

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER H2005-004**

December 21, 2005

**CALGARY HEALTH REGION**

Review Number H0349

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant made a series of requests under the *Health Information Act* to the Calgary Health Region (the “Custodian”), for his health records and records relating to his involvement with the Foothills Medical Centre. He also asked the Custodian to delete some of the information in his medical charts, and to place some information, provided by him, on his chart.

The Custodian provided many of the records in a timely way, but there were delays in providing some records. The Custodian refused to delete information from the Applicant’s chart. It did not directly address his request that information be added.

The Applicant requested this Office to review the way the Custodian had handled his requests.

The Commissioner held that the Custodian had failed to meet its duty under section 12 of the Act to provide records within the time limits imposed by the section, and that it failed to meet its duty to assist the Applicant under section 10(a) of the Act, though in neither case did he regard the failure as substantial. He held that the Custodian conducted an adequate search for records. He did not make an order in relation to sections 13 and 14 of the Act (relating to correction), but drew the attention of the parties to these provisions.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Regulation*, AR 200/1995, s. 2; *Health Information Act*, R.S.A. 2000, c. H-5, ss. 10(a), 10(c), 12, 12(1),

12(3), 13, 13(5), 13(6)(a), 14, 14(1), 14(1)(a), 15, 15(1), 15(3), 16, 62, 63, 80, 80(3)(c), 87; *Hospitals Act*; *Personal Information Protection Act*, s. 5(3).

**Authorities Cited: AB:** Order 99-039.

**Works Cited:** *Freedom of Information and Protection of Privacy Act Guidelines and Practices Manual*, Chapter 2; *Health Information Act Guidelines and Practices Manual*, Chapter 9; *Personal Information Protection Act Advisory # 3*.

## I. BACKGROUND

[para 1] The Applicant made a series of requests under the *Health Information Act* to the Calgary Health Region (CHR) (the “Custodian”), for his health records and records relating to his involvement with the Foothills Medical Centre.

[para 2] The initial request (July 3, 2003) was made to the Health Records Department of the Foothills Medical Centre (FMC) for “all documents contained in [his] recently-closed file”. The Custodian (FMC) responded on July 23 by providing 71 pages of records.

[para 3] Subsequently (on August 5 and 6, 2003) the Applicant made additional oral and written requests, to the Clinic Manager of the FMC, specifically for the questionnaire on which his assessment/diagnosis was based, as well as for any additional unreleased records pertaining to his involvement with the ‘dual diagnostic clinic’ (which is also known as the Addiction Centre). According to the Applicant’s submission, the August 5 telephone call was a “message asking for additional records – the questionnaire from which the evaluation was spawned as well as any other notes or documents relating to the care I received at the clinic”. The written request that followed was for all records, wherever located, not just those located in the Health Records Department of FMC.

[para 4] On August 14, 2003, the Applicant wrote a lengthy letter to the Director of the Addiction Centre (a doctor). This letter set out his disagreement with his evaluation and treatment, and stated his intention that his views, as stated in the letter, should be placed on his medical chart. The letter also said that his ultimate goal was to have records related to his involvement with the Addiction Centre removed from his medical chart.

[para 5] By letter dated September 18, 2003, the Custodian (through its Access and Privacy Analyst (APA)) provided an additional 24 pages of records. This consisted of the questionnaire, obtained from the Addiction Centre. In later correspondence to the Applicant, the Custodian described these records as ‘raw data’ that was not on the Applicant’s medical chart. However, in its September 18 correspondence to the Applicant, it did not comment on the records, or provide any explanation of why the records were not initially supplied.

[para 6] On September 26, 2003, the Applicant made additional requests for any additional undisclosed records to the Health Records department of the FMC (for all documents in the file from all sources) as well as to the Clinic Manager (for all information and documents pertaining to any of his dealings with the Addiction Centre). The Custodian (FMC, Health Record Services) responded on September 26 that there were no new records on his chart. The Applicant made a further request to the Clinic Manager on September 30 (for “verification of full compliance” with his request for all information pertaining to himself), and on October 2 (also delivered on November 13), he made two additional requests for “any and all records and/or information” to another doctor and another official, both of the Addiction Centre. On October 6 he sent a request to the Clinic Director for all records and information pertaining to his attendance at the dual diagnostic clinic.

[para 7] On October 10, 2003 the Applicant conveyed to the Custodian by fax a request that none of his information be revealed to third parties without his prior written consent, and that he be given prior notification of any internal access. On November 3, 2003 the Applicant conveyed a document in which he revoked his earlier consent to disclosure of his information for research purposes.

[para 8] On November 14, 2003, the Custodian, through its APA, responded to the Applicant’s earlier access requests by saying there were no new records on the chart and the file would be closed. On November 18, the APA also wrote to the Applicant advising, among other matters, that the Custodian could not comply with the requests the Applicant had made to have some of his health information deleted.

[para 9] On December 2, 2003, the Applicant made a request to Health Records at FMC for any new information on his file. On December 8, the APA provided three additional pages of ‘patient progress notes’. These records had been created in August, but were placed on the Applicant’s chart some time after September 26.

[para 10] On December 10, 2003, the Applicant made a telephone request for the August 14 letter he had written to the Clinic Director. FMC responded by providing this letter.

[para 11] The Applicant requested a review by my office (dated December 6, 2003) that was received on December 15, 2003. The request for review pertained to an attached series of requests the Applicant had made on various dates to particular officials of the Custodian, and to requests made on November 13, 2003, listed in an attached file.

[para 12] On January 8, 2004, my office advised the Custodian that a request for review had been authorized. A member of my staff was assigned to carry out an investigation. As a consequence of this process, the Custodian decided to “re-process the request”.

