

# ALBERTA

## OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

### ORDER H2015-04/F2015-39

December 3, 2015

### ALBERTA HEALTH SERVICES

Case File Numbers H6244/000898

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

**Summary:** The Applicant made a request to Alberta Health Services (“the Public Body”) for copies of video surveillance footage taken the year before in an emergency waiting area of a hospital. The Applicant was advised that the footage had been destroyed in accordance with the Public Body’s retention policy. The Applicant complained that his personal or health information had been destroyed in contravention of the *Freedom of Information and Protection of Privacy Act* (“FOIP” or “the FOIP Act”) or the *Health Information Act* (“HIA”).

The Adjudicator found that the information at issue was not health information as defined by the HIA but was personal information as defined by the FOIP Act. Therefore, she examined the Public Body’s action in light of its obligations under FOIP, and found that the Public Body had met its obligations under sections 35 and 38 of the FOIP Act.

**Statutes Cited:** **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 4, 35, 38, and 72.; *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1, 60, and 80.

**Authorities Cited:** **AB:** Order F2006-018.

#### I. BACKGROUND

[para 1] In 2013, the Applicant made an access request to Alberta Health Services (“the Public Body”) pursuant to the *Health Information Act* (“HIA”) for health records

from the Royal Alexandra Hospital. He subsequently clarified that he also wanted video surveillance footage taken on February 14 and 16, 2006 at the Royal Alexandra Hospital Emergency Room. These are dates which the Applicant states he attended this Emergency Room.

[para 2] The Public Body responded to the Applicant's access request and provided him with the health records but not the video surveillance footage. It explained that its policy is that video surveillance footage is kept for only 14 days.

[para 3] The Applicant requested a review of the Public Body's response from the Office of the Information and Privacy Commissioner ("this Office"). Mediation was authorized by the Commissioner but was not successful in resolving the issues between the parties. The Applicant requested an inquiry into whether the Public Body's retention period for video surveillance was appropriate.

[para 4] I received submissions from both the Applicant and the Public Body.

## **II. RECORDS AT ISSUE**

[para 5] The records at issue in this inquiry are the video surveillance footage from the Emergency Room at the Royal Alexandra Hospital on February 14 and 16, 2006.

## **III. ISSUES**

[para 6] The Notice of Inquiry dated June 18, 2015 sets out the issues in this inquiry as follows:

1. Is the video surveillance health information under the HIA, or recorded information under the FOIP Act? If the video surveillance is or was recorded information under the FOIP Act, did it contain personal information under the FOIP Act?
2. If the surveillance footage contains health information, did the [Public Body] meet its duty to protect the health information from reasonably anticipated loss under section 60 of the HIA?
3. If the video surveillance contains personal information under the FOIP Act, did the Public Body meet its duty to protect the information as required by section 38 of the FOIP Act?

[para 7] In his rebuttal, the Applicant asked that the issue of correcting information in his medical records be dealt with in this inquiry. When the Applicant first requested a review from this Office he was told that he first needed to request a correction from the Custodian before he could ask for a review of the Custodian's response to his request. This is still the process he must follow; therefore, I will not add the correction issue to this inquiry.

#### IV. DISCUSSION OF ISSUES

**1. Is the video surveillance health information under the HIA, or recorded information under the FOIP Act? If the video surveillance is or was recorded information under the FOIP Act, did it contain personal information under the FOIP Act?**

[para 8] This issue is framed in two parts and I will deal with each separately.

***a. Is the video surveillance health information under the HIA, or recorded information under the FOIP Act?***

[para 9] Pursuant to section 4(1)(u) of the FOIP Act, the FOIP Act does not apply to health information in the custody or under the control of the a custodian as those terms are defined in the HIA. Therefore, in order to determine what act applies to the information at issue, the preliminary issue to resolve in this inquiry is if video surveillance footage is health information under the HIA.

[para 10] Health information is defined by section 1(1)(k) of the HIA as follows:

*1(1)(k) “health information” means one or both of the following:*

*(i) diagnostic, treatment and care information;*

*(ii) registration information;*

[para 11] Video surveillance information is not registration information as that term is defined in section 1(1)(u) of the HIA. Therefore, in order to be health information, video surveillance information must be diagnostic, treatment and care information. The relevant portions of the diagnostic, treatment and care information definition found at section 1(1)(i) of the HIA read as follows:

*1(1)(i) “diagnostic, treatment and care information” means information about any of the following:*

*(i) the physical and mental health of an individual;*

*(ii) a health service provided to an individual, including the following information respecting a health services provider who provides a health service to that individual...*

*and includes any other information about an individual that is collected when a health service is provided to the individual, but does not include information that is not written, photographed, recorded or stored in some manner in a record;*

[para 12] To determine if the recording fits the definition of diagnostic, treatment and care information, it is important to understand what the Applicant was doing when he was recorded.

