ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER H2021-02

February 26, 2021

ALBERTA HEALTH SERVICES

Case File Number 003869

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Summary: The Complainant made a complaint that her information recorded in her health records was disclosed by Alberta Health Services (the Custodian) to her son's health care providers, while he was in the hospital following his birth, without her authorization and without authority under the *Health Information Act* (HIA). She also complains that her son's health care providers collected and/or used her information recorded in her health records without authority when they included it in her son's health records.

As well, the Complainant complains that the Custodian failed to ensure the security of her information and her son's health information when doctors and nurses spoke loudly about the Complainant, and when they threw labels containing her and/or her son's patient health information into garbage containers accessible to the public.

Finally, she complains that the disclosure of her information and her son's information to Child and Family Services by the NICU Social Worker was not authorized.

Mediation was authorized but did not resolve the issues between the parties and on March 17, 2017, the Applicant requested an inquiry.

The Adjudicator determined that the Complainant's health information is also the health information of her son, as it was collected and/or used in the course of providing health services to the son and was relevant to his care.

The Adjudicator determined that the social workers employed by the Custodian had authority to use the Complainant's information, and to disclose it to Child and Family Services.

The Adjudicator also determined that the Custodian did not fail to take reasonable steps to protect the Complainant's and her son's health information as required by section 60(1) of the Act; nor did it fail to take reasonable steps to ensure the accuracy of the information as required by section 61.

Statutes Cited: AB: *Child, Youth and Family Enhancement Act*, R.S.A 2000, c. C-12, ss. 1, 4, 6, 126, *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 33, *Health Information Act*, R.S.A. 2000 c. H-5, ss. 1, 20, 25, 35, 27, 56.5, 60, 61, 80

Authorities Cited: AB: Orders 98-002, F2006-018, F2008-029, F2017-39, F2020-18, H2002-005, H2020-05

Cases Cited: *Covenant Health v. Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562

I. BACKGROUND

[para 1] The Complainant made a complaint that her information recorded in her health records was disclosed by Alberta Health Services (the Custodian) to her son's health care providers, while he was in the hospital following his birth, without her authorization and without authority under the *Health Information Act* (HIA).

[para 2] The Complainant had given birth to her son in 2015 in hospital, after which the son was admitted to the Neonatal Intensive Care Unit (NICU), due to concerns about his health. The son was treated in the NICU for approximately a week and a half.

[para 3] The Complainant states that her health information was disclosed in her child's hospital chart, in the physician information sheet sent to her child's pediatrician, and in her child's Electronic Health Record (EHR). The information about the Complainant contained in these records includes her name, age, number of pregnancies, STD results, blood type, antibody screen, and information regarding a medical condition. The Complainant states also that the records

> …also include specific information about my pregnancy and delivery which is related to my baby and thus I understand its inclusion although I never authorized its collection, use, or disclosure and would prefer that it was not included.

[para 4] The Complainant states that the health care providers providing services for her child did not provide health services to her. She complains that her son's health care providers collected and/or used her information recorded in her health records without authority when they included it in her son's health records.

[para 5] As well, the Complainant complains that the Custodian failed to ensure the security of her information and her son's health information when doctors and nurses spoke loudly about the

Complainant. The Complainant states labels containing her and/or her son's patient information were later thrown away in garbage cans accessible to the public.

[para 6] Finally, she complains that the disclosure of her information and her son's information to Child and Family Services by the NICU Social Worker was not authorized.

II. ISSUES

[para 7] The issues set out in the Notice of Inquiry, dated May 7, 2020, are as follows:

1. Did the Custodian or the Custodian's Affiliate(s) disclose the Complainant's health information with, or without, authority, within the terms of the Act?

   This issue is framed to address both the disclosure of her information by unknown means to the son's health care providers, as well as to the disclosure of her information and her son's information to Child and Family Services.

2. Did the Custodian or the Custodian's Affiliate(s) collect and/or use the Complainant's health information with, or without, authority, within the terms of the Act?

   This issue is framed to address any use of the Complainant's health information relative to providing treatment for her son, and its inclusion in the son's health record.

3. Did the Custodian take reasonable steps to protect the Complainant's and her son's health information as required by section 60(1) of the Act?

   This issue is framed to address the Complainant's concerns about verbal disclosures and improper disposal of labels.

4. Did the Custodian or the Custodian's Affiliate(s) take reasonable steps to ensure the accuracy of information as required by section 61?

   This issue is framed to address the Complainant's concern about the accuracy "of the Social History section".