[para 13] The Custodian did a new search and provided 157 pages of documents to the Applicant by letter dated February 5, 2004. The response included some documents

pertaining to further requests by the Applicant to the Custodian that had been made subsequent to the date of the request for review. The Applicant made numerous additional requests to the Custodian subsequent to his request for review.

## II. RECORDS AT ISSUE

[para 14] The Applicant speculates that documents existed that were not provided to him. Apart from this, there are no records at issue, as all records responsive to the request that the Custodian located were provided to the Applicant.

[para 15] Records that relate to requests that were made subsequent to the request for review are outside the scope of this inquiry.<sup>1</sup>

## III. ISSUES

[para 16] The issues in the Notice of Inquiry were as follows:

- Did the Custodian make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(a) of the Act?
- Did the Custodian conduct an adequate search for responsive records, and thereby meet its duty to the Applicant, as required by section 10(a) of the Act?
- Did the Custodian provide an explanation of a record as required by section 10(c) of the Act?

[para 17] The Applicant has raised the question of delay in provision of some of the documents. There is a separate provision in the *Health Information Act* that deals with the timeliness of responses. Section 12 provides that custodians must make every reasonable effort to respond to requests within 30 days (or within any period extended under section 15). This section was not raised as an issue in this inquiry (likely because all responsive documents, except one, were eventually provided to the Applicant). However, the Applicant complains of the delays because he says the delays ‘destroyed his trust’.

[para 18] Therefore, in a letter to the Custodian during the course of this inquiry, I described the delays either raised by the Applicant or evidenced in the materials. I invited the Custodian to explain the delays relative to section 12 of the Act. I will consider this question under the following heading:

**Did the Custodian make every reasonable effort to respond to the requests within the time limits imposed by section 12 of the Act?**

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<sup>1</sup> See Order 99-039, at paragraphs 89 to 93, in which the former Commissioner held that a review is only in relation to records requested prior to the date of the request for review.

[para 19] I will deal with this question first because it is a key element in the Applicant's submissions, and because my conclusions about some of the other issues depend on my conclusion about this one. I will therefore number this issue as **Issue A**, and will number the issues listed above as **Issues B, C and D**.

[para 20] The parties have provided evidence in their submissions which suggests they have rights or obligations under this Act they have not acted upon. While these provisions of the Act were not raised as issues in this inquiry, I will also draw the parties' attention to them, and provide some comments. I have framed this issue as follows:

**Issue E: Do sections 13 and 14 of the Act have relevance to the matters raised in this inquiry?**

[para 21] In his submissions the Applicant also complains that his records were accessed by doctors who did not treat him. One of the two incidents of access occurred, according to the Applicant, in mid-to-late December, 2003 or early January, 2004, after the request for review was made, and is thus outside the time frame of this inquiry. In any event, use or disclosure of information contrary to the Act was not raised as an issue in this inquiry, and there is not sufficient information before me to reach any conclusions about it.

**IV. DISCUSSION OF THE ISSUES**

**Issue A: Did the Custodian make every reasonable effort to respond to the requests within the time limits imposed by section 12 of the Act?**

[para 22] The relevant parts of section 12 of the Act provide:

*12(1) A custodian must make every reasonable effort to respond to a request under section 8(1) within 30 days after receiving the request or within any extended period under section 15.*

...

*(3) The failure of the custodian to respond to a request under section 8(1) within the 30-day period or any extended period referred to in subsection (1) is to be treated as a decision to refuse access to the record.*

[para 23] Section 15, referred to in section 12, permits the custodian to extend the time for responding to a request, as follows:

*15(1) The custodian may extend the time for responding to a request under section 8(1) or 13(1) for an additional period of up to 30 days, or, with the Commissioner's permission, for a longer period if*

*(a) the request does not give enough detail to enable the custodian to identify the record that is requested or to be corrected or amended,...*

*(2) If the time is extended under subsection (1), the custodian must tell the applicant,*

*(a) the reason for the extension,*

*(b) when a response can be expected, and*

*(c) that the applicant may make a complaint to the Commissioner about the extension.*

[para 24] In this case, all responsive records that were located have been provided<sup>2</sup>, but some of them were provided after 30 days. The requirements for a formal extension of time under section 15 do not seem to have been met for these delays.

[para 25] According to section 12(3), the failure to respond within 30 days is to be treated as a decision to refuse access. However, if I were to treat the fact the 30-day period was not met as a refusal of access, the remedy would be to order access even though it has already been given. As it would not make sense to order the re-production of documents already provided, the appropriate remedy in a case such as this is to declare, if the facts support such a finding, that the duty under section 12(1) was not met (and in appropriate circumstances, to impose a remedy under section 80(3)(c)<sup>3</sup>).

[para 26] Turning to the facts before me, most of the Applicant's health records were provided to him on July 23, 2003, which was 20 days after his original request – within the 30-day time prescribed in section 12 of the Act. However, some documents that were supplied later were not included in the first response. The Applicant says this delay caused him to lose trust and confidence in the Custodian's intentions.

[para 27] The Applicant's submissions, and other material before me, reveal delays with respect to the following:

- a 24-page questionnaire from the Addiction Centre that was used to assess or diagnose the Applicant's condition was not supplied until after his second request; after the second request, it took six more weeks to respond
- three pages of 'patient progress notes'<sup>4</sup> were not supplied until December 8 though they had been created in August, and the Applicant had made further requests for additional information in September and October

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<sup>2</sup> The Applicant points to one record that he provided to the Custodian but that was not provided back to him – his revocation of consent to have his information used for research purposes - but presumably it was not provided because it was not located.

<sup>3</sup> This section permits the Commissioner, where a time limit has not been met, to reduce a fee to be paid to the Custodian under the Act, or order a fee refund, in appropriate circumstances.

