11(2)(a) of HIA.

[para 16] Section 80(2) of HIA allows me to require a custodian to grant or refuse access to all or part of a record, to confirm the decision of a custodian or require the custodian to reconsider the decision or to require a custodian to refuse access to all or part of the record. My authority at the Inquiry is restricted to reviewing PHR's decisions that were made in response to the Applicant's requests for access to health information under HIA.

V. DISCUSSION OF ISSUES

ISSUE A: Under section 7 of HIA, does the Applicant have a right of access to names, birthdates and home addresses of health services providers, in records that do not contain the Applicant's health information?

A. General

[para 17] The relevant part of section 7 of HIA reads:

7(1) An individual has a right of access to any record containing health information about the individual that is in the custody or under the control of a custodian.

B. Argument and Evidence

Applicant's Requests and Argument

[para 18] The copy of the Applicant's request for review that was provided to the parties in an attachment to the Notice of Inquiry, states:

I am requesting the full names and birth dates of the members of the takedown team which are not contained in my hospital records.

[para 19] In the Applicant's written rebuttal submission she says:

The issue of this inquiry is not the content of the records but the right to access staff names.

[para 20] However, in contrast to the above indications of a request for access only to names, the Applicant's written rebuttal submission states:

I have had the names of complete hospital records of every person that signed my hospital records for over a year. I accessed every investigation and one thing that I could prove is that I had their names. ...

When [name of individual] found out that he did a botched job of Foiping out names he offered to come to my house and pick up the records. ... I said no. He then said in a later conversation that they had decided it was O.K. for me to have the names. ...

I am submitting the Security Incident Reports/Unusual Incident Reports received from Palliser, delivered to me by [name of individual and place of work]. The copies received from Palliser do not have the names blacked out.

[para 21] The Applicant's rebuttal mentions PHR staff members by name and contains copies of PHR records containing names of PHR staff members. The Applicant's written rebuttal submission includes 10 pages of PHR hospital records that begin with the heading, "Identification Record". These pages are comprised of lists of PHR staff members and include the individual's typewritten name, status (e.g., RN, LPN, Security), initial and signature.

[para 22] The Applicant's rebuttal describes the information requested under HIA and the reasons for the requests, as follows:

I want justice, not revenge. The law will decide if any crime was committed. If these people did nothing wrong they have nothing to worry about. The names, birthdates and addresses are required in order to lay information under sect 504 of CC. ... the mental institutions are places of lawlessness. ... Psychiatric prisons are raping grounds for human rights.

[para 23] Similarly, the Applicant's initial written submission says the information requested includes birthdates and addresses, because:

Sect 504 of the Criminal Code states "Anyone who, on reasonable grounds, believes that a person has committed an indictable offence may lay in writing and under oath before a justice, and the justice shall receive the information ..." The form enclosed for the laying of information under a private prosecution requires names, birthdates, and addresses of the perpetrators.

[para 24] The Applicant's initial written submission argues that under HIA there is a right of access to "all information related to takedowns which includes names of these psychiatric death squads, so that the principles of fundamental justice will prevail." The Applicant says that HIA provides a right of access to the information, because:

Rogue violent men with gang mentality, wearing paramedic uniforms, trained in takedown techniques, who [sic] attack unarmed non violent citizen patients, and shackle them to beds, must be brought to justice. Palliser must not be permitted to protect the identities of the perpetrators as it is an obstruction of justice and legally, morally and constitutionally indefensible.

[para 25] The Applicant did not explicitly say whether, under section 7(1) of HIA, she has a right of access to names, birthdates and home addresses of health services providers on the MHH takedown team, in records that do not contain her health information. The Applicant merely said that she was entitled to the information.

PHR's Argument and Evidence

[para 26] There is much confusion about exactly what information was requested by the Applicant, what information was provided by PHR and what information remains at issue at the Inquiry under HIA. For that reason, I will outline PHR's submission pertaining to HIA requests and responses in some detail. In its initial written submission, PHR says that it received 13 different requests for access from the Applicant. PHR provided copies of the Applicant's seven requests remaining at issue under HIA as well as PHR's responses to each of those requests.