III. DISCUSSION OF ISSUES

Preliminary matter – additional issues raised by the Complainant

[para 8] With her initial complaint, the Complainant attached a 12-page explanation of her concerns, along with several pages of health records. With her request for inquiry, the Complainant attached a 9-page explanation of the issues into which she requested an inquiry. The issues set out in the Notice of Inquiry reflect my understanding of the Complainant's concerns.

[para 9] For her initial submission to the inquiry, the Complainant chose to rely on the information she had previously provided in the documents described above. However, in her rebuttal submission, the Complainant raised a number of additional issues that are not set out in the Notice of Inquiry.

[para 10] As stated in Order F2020-18 (at para. 11), a rebuttal submission is too late in the process to raise new issues. If the Complainant believed that issues she had previously raised were not reflected in the Notice of Inquiry, she ought to have raised that in her initial submission.

[para 11] This inquiry will address the issues as set out in the Notice.

1. Did the Custodian or the Custodian's Affiliate(s) disclose the Complainant's health information with, or without, authority, within the terms of the Act?

Disclosure of the Complainant's information to the child's health care providers

[para 12] The Complainant argues that her health care providers must have disclosed her health information to her son's health care providers. In her request for inquiry, the Complainant asks:

> Did my health providers disclose my information or did Alberta Health Services (AHS) disclose my information to my son's health providers by giving my son's health providers access to all of my [health information]…?

[para 13] If the Complainant's health information was disclosed by another health care provider that is not an affiliate of the Custodian – in other words, if the Complainant's health information was disclosed to the Custodian by another custodian – I don't know who that custodian is or might be. In any event, that other custodian (if there is one) is not part of this inquiry. Therefore, any disclosure by another custodian is not at issue here. Issue #2 of this Order (disclosed below) will consider whether the Custodian collected the Complainant's health information.

[para 14] The Complainant also states in her request for inquiry that "[m]y information was originally my information recorded in my health records maintained by AHS and it was disclosed on an unauthorized basis." The Custodian states that the son's health care providers are affiliates of the Custodian; if the Complainant's health care providers are also affiliates of the Custodian, then the issue is one of *use*, rather than disclosure of the Complainant's health information. It states that the HIA addresses the disclosure of health information to or by custodians; it does not contemplate the disclosure of health information between affiliates of one custodian. Instead, different affiliates of one custodian accessing health information constitutes a use of that information by each affiliate.

[para 15] I agree that when different affiliates of the Custodian accessed the Complainant's (or her son's) health information, those accesses are better characterized as separate uses of the information under the HIA, rather than collections and disclosures.

[para 16] Further, the submissions indicate that at least some of the information may have been accessed via the Electronic Health Record (Netcare). Section 56.5 of the Act addresses access of health information in Netcare; the relevant sections state:

> *56.5(1) Subject to the regulations,*
>
> > *(a) an authorized custodian referred to in section 56.1(b)(i) may use prescribed health information that is accessible via the Alberta EHR for any purpose that is authorized by section 27;*
>
> *(2) For greater certainty, the use pursuant to subsection (1) of prescribed health information that is accessible via the Alberta EHR does not constitute collection of that information under this Act.*
>
> *(3) For greater certainty, the use pursuant to subsection (1) of prescribed health information that is accessible via the Alberta EHR does not constitute a disclosure of that information by*
>
> > *(a) the regulated health professional or authorized custodian who originally made that information accessible via the Alberta EHR pursuant to section 56.3,*
> >
> > *(b) any other authorized custodian,*
> >
> > *(c) the information manager of the Alberta EHR, or*
> >
> > *(d) any other person.*

[para 17] The Custodian in this case is an authorized custodian referred to in section 56.5(1)(a).

[para 18] Whether the son's health care providers had authority to access and use the Complainant's health information will be addressed in the next section. Whether the Custodian collected the Complainant's health information from another custodian will also be addressed in the next section of this Order. There is no indication that the Custodian disclosed the Complainant's health information to another custodian.

Disclosure of the Complainant's information and her son's information to Child and Family Services

[para 19] "Health information" is defined in section 1(1)(k) of the HIA, with reference to section 1(1)(i). The information disclosed to the Child and Family Services (CFS) was information collected for the purpose of providing health services to the Complainant and her son. This is the health information of the Complainant and her son.

[para 20] The Custodian states that it contacted CFS when the Complainant "indicat[ed] her intent to discharge the Newborn from the [hospital] NICU against medical advice" (initial submission at para. 45).