<sup>4</sup> These notes discuss the Applicant's access requests and how they should be addressed, intermixed, on the same or adjacent pages, with diagnostic and treatment information.

- the Applicant's request that no information be revealed to third parties without prior written consent, and that notification be given to the Applicant of any internal access, was faxed by him on October 10, but was not on his file when he inquired on December 3; (it appears this document was not provided until February 5, in the material that resulted from the re-processing of the request)
- there is evidence suggesting the Custodian's APA had the Applicant's letters to the Clinic Manager and the Clinic Director in her possession in August, but they were not provided to him until December.<sup>5</sup>

[para 28] With respect to the questionnaire (which was not included in the first request, and was provided some six weeks after the second request), in its February 2004 correspondence to the Applicant (post-mediation), the Custodian described this document as 'raw data', that was not included on the medical chart at the Health Records department. The Applicant's first request was for his 'file', and the absence of the document from the medical chart is a reasonable explanation for why it was not provided in response to the original request.<sup>6</sup> I note, though, that it would have been helpful had this explanation been given at the time the document was provided. I note further that this does not explain why the response to the second request (dated August 5 and 6), specifically for this document, took six weeks. The Custodian has advised that the document was located on August 25, but it was not supplied until September 18, which exceeds by two weeks the 30-day time limit prescribed in the Act.

[para 29] With respect to the 'patient progress notes', the Custodian says the notes were not added to the medical chart until after the September 26 communication to the Applicant (which advised him that there was no new information on his chart). There are two undated, hand-written, notations on e-mail correspondence related to the Applicant's request, apparently made by an official of the Custodian, that suggest this. The APA also deposes in her affidavit that the notes were not added to the medical chart until after September 26.

[para 30] This does not entirely dispose of the matter. Though the 'patient progress notes' were added to the chart after September 26, they were created in August, and were not provided until December 8 (after the Applicant's December 2 request for any new information on his chart). They were also not provided in the Custodian's letter to the Applicant of November 14, which advised him that there were no new records on the

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<sup>5</sup> There is a lack of clarity in the material before me as to whether the Applicant is complaining (at the top of the fifth page of his "Summary of Arguments") about the non-disclosure of his August 6 written access request to the Clinic Manager, or whether he also provided the Manager with a copy of his letter to the Director, and his complaint is restricted to the copies of that letter. I will assume for the purpose of this decision that he is referring in this complaint to the separate (August 6) letter to the Manager requesting access.

<sup>6</sup> The Custodian did not directly address the question of what constituted what is referred to variously in the materials before me as the Applicant's 'health record', 'file' or 'medical chart'. However, the Custodian's submissions and other materials before me indicate that there was an entity known as 'Health Records' at the FMC, and that documents kept at that location were regarded by the Custodian as constituting such a record, and that his record was assigned a 'health record number'. I regard all these terms as referring to the same thing, and use them in this manner within.

chart and that the file would be closed. Presumably, between August and November, they were kept in a location other than the Applicant's 'FMC health record'. It appears that in its response, the Custodian focused only on records in this 'health record', and did not search elsewhere, for example, in the files of involved staff. The notes were apparently not provided until after they had appeared on the 'file' or 'medical chart'.

[para 31] Some of the Applicant's requests (subsequent to the first one) embraced records in locations other than the Applicant's 'file' or 'chart'. The Custodian did not respond to these later requests within 30 days. I must decide whether it made every reasonable effort to respond within 30 days.

[para 32] In my view, there are two factors that are relevant to the delays.

[para 33] The first is the way the Applicant made his requests for access. He made numerous requests, sometimes multiple requests in a single day, over several months. He made them to numerous officials of the Custodian. In those requests he used inconsistent descriptions of what was being sought. For example (according to his submission) his August 5 telephone message to the Clinic Director asked for records relating to the care he received at the clinic, while his letter written in follow-up asked for all records pertaining to his involvement with the clinic. On September 26, he made a request to the Health Records department of the FMC for all documents *in the file* from all sources; on the same date he made a request to the Clinic Manager for all information and documents pertaining to any of his dealings with or attendance at the Addiction Centre. He also made separate information requests at around the same time to two other doctors, and to another clinic official, for "any and all records and/or information". While I recognize that from the Applicant's standpoint, the multiplicity of his requests may have been meant to insure that no records would be missed, from the standpoint of the Custodian, it had the effect of making it harder to keep track of and respond to his requests, and generated confusion about what he was seeking.

[para 34] The second factor relates specifically to the three additional pages of 'patient progress notes'. These notes are largely concerned with the Applicant's information requests, and how these were to be addressed, rather than with his care. It is possible this contributed to the fact the notes were not initially supplied in response to his later requests for access to his information.

[para 35] The Applicant's third complaint relates to a document sent by him to the Custodian, in which he requested that no information be revealed to third parties without his prior written consent, and that notification be given to him of any internal access. This document was faxed by the Applicant October 10, but was apparently not on his file when he inquired in early December, and was not provided to him until the post-mediation release. As just noted, some of the Applicant's access requests covered records relating to him that were not on his 'file', and also records that were not strictly health-



related.<sup>7</sup> However, the same comments apply with respect to this delay as were made in the preceding paragraphs: there was a multiplicity of requests, to various individuals, made using varying terminology. The ability of the Custodian to provide the record in a timely way was affected by these circumstances. The Custodian's failure to place the record on the Applicant's file may also have been a function of the high volume of the communications it received from him.