[para 27] PHR says the first two access requests pertain primarily to FOIP, while the remaining seven access requests pertain primarily to HIA. PHR provided copies of the seven requests that pertain to its response under HIA in two binders labeled as "Binder 2" and "Binder 3". PHR indicates that Binder 2 contains pages 159 to 660 that are tabbed with blue cover pages indicating the first three HIA requests labeled as "HIA Request 3", "HIA Request 4" and "HIA Request 5". The Applicant's access request provided in HIA Request 3 is dated January 28, 2002; HIA Request 4 is dated May 14, 2002 and HIA Request 5 is dated July 16, 2002.

[para 28] PHR indicates that Binder 3 contains pages 661 to 1,019 that is tabbed with blue cover pages indicating the last four HIA requests and labeled as "HIA Request 6", "HIA Request 7", "HIA Request 8" and "HIA Request 9". The Applicant's access request provided in HIA Request 6 is dated October 21, 2002; HIA Request 7 is dated October 24, 2002; HIA Request 8 is dated December 23, 2002 and HIA Request 9 is dated February 15, 2003. According to the notation of the face of Binders 2 and 3 (Requests 3 to 9), PHR disclosed a total of 861 pages in their entirety to the Applicant under HIA.

[para 29] PHR provided a binder labeled as "Binder 4", entitled "Documents at Issue". PHR says Binder 4 pertains to Request 3 and contains the pages that were severed under HIA. The notation on the face of Binder 4 says it contains pages 1,020 to 1,309. According to the notation on Binder 4, PHR disclosed a further 289 pages with minimal severing to the Applicant under HIA. According to PHR's figures, PHR disclosed a total 1,150 pages to the Applicant under HIA.

[para 30] PHR's Affidavit of its Vice President Corporate states:

That I contacted the Applicant by telephone in February 2002 and advised her that I would provide copies of her health record but would first sever the names of the health care providers. I advised that the severing was necessary as a result of verbal threats from the Applicant and the resulting fear of staff members that the Applicant would cause them harm. ...

That the Applicant contacted me in early February 2002 and advised that although the names had been severed in the record produced to her she was still able to read them through the black ink. I asked her to return the records but she refused to do so.

That in early February 2002 the Applicant informed Palliser that she had received an unsevered chart through the [name of organization]. ...

That on May 10, 2002 the Respondent disclosed copies of patient incident reports to the Applicant with respect to the incident reported in September 2000.

That on June 19, 2002 the Applicant notified [name of individual] that she had succeeded in obtaining the names of the health care providers in question through another means.

...

That on October 8, 2002 I sent to the Applicant copies of three security incident reports found after an extensive search. ... The names of the security personnel who completed the reports were severed pursuant to section 11(1)(a)(ii) of the Health Information Act.

[para 31] Exhibit AA is a handwritten document prepared by the Applicant and attached to the above Affidavit of the Vice President Corporate, which states:

P.S. It may be time to get a new FOIP pen as yours seems to miss the names I'm not suppose [sic] to have.

[para 32] In their *in camera* submission, the Affected Parties did not provide explicit argument on the application of section 7 of HIA. However, the Affected Parties did specifically request that names and birthdates not be disclosed to the Applicant for safety reasons. The Affected Parties did not specifically address home addresses.

[para 33] In its written initial submission, PHR says that the definition of health services provider information in HIA includes the health services provider's name. PHR argued that Order H2002-003 says that in the circumstances of that case, the first and last name of a health services provider fell within the definition of health services provider information under HIA. PHR says that names of health services providers fall within the definition of health information in this case.

[para 34] In its initial submission, PHR referred to the purposes set out in HIA, which include the protection of privacy of individuals with respect to their health information under section 2(a) of HIA. PHR pointed out the limits to the right of access that are prescribed in the purposes in section 2(d) of HIA, which is "to provide individuals with a right of access to health information **about themselves**, subject to limited and specific exceptions as set out in this Act, (emphasis added)".

