

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER H2015-02

November 30, 2015

DR. BRAD MECHOR

Case File Number H6011

Office URL: www.oipc.ab.ca

Summary: An individual made an access request under the *Health Information Act* (HIA) for his entire medical file from Dr. Mechor (the Custodian), of whom the Applicant had been a patient. The Custodian provided the Applicant with records; however, the Applicant requested a review of the Custodian's response as he believed further records should be provided to him.

The Adjudicator found that the search conducted by the Custodian was adequate, and that he fulfilled his duty to assist the Applicant as required under section 10 of the HIA.

Statutes Cited: AB: *Health Information Act*, R.S.A. 2000, c. H-5, ss. 10, 80.

Authorities Cited: AB: Orders H2005-003, H2006-003.

I. BACKGROUND

[para 1] An individual made an access request under the *Health Information Act* (HIA) for his entire medical file from Dr. Mechor (the Custodian), of whom the Applicant had been a patient. The Custodian provided the Applicant with records; however, the Applicant requested a review of the Custodian's response as he believes further records should be provided to him.

[para 2] The Commissioner authorized an investigation to attempt to settle the matter. This was not successful, and the Applicant requested an inquiry.

II. INFORMATION AT ISSUE

[para 3] As this inquiry addresses the adequacy of the Custodian's response under section 10 of the Act, there are no records directly at issue.

III. ISSUES

[para 4] The issue in this inquiry, as set out in the Notice of Inquiry dated May 25, 2015, is:

Did the Custodian meet its duty to the Applicant as provided by section 10(a) of the HIA (duty to assist applicants)? In this case, the Commissioner will consider whether the Custodian conducted an adequate search for responsive records.

IV. DISCUSSION OF ISSUES

[para 5] Section 10 of HIA states:

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

(a) must make every reasonable effort to assist the applicant and to respond to each applicant openly, accurately and completely.

[para 6] Past Orders of this office have determined that a custodian is in the best position to show that it conducted an adequate search for responsive records; therefore, the burden of proof is on the custodian to show that it has done so (see Orders H2005-003 and H2006-003).

[para 7] Regarding the test for whether an adequate search was conducted, former Commissioner Work stated the following in H2005-003 (at paras. 19-21):

These FOIP Orders have not established a specific test for adequacy of the search; this is a question of fact to be determined in every case. The standard for the search is not perfection but rather what is "reasonable" in the circumstances. The decision about adequacy of a search is based upon the facts of how the search was conducted in the particular circumstances. In order to discharge its burden of proof under FOIP, a public body must provide sufficient evidence to show that it has made a reasonable effort to locate responsive records.

In its written and oral submissions, the Custodian argued that the FOIP approach to interpretation should be applied to the parallel provision in HIA. I accept this argument. I hereby adopt the above described FOIP criteria and approach for deciding whether the adequacy of the search and therefore the duty to assist under section 10(a) of HIA has been satisfied by a custodian.

To address the Applicant's concerns, I must review the thoroughness of the Custodian's search. In its written and oral submissions, the Custodian provided detailed descriptions of the steps that were taken, the communications that occurred, the documentation utilized and the efforts that were made to attempt to locate the information requested.

[para 8] With his Request for Inquiry, the Applicant had provided a handwritten explanation of why he was unsatisfied with the records he received from the Custodian. He said:

The unsatisfactory missing details are as below:

- A. File Transferred from [Dr. W] to [the Custodian] starting November 10, 2009
- B. All the Data related [through] fax, electronically[,] notes from the following list of professional medical team[,] All data from Alberta Health[.]

This is followed by a five-page list of documents sent to the Custodian by various physicians or organizations. As further explanation of this list was required from the Applicant, the Notice of Inquiry asked the Applicant to clarify. It stated:

The Applicant is asked to provide an explanation of the list attached to his Request for Inquiry dated September 9, 2014. For example, are these records which he believes are missing from the information already provided to him by the Custodian? If so, the Applicant is asked to provide a clear explanation of why he believes the Custodian should be in possession of those records. To assist the Commissioner, typed explanations would be preferable. This explanation should be provided with the Applicant's initial submission, which is to be provided to the Commissioner's Office and the Custodian per the schedule provided in Part III of this Notice.

[para 9] The Applicant did not provide any additional information in his initial submission. In his initial submission, the Custodian noted that the list provided by the Applicant with his Request for Inquiry appears to be a list of records already provided to the Applicant by the Custodian. By letter dated August 26, 2015, I said to the Applicant:

... the Notice of Inquiry, dated May 25, 2015, instructed you to provide an explanation of the list attached to your Request for Inquiry dated September 9, 2014. The Notice of Inquiry asked if the list of documents you provided was a list of records that you believe [the Custodian] should be providing to you. If so, you were asked to provide a clear explanation of why you believe [the Custodian] has these records. You did not provide any additional information in your initial submission; therefore, you have not provided the information you were instructed to provide.

In [the Custodian]'s submission (dated August 25, 2015), he states that the list attached to your Request for Inquiry appears to be a list of records that he has *already* provided to you.

Is your list a list of items you have received from [the Custodian], or is it a list of records you believe you *should* receive from [the Custodian]? Please clarify what

records you believe [the Custodian] ought to provide you in response to your access request. Please also explain why you believe [the Custodian] has those records.

[para 10] The Applicant responded by letter dated September 2, 2015. In this letter, he provided a list of documents he says were provided to him by the Custodian. The list is comprised of letters from various physicians and organizations to the Custodian, as well as letters from the Custodian to various physicians and organizations. The Applicant reiterated that he was seeking the information described in his Request for Inquiry (cited in paragraph 8 of this Order).

[para 11] In this letter, the Applicant also provided background information regarding his medical history, including his interactions with the Custodian. He made several allegations regarding the care he received from the Custodian and other physicians, but did not provide any explanation as to why he believed the documents he listed in his Request for Inquiry existed. He did not address the Custodian's statement that the listed documents appeared to be documents that were already provided to the Applicant.

[para 12] In his submission, the Custodian provided me with an affidavit outlining how he responded to the Applicant's access request. In this affidavit, the Custodian states that he provided the Applicant with his entire medical record and that he does not have any further treatment records relating to the Applicant. He also states:

I keep all of my patient's records in an electronic database. I do not keep any paper record. If written notes are taken, they are scanned and added to the patient's electronic record. Thus, [the Applicant's] record was located in this database using his name and medical health care identity number. I had my staff print his complete medical record. I reviewed what they printed and satisfied myself that it was [the Applicant's] complete medical record. (Custodian's affidavit, at para. 6)

[para 13] With his rebuttal submission, the Custodian provided me with a copy of the records (the Applicant's chart) provided to the Applicant in response to his access request. Nothing in those records indicates that the Custodian ought to have other records that were not included in the Custodian's response to the Applicant.

[para 14] In my view, the Custodian's search for records is adequate. Specifically, his explanation that he maintains all records related to a patient electronically on one database, and provided the Applicant with everything related to him from that database, is reasonable. Although the Applicant provided me with a list of documents he was seeking, he did not provide me with any reason to expect that the Custodian had these documents. Therefore, I have no reason to find that the Custodian's search for responsive records was inadequate.

[para 15] I find that the Custodian conducted an adequate search for records, in accordance with section 10 of the HIA.

V. ORDER

[para 16] I make this Order under section 80 of the Act.

[para 17] I find that the Custodian met its duty to assist the Applicant under section 10 of the HIA.

Amanda Swanek
Adjudicator