[para 36] Another time-related complaint relates to the Custodian's delay in providing the Applicant's correspondence back to him about his access requests. The Custodian did not provide the Applicant with a copy of his original access request until after the 'reprocessing' of all his requests. It did not provide him with his August 6, 2003 access request to the Clinic Manager, until he specifically asked for the document.<sup>8</sup>

[para 37] With respect to the requests for access requests, in my view, insofar as the Applicant was seeking to have provided back to him the documents which he sent to the Custodian requesting access, he was not motivated by a desire to obtain access to information. I find that to the extent the Applicant's request for review to this office is based on the Custodian's delay in providing his earlier access requests back to him, I do not fault the Custodian for the delay.

[para 38] The final complaint of delay relates to a letter dated August 14, 2003, sent by the Applicant to the Clinic Director, a physician, in which the Applicant discusses his condition and diagnosis. The Custodian did not provide this letter back to the Applicant until he specifically asked for it.

[para 39] The Applicant says the APA orally explained the failure to provide him with this letter by saying that it had not been sent because he already had it. The fact that requested information is known to already be in possession of the Applicant, or was supplied by him, is not in itself a justification for declining to provide it on a request (though in some cases it may be an indicator of a frivolous or vexatious request).

[para 40] In this case the document in question had, apparently, not been attached to the Applicant's chart, possibly because the Custodian did not regard it as the Applicant's 'health information', as defined in the *Health Information Act*.

[para 41] As with the records discussed in preceding paragraphs, the delay in providing this document is mitigated to some degree by the lack of clarity about what the Applicant was seeking. It is also mitigated by the fact the Custodian provided the document immediately once it understood that he was requesting it.

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<sup>7</sup> As I discuss more fully under Issue C below, the fact that information is not health information does not obviate a Custodian's duty to provide information to which the *Freedom of Information and Protection of Privacy Act* applies.

<sup>8</sup> As noted earlier, it is not clear from the evidence before me whether the Applicant is complaining about the delayed return of his August 6 written access request to the Clinic Manager, or of the delayed return of a copy sent to her of his letter to the Clinic Director. I will assume for the present purpose his complaint was about the former. The letter to the Clinic Director is dealt with below.

[para 42] Most of the Applicant's information was provided 20 days after his original request. For the reasons just discussed, most of the delays relative to the remaining documents are attributable in part to the high volume and complexity of the Applicant's requests and related correspondence. (The only exception is the patient questionnaire, which was specifically requested and was provided two weeks beyond the 30-day period following the specific request.)

[para 43] Having said this, however, I think there is room for improvement in the Custodian's practices. I take this opportunity to provide some guidance to custodians about dealing with multiple requests from the same individual, or unclear requests.<sup>9</sup> This case underlines the challenges faced by custodians (or public bodies or organizations) in such cases. The custodian is placed in a difficult situation, one to which I am sympathetic. However, it is the custodian that must take charge of such situations, in order to meet its obligations under the Act. I would suggest the following:

- Decide what the applicant is after. This should be done in consultation with the applicant but that is not always possible. Where there are apparently multiple requests for the same information, the custodian can define what it thinks the requests are for. In other words, the custodian can say "This is how we interpret your request and this is what we are going to process." This should be done in writing and communicated to the applicant. Hopefully there will be agreement or dialogue. The custodian must define the request at a given point in time so that there is certainty as to the task on which the clock is running. It is very hard to fulfill a 'moving' access request.
- If the applicant makes subsequent requests that are different, one option for the custodian is to continue to process the original one, as well as start an additional application with a new time limit. If this is the course it chooses, the custodian should communicate this in writing, by saying "this is what we understand the first request to be, and here are the timelines for dealing with it; this is your second request and we will deal with that on the following timeline". Custodians have 30 days on a request and, if the terms of section 15 are met, can give themselves another 30. Ideally the applicant should agree to the schedule, but this is not always possible. A custodian can seek further extensions from this Office with or without the applicant's agreement. A custodian that presented this Office with a schedule of how it is going to handle multiple requests, in a sequential, reasonable manner, would, other things being equal, have a good chance of getting the necessary extensions.
- The other alternative for the custodian is to amend the original request so as to add the new one, and advise the applicant in writing that it is doing this. If the applicant agrees, it can set out a new time schedule. If the applicant doesn't agree, the custodian may still be able to extend the time under section 15. It is open to the Applicant to object to this Office. Though this puts the whole process on hold while the decision is reviewed, that is a choice available to the applicant.

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<sup>9</sup> The same points apply to requests to public bodies under the *Freedom of Information and Protection of Privacy Act* or organizations under the *Personal Information Protection Act*.

- If an applicant insists on having its several access requests dealt with immediately and they appear to be for the same or similar information, the custodian may ask this Office for permission to disregard duplicate requests under section 87. This Office does not use section 87 lightly, but it is there to be used. This may be preferable to struggling under numerous similar or identical requests, then failing to meet the timelines on all of them, occasioning deemed refusals and reviews by this Office.
- In a large organization, or where the requests are made to different units or individuals, one unit within the organization should be made aware of all requests.<sup>10</sup> Such organizational approaches can save duplication of effort.

The bottom line is that the custodian must take responsibility for managing multiple requests. It must be aware of all the requests and it must be decisive in managing its caseload.

[para 44] Notwithstanding this advice, the legislated duty to assist remains paramount. While public bodies should manage access requests, this should be done for the benefit of the applicant. Process should not be used to oppress applicants or to defeat their requests. If an applicant believes this is happening, their recourse is to seek a review by this Office.

[para 45] In this case, the Custodian did make some effort to centralize the requests as I have suggested. However, it did not do it sufficiently either to allow it to recognize early on that it would be insufficient to provide only the records located in the Applicant's 'file', or to prompt it to respond to the different requests within the appropriate time frame or to formally extend the time frame. While, for the reasons just discussed, I regard the delays as only a minor failure to make every reasonable effort to respond within the prescribed time period under section 12, I would urge the Custodian to adjust its practices for future cases so as to enable it to respond in a timely way.