[para 35] In its initial submission, PHR stated:

It is respectfully submitted that the HIA is designed to enable individuals to access their own health information, not to access the identities of health providers. Finally, in H2002-002, the Commissioner was considering an attempt

to access information that was used for purposes of a practice review. The Commissioner noted that *“The right of access of an individual under the Act [HIA] is limited to access to a ‘record containing health information about the individual’ [s. 7(1)] [emphasis added].*

[para 36] Also in its initial submission, PHR pointed out other limitations on the right of access that exists in section 7(1) of HIA, in that section 7(2) of HIA states:

7(2) The right of access to a record does not extend to information in respect of which a custodian is authorized or required to refuse access under section 11, but if that information can reasonably be severed from a record, an individual has a right of access to the remainder of the record.

[para 37] In its written rebuttal submission in regard to the Applicant’s request to receive names, birthdates and home addresses of care providers, PHR states:

Her second issue, which is a request to obtain the names, addresses and, as submitted initially, the dates of birth of service providers so that she can ensure that they are brought to justice, has been and still is a concern to us, as we consider that the kind of justice [name of Applicant] has in mind will be harmful to our staff and is unfounded based on the outcomes of several investigations by professional and legal bodies. ...

[Name of Applicant] further states that she requires the names, birth dates and addresses of the *“perpetrators for the laying of information under the rights of private prosecution as allowed under section 504 of the Criminal Act”*.

If [name of Applicant] were to file a private prosecution action we would release all information, as required, under a Court Order or a subpoena. Until we receive a Court Order or a subpoena we do not feel that [name of Applicant’s] right to have this information outweighs the Region’s responsibility to provide protection to its staff when there is a real threat to them if we release their names, addresses and dates of birth.

C. Application

[para 38] Section 7(1) of HIA gives an applicant a right of access to health information. In particular, section 7(1) of HIA gives an individual a right of access to any record containing health information about the individual, which is in the custody or under the control of a custodian. However, section 7(1) does not go so far as to give an individual a right of access to a record that does *not* contain health information about the individual.

[para 39] In order for section 7(1) of HIA to give an individual a right of access to a record, the following criteria must be met:

- There must be a “record”,
- The record must contain “health information”,
- The health information must be “about the individual”, and

- The record must be in the custody or under the control of a “custodian”.

There must be a “record”

[para 40] Section 1(1)(t) of HIA defines a “record” as follows:

“Record” means a record of health information in any form and includes notes, images, audiovisual recordings, x-rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records.

[para 41] The “record” referred to in section 7(1) is a record of health information that would include, for example, the Applicant’s mental health record. However, a record that is not a record containing health information such as human resources, personnel, financial or other types of organizational records, would not fall within this definition.

The record must contain “health information”

[para 42] Section 1(1)(k) of HIA defines “health information” to include any or all of diagnostic, treatment and care information, health services provider information or registration information.

[para 43] “Diagnostic, treatment and care information” is information about the physical and mental health of an individual, a health service provided to an individual, a drug as defined in the *Pharmaceutical Profession Act* provided to an individual and any other information about an individual that is collected when a health service is provided to the individual (HIA section 1(1)(i)).

[para 44] A “health service” is a service that is paid for by the Department of Alberta Health and Wellness and that is provided to an individual for purposes that include protecting or promoting or maintaining physical and mental health, preventing illness, diagnosing and treating illness, rehabilitation and caring for the health needs of the ill, disabled or injured (HIA section 1(1)(m)). The Applicant’s mental health record at MHH is an example of a record that contains diagnostic, treatment and care information and therefore health information under section 1(1)(k) of HIA.

[para 45] “Health services provider information” includes information relating to a health services provider including their name, home mailing address and date of birth (HIA section 1(1)(o)). A “health services provider” means an individual who provides health services (HIA section 1(1)(n)). Depending on the circumstances, the name, home mailing address and date of birth of a health services provider may fall within the definition of “health services provider information” under section 1(1)(o) HIA.