[para 13] The Applicant is seeking video surveillance from a camera in a hospital emergency waiting area. The Applicant's submissions indicate that he was at the emergency department because of pain he was having in his ankle. He believes that the video will show him being escorted out of the emergency department by security personnel. Because the surveillance video was destroyed prior to the Applicant's access request, I do not have a copy of it.

[para 14] Although in his access request, the Applicant mentions two dates, it appears that he was only escorted out of the emergency room on February 16, 2006. I have reviewed the Applicant's chart from his visit to the emergency department on February 16, 2006. It appears as though he was examined by a doctor and found to have ankle pain. He was given pain medication and an order for crutches and was discharged. The nurses' records note that the Applicant was apprehensive about many things including walking on crutches and going home by himself. He was advised to take a cab if he did not think he could drive responsibly. The note then says, "...left walking, [with] security to get vehicle."

[para 15] Given the facts in this inquiry, in order for this to be diagnostic, treatment and care information it must fit into one of the following categories:

1. The video contains information about the physical and mental health of the Applicant; or
2. The video is information about a health service provided to the Applicant; or
3. The video was taken while the Applicant was being provided a health service.

[para 16] I do not believe that the video fits into any of these categories.

- i. Is the information "about the physical and mental health of an individual"*

[para 17] Firstly, the information on the video from either date on which the Applicant was present in the emergency department cannot be said to be "about the physical and mental health of the individual".

[para 18] The video recording was taken in a hospital emergency waiting area; however, it does not follow that what the camera recorded was information about the Applicant's (or anyone's) health within the terms of section 1(1)(i)(i). This is because in order to be information about someone's health within the terms of that provision, the recorded information must be assessed to be such by a health professional. To illustrate, if one lay individual observes another and records the fact they are looking ill, or have a

cough, that is not the second individual's "health information" within the terms of the Act (unless provided to, or considered by, a health professional).

[para 19] This conclusion is also supported by the opening words of section 1(1)(i), which indicate that the list in this subsection is of things that can constitute "diagnostic, treatment and care information" – this suggests that information about health is information about health that is created in the course of the diagnosis, treatment or care of an individual by a health professional.

[para 20] I do not go so far as to say what the surveillance camera records can never be health information. If a health care professional reviewed the recording for the purpose of ascertaining something about a person's health condition at the time, it could then (but not before) properly be regarded as information about the health of the person. (Thus, the original or primary purpose of the recording is not necessarily the critical factor.)

[para 21] In this case, the surveillance camera recorded the Applicant waiting in the emergency room waiting areas, and being escorted out of the area by a security person. These situations had some relationship to the treatment that was provided to the Applicant, but the recording of these activities was not a recording of information about his health, in the sense just described. Therefore, the first of the three possibilities listed above is not met.

ii. *Is the information "about a health service provided to the Applicant"*

[para 22] Equally, the information cannot be information "about a health service provided to" the Applicant. Health service is defined in section 1(1)(m) of the HIA as follows:

*1(1)(m) "health service" means a service that is provided to an individual for any of the following purposes:*

*(i) protecting, promoting or maintaining physical and mental health;*

*(ii) preventing illness;*

*(iii) diagnosing and treating illness;*

*(iv) rehabilitation;*

*(v) caring for the health needs of the ill, disabled, injured or dying,*

*but does not include a service excluded by the regulations...*

[para 23] With regard to the February 16, 2006 video, when the video was taken, a health service was not being provided – it had already been provided. The Applicant had been seen by a doctor, treated, and was leaving the emergency department. Being treated by the medical staff at the emergency department was the health service the Applicant was provided. This service had been completed by the time he was escorted to his car by a security guard.

[para 24] With regard to the video of the Applicant taken in the waiting area, providing a place for people to wait is not *providing* a health service.

[para 25] I acknowledge an individual seeking medical assistance who is sitting in a waiting area may already have undergone triage. However, I believe that there needs to be some sort of medical element to the service to bring it within the definition of health service. While the individual is waiting, he or she is not being provided a health service. The point of a triage system is to ensure that those who need a health service immediately are given priority. By deciding a person must wait after being triaged, a medical professional is making a decision that an individual can wait before being provided a health service. This means that an individual simply waiting in emergency is not being provided a health service.

[para 26] Therefore, unless it captured an individual actively being attended to or treated by medical staff, video surveillance in an emergency waiting area would not be information about a health service provided to an individual.