[para 46] Beyond bringing these matters to the Custodian's attention, I grant no remedy under section 12.

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<sup>10</sup> The *Freedom of Information and Protection of Privacy Regulation* deals with this topic in section 2. It requires public Bodies to make public those of its offices that are authorized to receive requests, and requires offices that are not so authorized to forward requests to authorized offices by the fastest means available. The *Health Information Act*, section 62, requires each custodian to identify its affiliates who are responsible for ensuring compliance with the act and regulations, and with policies and procedures established under section 63. Similarly, in the *Personal Information Protection Act*, section 5(3) requires organizations to designate one or more individuals to be responsible for ensuring compliance with that act. See also: the *Health Information Act Guidelines and Practices Manual*, Chapter 9; the *Freedom of Information and Protection of Privacy Act Guidelines and Practices Manual*, Chapter 2; *Personal Information Protection Act Advisory # 3*.

**Issue B: Did the Custodian make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(a) of the Act?**

[para 47] The Applicant has a number of complaints related to the Custodian's response to his information requests, as well as with the Custodian's dealings with his information. His main points are as follow.

*Delays in providing documents*

[para 48] As already noted, the Applicant makes frequent complaints in his submissions about the length of time it took the Custodian to provide particular records, which he says contributed to his "loss of trust". I dealt with this subject in the preceding section.

*Omission of documents from the response*

[para 49] The Applicant's second main complaint relates to the omission, from the Custodian's response, of particular documents that were in its possession. The Applicant makes numerous references in his submission to 'withholdings' by the Custodian. I will discuss the Applicant's allegations about omissions under Issue C (below), which deals with adequacy of the search.

*Unmet undertakings and premature closing of the file*

[para 50] The Applicant says that on October 9, 2003 the APA advised him that more information was to be provided, but that the file was closed on November 14 although he had received no further information. He also says the APA advised him on December 5 that there were to be 25 new pages of information, which was inconsistent with the closing of his file on November 14.

[para 51] According to the Applicant, the former undertaking was oral in nature. Its content is not sufficiently substantiated for me to draw any conclusions.

[para 52] With respect to the latter, I can find no evidence of any written communication containing advice of forthcoming information, nor is it clear to which "25 pages" the reference by the Custodian was made. I note that a similar number of pages was subsequently supplied that had been located in other treatment facilities, but this was not part of the original request and the pages were supplied at the Custodian's initiative; hence, there is no conflict with the decision to close the file on November 14.

*Failure to advise of the identity and role of the Access and Privacy Analyst*

[para 53] The Applicant complains that in a telephone conversation of September 11, 2003, the Clinic Manager advised that a response would come from a person who, at the time of this conversation, was unknown to the Applicant, and that the role of this

person (the APA) was not explained. He also complains that he was not informed that this person had, in August, undertaken to respond to his requests (though this undertaking was not fulfilled for some time), and that this lack of knowledge gave rise to unnecessary further access requests on his part. I accept that the APA's delay in providing the responses she undertook to provide in the August meeting may have contributed to some degree to the Applicant's frustrations. However, as already noted, in my view the Applicant's own actions, in that he made numerous, repetitive requests to numerous officials of the Custodian, made it harder to keep track of his requests, and also necessitated the coordination of a response involving the various recipients of the requests. Therefore I do not find that this factor constituted a failure by the Custodian to meet its duty to assist.

#### *Channeling of requests and responses*

[para 54] The Applicant says he is dissatisfied that particular individuals to whom he sent requests did not respond personally. In my view it was appropriate, and is indeed a recommended practice, for a custodian to channel multiple requests made by an Applicant through a single office.

#### *Allegations about conduct of the Custodian*

[para 55] Under this heading I mention a number of references to or allegations about conduct of the Custodian made by the Applicant, with which he disagrees or which he says undermined his trust. In each case, because the Applicant's submissions were made *in camera*, and were not provided to the Custodian, it has not had an opportunity to consider the Applicant's allegation and to try to refute it, or to provide information or an explanation about it. Had I regarded these points as relevant to the issue before me, I would have summarized them and asked the Custodian to respond. However, I did not do so because I do not see the points as having any bearing on the matters I must decide. Nevertheless, I mention these points, so the Applicant may know that I considered them. They are as follows:

- *Forgery of documents:* The Applicant claims that the documents released to him reveal an alteration or 'forgery' by the Custodian. He points to two separate copies of his consent to release of his information to a third party, which were provided to him in separate disclosures by the Custodian. Both these documents have his identical signature on them and were apparently copied one from the other. However, there is additional hand-written information on one of the copies consisting of the printed name of the witness to his signature, a date, and a check-mark in a box that is to be checked to indicate the consent does not expire. The Applicant suggests this information was added after he signed the document, and says also that the date is a "back-date" in that it is May 20, 2003, but he did not attend the clinic and could not have signed the document until May 26.

I may deal only with the Custodian's duty to provide documents to the Applicant in accordance with the relevant legislation. The Custodian appears to have provided to

the Applicant all versions of responsive documents which it had in its possession. The existence of two versions of a document (a matter on which the Custodian has had no opportunity to comment) is not relevant in this case to the question of whether the Applicant met its duty to assist under section 10(a) of the Act. As the documents were both disclosed, there can be no suggestion that they were withheld in order to cover up an error.