[para 46] Where the information requested is itself health information as defined in HIA, an individual does not have a right of access to the information under section 7(1) of HIA unless the information is in a record containing health information about the individual that is in the custody or under the control of a custodian. For example, if the information is a name, birthdate or home address of a health services provider that is not in a record containing health information about the individual, an individual does not have a right of access to that information under section 7(1) of HIA.

[para 47] If the information is in an administrative or personnel record that does not contain health information about the Applicant, the Applicant has no right to access to that information under section 7(1) of HIA. However, where the custodian is also a public body under FOIP such as PHR in this case, pursuant to section 16(1) of HIA, the public body must deal with the request under FOIP, as the request is deemed to have been made under section 7(1) of FOIP. I have previously addressed the interface of HIA and FOIP and the deeming provision in HIA in Orders F2004-005 & H2004-001 (paras 77-84), so there is no need to repeat that discussion here.

[para 48] The right of access under section 7(1) of HIA does not extend to the same information in all different circumstances. For example, the right of access under section 7(1) of HIA to information such as name, birthdate or home address of a health services provider where that information is contained in a health record does not extend to situations where that same information is not in a record containing health information.

[para 49] Whether information such as health service provider names, birthdates or home addresses falls within the definition of health services provider information under HIA or alternatively falls within the definition of personal information under another piece of privacy legislation such as FOIP depends upon the context and circumstances of each case. This approach is consistent with Orders issued from this Office, which entail the interface of these two pieces of privacy legislation (See for example, Orders F2006-021 & H2006-001, F2005-017 & H2005-001, F2004-005 & H2004-001, F2002-015 & H2002-006).

[para 50] This approach is consistent with the “modern principle” that has been consistently adopted by the Supreme Court of Canada as the preferred approach to the interpretation of legislation (see, for example, *Canada 3000 Inc., Re; Inter-Canadian (1991) Inc. (Trustee of)*, 2006 SCC 24 (CanLII) (SCC), June 9, 2006, para 36 and the appeal from Alberta in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 (CanLII) (SCC), February 9, 2006, para 37), which has been canvassed in previous Orders issued by this Office (for example, Orders H2006-002 (paras 27-29), F2005-017 & H2005-001 (paras 25-26) and F2004-005 & H2004-001 (paras 46-52); there is no need to repeat those discussions here.

[para 51] The “modern principle” says I must read the words in an enactment “in their entire context” (Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed., Markham Ontario: Butterworths, 2002, p. 1). The *ATCO Gas* case says words are to be interpreted in the context of the surroundings; the “context that colours the words” is to be examined in statutory interpretation (para 49). Thus, the context of the

surroundings must be considered when determining whether section 7(1) of HIA is triggered, in that the context must include a record containing health information.

[para 52] “Registration information” includes an individual’s demographic information such as the individual’s name and gender and an individual’s location and telecommunications information (HIA section 1(1)(u); *Health Information Regulation*, A.R. 70/2001 section 3). I find that the Applicant’s health record contains registration information as defined under section 1(1)(u) of HIA and therefore contains health information under section 1(1)(k) of HIA.

[para 53] After a review of the Applicant’s mental health record, I find that the record contains all three types of “health information” as that term is defined in section 1(1)(k) of HIA; the health information includes “diagnostic, treatment and care information”, “health services provider information” and “registration information”. However, the same could not be said for other types of records that do not contain health information, such as personnel or financial records.

There must be health information “about the individual”

[para 54] I find that there is health information “about the individual” in the Applicant’s mental health record. However, this would not be the case for a different type of record, such as the information contained in a personnel or financial record.

The record must be in the custody or under the control of a “custodian”

[para 55] The determination of whether any given entity is a custodian must be done on a case-by-case basis. Section 1(1)(f)(iv) of HIA defines a “custodian” to include a regional health authority established under the *Regional Health Authorities Act*. It is not in dispute that PHR is a regional health authority. I find that PHR is a custodian under HIA.

