

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER H2016-05/F2016-13

April 29, 2016

ALBERTA HEALTH SERVICES

Case File Numbers H6188 and 001502

Office URL: www.oipc.ab.ca

Summary: Pursuant to the *Health Information Act* (HIA), the Applicant requested that Alberta Health Services (the Custodian) delete letters of complaint from his files that had been taken by a named employee of the Custodian. The Custodian refused to do so and also indicated that the letters were not retained on the Applicant's medical file.

The Adjudicator found that the letters were given to a named employee by the Applicant but the named employee was acting in her personal capacity when she collected the letters. Therefore, the letters were not collected by the Custodian and so neither the HIA nor the *Freedom of Information and Protection of Privacy Act* (FOIP Act) applied to the collection.

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

I. BACKGROUND

[para 1] On May 2, 2014, the Applicant sent a fax to Alberta Health Services (the Custodian) requesting the:

Removal of letters of complaints, that were taken from my car (even though she denies it), which were suppose to be strictly confidential and shredded upon reading. These were shown to many different parties which was breaking privacy laws...

[para 2] The Custodian responded stating that it would not remove the letters from the Applicant's file because once a medical record is created the contents may not be deleted. Subsequently, the Applicant's medical files were searched and the letters were not found. The Custodian also states that the letters were not removed from the Applicant's car, nor were they ever placed on his medical file.

[para 3] In his submissions, the Applicant indicates that he delivered more than one complaint letter to a named employee at the clinic where he was regularly receiving treatment and that on at least one occasion, he gave a complaint letter to the named employee in the parking lot of the clinic when he was at his car. He also provided a copy of his progress notes which showed that the named employee had received four complaint letters from the Applicant and that each noted on the envelope that the named employee ought to treat the letter with "extreme confidence".

[para 4] On June 16, 2014 the Applicant requested that the Office of the Information and Privacy Commissioner review the Custodian's response to his request. Mediation was authorized but was not successful and on January 20, 2015, the Applicant requested an inquiry.

II. ISSUES

[para 5] The Notice of Inquiry dated October 15, 2015 lists the issues in this inquiry as follows:

1. Did Alberta Health Services collect the documents which the Applicant refers to in his request for review, and if so, were these documents retained and placed on the Applicant's medical file or some other file associated with the Applicant?

<p>In his initial submission, the Applicant should provide all the evidence he has that would establish that the documents referred to in his request for review were retained and placed on a file.</p>

2. If the answer to question 1 is yes, is the HIA or the FOIP Act the legislation that is applicable to collection of the information?
3. If the answer to question 2 is the FOIP Act, did Alberta Health Services have the authority under the FOIP Act to collect the information?
4. If the answer to question 2 is the HIA, did Alberta Health Services have the authority under the HIA to collect the information?

[para 6] The Applicant also makes several statements that he wants to have references to these complaint letters in his medical file deleted and other corrections made to notes in his medical file. This inquiry was set in order to deal with the complaint letters that the Applicant requested be removed from his file. The issue of correcting or deleting items from his progress notes on his medical file is a new issue. If the Applicant wishes

to have this issue addressed, he must first ask the Custodian to remove/correct the notes. If the Applicant is unsatisfied with the Custodian's response to his request, he may ask this Office to review the Custodian's reply and then ask for an inquiry if necessary. Because this has not been done, I have no ability to make findings on if the Custodian ought to correct/delete these references.

III. DISCUSSION OF ISSUES

1. Did Alberta Health Services collect the documents which the Applicant refers to in his request for review, and if so, were these documents retained and placed on the Applicant's medical file or some other file associated with the Applicant?

[para 7] The Applicant states that he gave several complaint letters to a named employee of the Custodian and told her to keep them in confidence, not show them to anyone else, and destroy the letters. A progress note written by the named employee from his medical file provided to me by the Applicant indicates that the named employee did receive at least four of these letters. The Custodian has searched for the letters the Applicant asked to be destroyed and confirms that these letters were not retained on the Applicant's medical file or any other file.

[para 8] The Applicant believes that these letters were kept on some file in the possession of the Custodian. He bases this belief on the fact that reference to the letters was in his progress notes. As well, he states that he saw some of the letters in his file or they were in the file "surrendered" to him. He provided me with his own copies of these letters and made a note "put in file" on the letters he believes he remembered seeing on this file. He also states that the letters were in a police case file which he appears to have had access to.

[para 9] It seems that the Applicant was receiving information from more than one source (the Custodian and the police). He states that the file he received from the Custodian was very large and so I believe that there is a strong possibility that the letters the Applicant believes he recalls seeing on his file, may have been on the police file. In any event, I believe the Custodian's evidence that those letters are not now on his file. So, while I have no doubt that reference to the letters was made in the progress notes in the Applicant's medical file, on a balance of probabilities, I find that the letters were not retained by the Custodian. Therefore, I find that the Applicant has not provided sufficient evidence that the letters he asked to be destroyed were retained on his medical or any other file.

[para 10] Although I do not believe that these letters were retained on the Applicant's file, I do believe that the Applicant gave these letters to the named employee and that she read at least some of them.

[para 11] While the collection of information by an employee of a custodian is more often than not going to be deemed a collection by the custodian because a custodian can

act through its employees, this case is an unusual one. Generally, when an employee collects information he or she is doing so in the course of their employment. In those instances, the collection of information by the employee is the collection of information by the custodian. This is usually understood by both the employee and the individual providing the information to the employee.

[para 12] However, in this instance, the Applicant provided information to a specific employee and asked that she not show other people and even that she destroy the letters. As the Applicant stated in his initial submissions:

[The named employee] had taken the majority of my complaints from me while I was in my car. I did this as an added precaution that would not allow her to let anyone else from (*sic*) seeing them, which also made it clear that it was not done in the hospital, so it was not as a patient or to go to the hospital, and also before letting her remove them from my right hand while I sat in the drivers (*sic*) seat of my vehicle, had her promise that they would be kept to herself and upon reading them once, she would shred them without showing, discussing them or copying them etc.

(Applicant's initial submissions at page 2)

[para 13] Clearly, the Applicant did not mean for the information in the letters to be collected by the Custodian. His dismay that this may have occurred is evident throughout his submissions. Therefore, I do not believe that the Applicant was providing this information to the named employee in her capacity as a representative of the Custodian and was not providing it to the Custodian.

[para 14] Likewise, another progress note written by the named employee from the Applicant's chart states that if the Applicant provided the named employee with any further letters, she was advised that she should charge him with harassment. As well, the Applicant provided me with copies of some of the letters that he provided to the named employee. The Applicant also provided me with a copy of a letter he wrote to the named employee thanking her for her assistance. While the letter discussed incidents that occurred in the clinic, the tone was very personal. These letters were written specifically to the named employee. Therefore, I think it is more likely than not that these letters were given to the named employee as an individual and not as employee of the Custodian collecting information for the Custodian.

[para 15] As a result, I find that the Custodian did not collect information from the Applicant when the Applicant gave the named employee the letters. Therefore, neither the FOIP Act nor HIA apply to that information transfer. As a result, it is beyond my jurisdiction to make any decisions about it.

IV. ORDER

[para 16] I make this Order under section 72 of the FOIP Act and section 80 of the HIA.

[para 17] I find that the named employee did not collect the letters on behalf of the Custodian and therefore neither the FOIP Act nor the HIA apply to the collection of the letters of complaint by the named employee.

Keri H. Ridley
Adjudicator