- *Admission of mistakes:* The Applicant says that officials of the Custodian admitted that release of his information to a third party was not properly handled and was a mistake. The Applicant has not made a complaint to me about an improper disclosure of his information, and there is insufficient information before me to reach any conclusions about it. In any event, as with the suggestion of ‘forgery’, this point has no bearing on the question of whether the Custodian met its duty to assist and respond appropriately to the Applicant in his information request.
- *Dissemination of misinformation about the Applicant:* The Applicant complains that some of the Custodian’s officials wrongly, and unprofessionally, suggested to third parties (including to police) that his actions were the result of his displeasure at the refusal of an insurance company to pay him long-term disability, and that they also wrongly described him as having an addiction to alcohol. This allegation does not bear on any of the issues in this inquiry.
- *Intimidation:* The Applicant also says that the February 5, 2004 response from the APA included the words “Calgary Police Services” below this official’s name, and that this may have been an attempt to intimidate him. This correspondence is dated after December 15, 2003 (the date of the request for review) and is outside the scope of this Inquiry. I would not in any event, given the identity of the correspondent and the nature of the letter, attach the significance suggested by the Applicant to the closing words.

[para 56] I conclude that apart from the delays, dealt with under Issue A, the Custodian made every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(a) of the Act.

**Issue C: Did the Custodian conduct an adequate search for responsive records, and thereby meet its duty to the Applicant, as required by section 10(a) of the Act?**

[para 57] The Applicant raises two kinds of concerns that can be taken as suggestions the Custodian’s searches were inadequate. He complains the Custodian had certain documents that it did not provide. He also complains there were delays in providing documents.

*Alleged omission of records as an indicator of an inadequate search*

[para 58] The Custodian’s original response (dated July 23, 2003) consisted of 71 pages (this number was mentioned by the Applicant in his submissions). My review of

the numbers of documents provided at various times allows me to conclude the Custodian initially supplied all of the responsive documents that were requested and then available<sup>11</sup>, other than the questionnaire (the ‘raw data’) from the Addiction Centre, and one other document, discussed below.

[para 59] The Custodian also eventually supplied, though with some delay, the 24-page questionnaire, and three pages of ‘patient progress notes’, (which were created in August and apparently attached to the Applicant’s ‘file’ after November 14). When specifically requested, it provided the Applicant’s August 14 letter to the Clinic Director. The Custodian supplied the Applicant’s access requests and materials, and correspondence relating to these, after the ‘reprocessing’ of the access requests.

[para 60] The Applicant points to only a single document that he knows was in the Custodian’s possession (because he sent it) that was not supplied back to him. This is his original document, consenting to disclosure of his information for research purposes, in which the Applicant revokes his consent by drawing lines through his signature and adding notations to indicate he was revoking the consent he had formerly given. The Applicant faxed this document to the Custodian on November 3, 2003 (Applicant’s Exhibit # 17). The omission of this single page, though unexplained, is not in my view significant enough to constitute a breach of the Custodian’s duty to conduct an adequate search.

[para 61] The Applicant also speculates that other documents existed that were not provided to him. In particular, he refers to the three additional pages of ‘patient progress notes’, noting that the third page appears newer, and has no hole punching as the first two have. It is not clear what significance the Applicant attaches to these features of the documents – he may be suggesting they point to the existence of multiple copies of these documents. He also points out there are no notes for the month of September, although clinic officials and service providers spoke to him during that month. He says this suggests the possibility of undisclosed notes. In my view these are all highly speculative suggestions. They do not provide a basis for me to conclude there were additional documents that were not supplied (and that the Custodian did not on this account meet its duty to conduct an adequate search).

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<sup>11</sup> Of the 157 pages (supplied to me by the Custodian) which it provided post-mediation as a ‘reprocessing’ of the request, the following were supplied after the initial response:

- 24 pages from other treatment facilities,
- the 24-page questionnaire,
- the letter to the Clinic Director (16 pages),
- three additional pages of ‘patient progress notes’
- 19 pages of information about access requests that were created after the first response
- the Applicant’s October, 2003 request that information about him not be released, etc. (one page).

This totals 87 pages. Of the 157 pages of information the Custodian eventually supplied, it leaves 70 pages. The Applicant states that he received 71. I may conclude, therefore, that the Applicant received all information that was available at the time of the first request (with the exception of a single document, which is discussed at paragraph 60).

*Delays in provision of particular documents as indicating an inadequate search*

[para 62] As discussed at length above, the Applicant also repeatedly complains about delays in the provision of documents. Arguably the failure to do a sufficiently comprehensive search at a particular point in time is a failure to meet the duty under section 10(a) even though an adequate search is done at a later time.

[para 63] The materials before me suggest that records that were in the Custodian's possession, but were not on the Applicant's 'file' (or 'medical chart' or 'health record'), were not provided until he specifically asked for particular documents, or until after his requests were 'reprocessed' following mediation by this office.<sup>12</sup> This in turn suggests that until these later points in time, the Custodian restricted its searches for the Applicant's information to his 'file', and did not search other locations where records relating to him may have been kept – for example, in the files of people involved in his treatment or in other dealings with him.

[para 64] I have already dealt with the issue of delays under the heading "Issue A". I concluded that though the Custodian breached its duty under section 12 by the delays associated with some of its initial responses, this was due in part to the confusing nature of the Applicant's requests. The same factor explains why the Custodian restricted its search to the Applicant's 'file' or 'medical chart' at particular points in time. I find, therefore, that overall, the search for records was adequate.

[para 65] I must note, however, that where an Applicant clearly requests all health information, an adequate search requires the custodian to look in all places where there might be such records. In my view, in determining the scope of a search for 'all health information' (or some equivalent), a custodian must have regard to its own practices about where such health information might be found – whether and with what degree of regularity it is placed in some central location or locations. If it is possible there are health records that are not in defined locations, the search must extend to those other locations.

[para 66] A similar point may be made with respect to an access request to a custodian for information that is not health information. In this case, some of the Applicant's access requests covered information that may not fall within the definition of 'health information'. The Custodian did not provide such information until after it re-processed the requests following mediation.