*iii. Is the information “collected when a health service is provided to an individual”?*

[para 27] Finally, in order for me to find that the video surveillance was “information collected while a health service was being provided”. I would have to find that from the time that an individual enters an emergency department, to the time the person is treated, he or she is being provided a health service. I have already found that providing a place to sit and wait is not providing a health service, and that escorting the Applicant out of the emergency department was not providing a health service. As a result, I find that any video surveillance footage taken of the Applicant in the waiting area or while being escorted out of the emergency department was not information collected while a health service was being provided.

*iv. Conclusion under section 1(1)(i) of the Act*

[para 28] Given my conclusions above, I find that the information at issue in this inquiry is not diagnostic, treatment and/or care information and does not meet the definition of health information in the HIA. Therefore, I find that the information at issue is recorded information subject to FOIP.

***b. If the video surveillance is or was recorded information under the FOIP Act, did it contain personal information under the FOIP Act?***

[para 29] Personal information is defined by section 1(n) of the FOIP Act as follows:

*1(n) "personal information" means recorded information about an identifiable individual, including*

*(i) the individual's name, home or business address or home or business telephone number,*

*(ii) the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*

*(iii) the individual's age, sex, marital status or family status,*

*(iv) an identifying number, symbol or other particular assigned to the individual,*

*(v) the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*

*(vi) information about the individual's health and health care history, including information about a physical or mental disability,*

*(vii) information about the individual's educational, financial, employment or criminal history, including criminal records where a pardon has been given,*

*(viii) anyone else's opinions about the individual, and*

*(ix) the individual's personal views or opinions, except if they are about someone else;*

[para 30] Although I have not seen the video, given the information I was provided about what it may contain, it does not fit into any of the enumerated examples of personal information outlined in section 1(n) of FOIP. However, the list is not exhaustive, and previous orders of this Office have found that an individual's image captured on video is that individual's personal information (see Order F2006-018 at para 22). I find that the surveillance video, if it did capture the Applicant's image, was his personal information.

**2. If the surveillance footage contains health information, did the [Public Body] meet its duty to protect the health information from reasonably anticipated loss under section 60 of the HIA?**

[para 31] Given my finding that the information at issue in this inquiry is not health information, it is not subject to section 60 of the HIA.

**3. If the video surveillance contains personal information under the FOIP Act, did the Public Body meet its duty to protect the information as required by section 38 of the FOIP Act?**

[para 32] The Public Body provided me with its policy regarding retention of surveillance information. The retention period is two weeks unless there is an incident, in which case the information is kept for a longer period of time.

[para 33] Although the Applicant seems to suggest in his submissions that there was an incident caught on the video which ought to have meant the Public Body retained the video for a longer period, there appears to have been no incident. When the Applicant, informed a nurse about his unease in getting home, he was walked to his car by security. I gather from the neutral tone of the nurse's notes, that this situation was not an incident in which the Applicant was expelled, against his will, from the emergency department, but rather one in which a security guard assisted the Applicant. As such, there was no reason for the Public Body to keep the information at issue in this inquiry, and, in accordance with its own policies, the Public Body destroyed it two weeks after it was recorded.

[para 34] Section 38 of the FOIP Act states:

*38 The head of a public body must protect personal information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or destruction.*

[para 35] Section 38 of the Act places an obligation on the Public Body to secure personal information against unauthorized access, collection, use, disclosure and destruction. The Public Body's retention policy is its attempt to help secure the information it collects from surveillance footage against unauthorized access, collection, use and disclosure by ensuring the footage is kept for as short of a time as necessary. In this inquiry, the destruction of the Applicant's personal information was done in accordance with the Public Body's obligations and was authorized by the Public Body's own policy. Therefore, the Public Body has met its obligations sets out in section 38 of the FOIP Act.

[para 36] Alternatively, from reading the Applicant's submissions, it seems that he was also concerned that the retention period set out in the Public Body's policy was too short. Section 35 of the FOIP Act deals with retention of an individual's personal information and states:

*35 If an individual's personal information will be used by a public body to make a decision that directly affects the individual, the public body must*

*(a) make every reasonable effort to ensure that the information is accurate and complete, and*

*(b) retain the personal information for at least one year after*



*using it so that the individual has a reasonable opportunity to obtain access to it, or for any shorter period of time as agreed to in writing by*

*(i) the individual,*

*(ii) the public body, and*

*(iii) if the body that approves the records and retention and disposition schedule for the public body is different from the public body, that body.*

[para 37] The Public Body's adherence to this section was not an issue in this inquiry. In any event, section 35 of the FOIP Act does not apply because the information at issue was not used by the Public Body to make a decision that directly affected the Applicant.

## **V. ORDER**

[para 38] I make this Order under section 72 of FOIP and section 80 of HIA.

[para 39] I find that the information at issue in this inquiry was not the Applicant's health information.

[para 40] I find that the Public Body met its obligations under sections 35 and 38 of the FOIP Act.

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Keri H. Ridley  
Adjudicator