[para 56] It is also not in dispute that the Applicant’s health record is in the custody or under the control of a custodian, namely PHR. I accept PHR’s argument and find that section 7(1) of HIA does not give the Applicant a right of access to information in records that do not contain the Applicant’s health information. This means that, in the circumstances of this case, section 7(1) of HIA does not give the Applicant a right of access to birthdates and home addresses of takedown team staff where that information is not in a record containing health information about the individual that is in the custody or under the control of a custodian.

[para 57] To the contrary this means that, in the circumstances of this case, section 7(1) of HIA does give the Applicant a right of access to names of takedown team staff since that information is in a record containing health information about the individual that is in the custody or under the control of a custodian. The staff names are in the Applicant’s mental health record at MHH.

[para 58] However, even if the information falls within section 7(1) of HIA, the right of access is not absolute. Before health information is disclosed, any applicable exceptions to access under section 11 of HIA must be considered pursuant to section 7(2) of HIA. Examples of exceptions to access that could apply in this case include the provisions claimed by PHR under section 11(1)(a) and section 11(2)(a) of HIA.

[para 59] The question of whether the Applicant has a right of access to names of health services providers is a moot issue, in that the Applicant has already received that information. Order H2006-003 (paras 12-19) canvassed the criteria to consider under HIA when deciding whether to exercise the discretion to hear a moot issue, which are: adversarial context, judicial economy and role of the legislative branch. Having considered these criteria in the circumstances of this case, I decline to exercise my discretion to decide the moot issue about whether the Applicant has a right of access under section 7 of HIA to names of the health services providers.

[para 60] Based upon my review of the records, the evidence and the arguments provided by the parties and for all of the above reasons, I find that PHR discharged its burden of proof under section 79 of HIA to show why the Applicant does not have a right of access to birthdates and home addresses of takedown team staff under section 7(1) of HIA. PHR has discharged its burden of proof to show why access to this information should not be granted to the Applicant.

[para 61] For all of the above reasons, I find that the Applicant does not have a right of access to birthdates and home addresses of takedown team staff at the MHH when that information is not in a record containing health information about the individual. This finding is consistent with the “context that colours the words” as set out by the Supreme Court of Canada in the “modern principle”. This finding is also consistent with the purposes set out in sections 2(a) and 2(d) of HIA, which have the effect of balancing the individual’s right of access with other individuals’ rights to protection of privacy.

[para 62] In my view, this finding is also consistent with other HIA provisions that limit the individual’s right of access, depending on the context of the situation. See, for example, section 7(2) of HIA (right of access does not extend to information where custodian is authorized or entitled to refuse access under section 11), section 11(2)(a) of HIA (must refuse access to information about another individual unless provided by the applicant in the context of a health service) and section 11(1)(b) of HIA (may refuse to disclose where disclosure could reasonably lead to identification of a person providing health information explicitly or implicitly in confidence where appropriate that name of the person be kept confidential).

ISSUE B: Did the Custodian properly apply section 11(1)(a) of HIA to the information/records?

[para 63] Given the decision under section 7 of HIA, there is no information/records remaining to be considered under section 11(1)(a) of HIA.

ISSUE C: Does section 11(2)(a) of HIA apply to the information/records?

[para 64] Given the decision under section 7 of HIA, there is no information/records remaining to be considered under section 11(2)(a) of HIA.

VI. ORDER

[para 65] I make the following Order under section 80 of HIA:

- I find that under section 7 of HIA, the Applicant does not have a right of access to birthdates and home addresses of health services providers, in records that do not contain the Applicant's health information. Therefore, I confirm the Custodian's decision to refuse access to the Applicant to that information when the information is not contained in the Applicant's health records under HIA;
- I decline to exercise my discretion to decide the moot issue of whether under section 7 of HIA, the Applicant has a right of access to names of health services providers as the names have already been disclosed;
- Given the decision under section 7 of HIA, there is no information/records remaining to be considered under section 11(1)(a) of HIA; and
- Given the decision under section 7 of HIA, there is no information/records remaining to be considered under section 11(2)(a) of HIA.

Frank Work, Q. C.
Information and Privacy Commissioner