[para 67] Section 16 of the *Health Information Act* imposes a duty on a custodian to provide requested information even though it does not fall within the definition of health

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<sup>12</sup> This includes the assessment questionnaire, the three pages of 'patient progress notes' created in August, and the Applicant's October 10, 2003 document (requesting that no information be revealed to third parties without prior written consent, and that notification be given to him of any internal access).



information, if such information is accessible under the *Freedom of Information and Protection of Privacy Act*. Section 16 of the former Act provides as follows:

*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.*

[para 68] The Custodian's failure to provide such information in its initial responses can, as noted, be attributed in part to the multiplicity and variability of the Applicant's requests. However, it is important that health care bodies be aware of this broader obligation, and that they do not unintentionally restrict their provision of access only to health information. As with the *Health Information Act*, they equally have a duty to assist applicants with their access requests for non-health information. They must be mindful, in an on-going way, of this dual aspect of their duty to give access to information.

[para 69] The comments I made earlier about how a custodian has a responsibility to take charge of, clarify, and actively manage multiple requests, also applies to conducting adequate searches.

**Issue D: Did the Custodian provide an explanation of a record as required by section 10(c) of the Act?**

[para 70] Section 10(c) provides:

*10 A custodian that has received a request for access to a record under section 8(1) ...*

*(c) must provide, at the request of an applicant and if reasonably practicable, an explanation of any term, code or abbreviation used in the record.*

[para 71] Section 10(c) of the Act is triggered only on a request. The Applicant does not argue in his submission that he made any request for an explanation of any term, code or abbreviation in his records, nor has the Applicant directed me to any record of a request for such an explanation.

[para 72] I have before me a document, apparently signed by the Applicant, with a fax date November 17, 2003, which lists several specified pages (10 in total) under the heading "various records/entries requiring clarification", but this is not sufficiently explained to permit me to draw any conclusion under section 10(c) of the Act. Other materials provided by the Applicant also contain references to requests by him for clarification of illegible entries, but again, this is not demonstrated clearly enough for me to reach any conclusions.

[para 73] In its submission the Custodian describes a marginal note (apparently made by the Applicant) on a copy of his December 25, 2003 request for access as a request for “clarification of diagnostic analysis”. However, even if this marginal note is properly understood as a request for an explanation, it is not a request for an explanation of a term, code or abbreviation, and therefore it does not fit within the language of section 10(c). This document was in any event dated outside the time-frame at issue in this inquiry.

[para 74] For these reasons I do not have a basis for finding that section 10(c) was not met.

**Issue E: Do sections 13 and 14 of the Act have relevance to the matters raised in this inquiry?**

[para 75] Sections 13 and 14 of the Act deal with corrections or amendments of health information. The relevant parts of these sections are as follows:

*13(1) An individual who believes there is an error or omission in the individual’s health information may in writing request the custodian that has the information in its custody or under its control to correct or amend the information.*

*(2) Within 30 days after receiving a request under subsection (1) or within any extended period under section 15, the custodian must decide whether it will make or refuse to make the correction or amendment.*

*(5) If the custodian refuses to make the correction or amendment, the custodian must within the 30-day period or any extended period referred to in subsection (2) give written notice to the applicant that the custodian refuses to make the correction or amendment and of the reasons for the refusal.*

*(6) A custodian may refuse to make a correction or amendment that has been requested in respect of*

*(a) a professional opinion or observation made by a health services provider about the applicant, ....*

*14(1) Where a custodian refuses to make a correction or amendment under section 13, the custodian must tell the applicant that the applicant may elect to do either of the following, but may not elect both:*

*(a) ask for a review of the custodian’s decision by the Commissioner;*

*(b) submit a statement of disagreement setting out in 500 words or less the requested correction or amendment and the applicant’s reasons for disagreeing with the decision of the custodian.*

[para 76] The Applicant does not describe his request for correction as a request under the Act. Neither was correction or amendment formally raised as an issue in this inquiry.

[para 77] However, some of the materials before me, which I will describe briefly below, reveal that a primary reason underlying the Applicant's access request, and other correspondence and communication with the Custodian, was his disagreement with the way he had been evaluated or diagnosed, and treated, as this was reflected in his health records. The materials make clear he wanted to have his own comments on these subjects added to his chart, and, or alternatively, he wanted the parts of his chart with which he disagreed deleted. It is also clear that he conveyed this purpose to the Custodian. The materials show that the Clinic's staff was aware the Applicant wished to have particular parts of his health record deleted, and that the Custodian, through its APA, responded to this aspect of the Applicant's correspondence. They also show that the Applicant communicated to some of the Custodian's officials his desire that his own comments about his condition and treatment be placed on his chart.

[para 78] The Applicant's letter to the physician who was the Director of the Addiction Centre is a primary indicator of his purpose. This letter points out the ways in which he disagrees with the caseworker comments and with his treatment. It states his intention on the first page, as follows:

“... one very real concern of mine ... is to currently have this correspondence find its way in its entirety into my treatment record. This, in truth, is my first main strategy at this point in time.”

The letter concludes with the statement that his

“... ultimate goal is to have my entire file, along with all related [illegible], purged of all records pertaining to your facility and to its handling of [illegible]; undoubtedly the best path for ALL concerned parties.”

This letter was apparently also sent to the Clinic Manager, and the Applicant placed subsequent phone calls that “requested an answer”.

[para 79] The Applicant's caseworker's awareness of some of the Applicant's wishes is reflected in her entry in the 'patient progress notes' on August 22. She states that besides access to his questionnaire from the Addiction Centre, the Applicant's other primary purpose was to “have all evidence of his involvement at the A.C. [Addiction Centre] removed from his medical chart”. This issue was discussed in a meeting with the Clinic Director (the doctor who received the letter of August 19) and the Clinic Manager, and it was decided that the guidance of the Access and Privacy Analyst would be sought. The issue was subsequently discussed, and a resolution formulated, at a meeting of August 25 that included the caseworker, the Clinic Manager, and the APA.

[para 80] The APA's Affidavit also establishes she was aware of the Applicant's desire to have part of his medical record deleted. She states that she was advised of this by the Clinic Manager in the first few weeks of November. (The Affidavit does not mention the meeting of August 25 at which, according to the caseworker's notes, this issue was discussed amongst the caseworker, Clinic Manager, and the APA.)

[para 81] As well, there is a handwritten notation in a space reserved for 'comments' on one of the Applicant's November 26, 2003 access requests, apparently written by an official of the Custodian, which states: "Pt. wanted to know if there was a personal letter from himself on chart."

[para 82] Section 13(5) of the Act requires a custodian who refuses to make a correction or amendment to give notice of the refusal, and reasons therefore, within 30 days of the request. Section 14(1) requires that where a custodian refuses to make a correction or amendment under section 13, the custodian must permit the applicant to elect between a review of its decision by the Commissioner, and submission of a statement of disagreement (of 500 words or less).

[para 83] The Custodian responded to the part of the Applicant's request that was for deletion of his records. On November 18 the APA wrote to the Applicant stating that deletion of his records would be contrary to the records retention provisions of the *Hospitals Act*. However, it did not give him the election under section 14(1) of the Act.

[para 84] It appears the Custodian did not attach the Applicant's comments about his evaluation and care, contained in the Applicant's August 19 letter to the Clinic Director, to his chart. However, the Custodian did not expressly refuse to comply with the Applicant's suggestion that this letter should be included in his chart. As it did not respond, it did not, again, give him the election under section 14(1) of the Act.

[para 85] Because the facts of the case raised the question of the application of sections 13 and 14, I asked the Custodian to comment on whether and how these sections apply in this case.

[para 86] The Custodian responded that in its view, the Applicant's request was not based on his perception that there was an error or omission in his records, but rather, was based on his desire to avoid people becoming aware of some of the information contained in his health record. It says that the Applicant has never suggested that the portions of the record he wished to have deleted were erroneous. It also says that when the Custodian wrote to the Applicant (on November 18, 2003) stating that it was being asked to destroy part of his health record "to ensure against unwanted disclosure", the Applicant did not take steps to correct any misunderstanding. For this reason, the Custodian says, sections 13 and 14 of the Act do not apply.

[para 87] In my view, the letter written by the Applicant to the Clinic Director shows that the Applicant strongly disagreed with his evaluation, diagnosis, and treatment plan. He expressed his wish to the Clinic Director not only that parts of his health record

be deleted, but also, that his own views on these questions become part of his treatment record.

[para 88] I acknowledge that the Applicant's views and wishes were expressed in a repetitive and disjointed manner, and that the multiplicity of his requests, sent to numerous officials, significantly contributed to the Custodian's misunderstanding of his intentions. Nevertheless, in my view, both his requests for deletion of parts of his record, and his expressed desire in the letter to the Clinic Director that his own views become part of his treatment record, constituted a request for a correction or amendment based on a belief that there is an error or omission in the information. (A request for a deletion can in some circumstances, including in this one, constitute a request for a correction or amendment.) Thus, in my view, these requests fell under section 13 of the Act, and gave rise to a duty in the Custodian under section 13 to respond, as well as a duty under section 14(1), should it refuse to make the correction, to give the Applicant the election between the two options stated in the section.

[para 89] However, the Applicant has not made a complaint to me that the Custodian did not comply with its duties under sections 13 and 14 of the Act. Neither has the Applicant asked me to review the Custodian's decision to refuse the deletion. I will not, therefore, make any order on this matter at this time. However, I draw the provisions of sections 13 and 14 to the attention of both parties, who may consider their obligations and options under this legislation.

[para 90] I urge the Custodian to consider responding to the aspect of the Applicant's request for correction or amendment in which he states his desire that his views on his diagnosis and treatment be added to his chart. I also urge it to consider providing the Applicant with an opportunity to exercise the option in section 14(1) of the Act with respect to the 'deletion' aspect of his request. The same applies should it decide to refuse the 'addition' aspect. If it does not do these things, the Applicant may consider whether to bring a complaint to me that the Custodian has not fully responded to his correction requests, nor provided an opportunity to elect between the options in section 14.

[para 91] I also draw to the Applicant's attention section 13(6)(a) of the *Health Information Act*, which says that the Custodian is not obliged to correct or amend health information that is requested in respect of "a professional opinion or observation made by the health services provider about the applicant". The information in the Applicant's health record with which he disagrees appears to fall within this definition on its face. These materials appear to be professional opinions or observations about him. Should the Applicant be presented with the opportunity to make the election under section 14(1), I urge him, in exercising his option, to consider that section 13(6)(a) may apply to the information he has asked to have corrected or amended. Unless the Applicant could find some compelling argument that this information is not a professional observation or opinion about him, I would not ask the Custodian to correct or amend such information in a review pursuant to section 14(1)(a).

## **V. ORDER**

[para 92] I make this order under section 80 of the Act.

[para 93] I find the Custodian failed to meet its duty under section 12 of the Act to respond to the requests within the time limits imposed by the section.

[para 94] I find the Custodian failed to meet its duty to assist the Applicant under section 10(a) of the Act.

[para 95] Given the circumstances leading to the failures under sections 10 and 12, I do not regard these failures as substantial.

[para 96] I find the Custodian conducted an adequate search for records.

[para 97] I find the Custodian did not breach its duty to provide an explanation under section 10(c) of the Act.

[para 98] I do not make an order in relation to sections 13 and 14 of the Act, but draw the attention of the parties to these provisions.

Frank Work, Q.C.  
Information and Privacy Commissioner