[para 21] The Custodian states that the Complainant's name and some health information about her son was disclosed to CFS at that time. The Custodian states that the health information is that of the son, rather than the Complainant. The Custodian argues that it had authority to disclose this information under sections 35(1)(m)(i) and (p) of the HIA. These provisions state:

35(1) A custodian may disclose individually identifying diagnostic, treatment and care information without the consent of the individual who is the subject of the information

…

(m) to any person if the custodian believes, on reasonable grounds, that the disclosure will avert or minimize

(i) a risk of harm to the health or safety of a minor

…

(p) if the disclosure is authorized or required by an enactment of Alberta or Canada

[para 22] The Custodian states that it is required under the *Child, Youth and Family Enhancement Act* (CYFEA) to report to the CFS any child that it believes on reasonable and probable grounds is in need of intervention. The applicable sections of the CYFEA state:

1(2) For the purposes of this Act, a child is in need of intervention if there are reasonable and probable grounds to believe that the safety, security or development of the child is endangered because of any of the following:

…

(c) the child is neglected by the guardian;

…

(2.1) For the purposes of subsection (2)(c), a child is neglected if the guardian

…

(b) is unable or unwilling to obtain for the child, or to permit the child to receive, essential medical, surgical or other remedial treatment that is necessary for the health or well-being of the child,

…

4(1) Any person who has reasonable and probable grounds to believe that a child is in need of intervention shall forthwith report the matter to

(a) a director, or
(b) a police officer.

(2) Subsection (1) applies notwithstanding that the information on which the belief is founded is confidential and its disclosure is prohibited under any other Act.

6(1) If a director receives information in the form of

(a) a request for intervention services,

(b) a report under section 4 or 5, or

(c) any other allegation or evidence that a child may be in need of intervention,

the director must investigate the child's need for intervention unless the director is satisfied that the information was provided maliciously or is unfounded or that the report or allegation was made without reasonable and probable grounds.

(2) During an investigation, a director may convey a child to any place in order to complete the investigation if in the opinion of the director it is necessary.

(3) If, after an investigation referred to in subsection (1), the director is of the opinion that the child is in need of intervention,

(a) the director must,

(i) if the director is satisfied that it is consistent with the child's need for intervention, provide family enhancement services to the child or to the child's family in accordance with this Act, or

(ii) if the director is not satisfied that the child's need for intervention can be met under subclause (i), take whatever action under this Act that the director considers appropriate, including the provision of protective services in accordance with this Act,

and

(b) the director may, if the director is satisfied that it is consistent with the child's need for intervention, convey the child to the person who has custody of the child or to a person who is temporarily caring for the child.

(4) If family enhancement services are provided to the child or to the child's family, the person or a member of the organization providing those services must report to the director any matter respecting the child that may require further investigation by the director.

126(3) A director or a person acting on behalf of a director, including an agency providing services on behalf of a director, may collect and use personal information, including health information, for the purposes of conducting an assessment or an investigation or providing services under this Act.

(4) A custodian may disclose health information to a director or a person acting on behalf of a director, including an agency providing services on behalf of a director, for the purposes set out in subsection (3).

[para 23] The Custodian argues that it was authorized to disclose the Complainant's information, and her son's information, to CFS because it reasonably believed that the Complainant intended to take her son out of the NICU against medical advice. The medical advice was for the son to remain in the NICU until he had established oral feeds, which had not yet happened. The Custodian argues that the Complainant's discharging her son would have amounted to refusing to permit the son to receive essential medical care, amounting to neglect under the CYFEA (sections 1(2)(c) and 1(2.1)(b), above).

[para 24] Section 126(4) specifically authorizes the Custodian to disclose health information to the director or a person acting on behalf of the director, for the purposes of conducting an assessment or an investigation or providing services under that Act.

[para 25] The Custodian argues that the Complainant's intent to discharge her son triggered the requirement under section 4 of the CYFEA for the custodian to report the situation to the director. Once the director receives a report under section 4, the CYFEA requires the director to investigate the child's need for intervention (section 6).

[para 26] The Complainant states in her request for inquiry that the disclosure of her information was done by a social worker with AHS. She agrees that the social worker initially disclosed her information to CFS in relation to the issue regarding her son's feeding. The Complainant states that CFS successfully mediated that issue between the Complainant and the Custodian. She does not appear to object to that initial disclosure.

[para 27] The Complainant states that the social worker continued to disclose the Complainant's information to CFS after the feeding issue was mediated. She objects to any disclosure after the mediation was concluded.

[para 28] The only information I can locate in the submissions before me that show what information was disclosed by the social worker are copies of the social worker's notes, provided by the Custodian in its initial submission. These notes recount meetings that included the CFS employee and indicate what SW2 and the CFS employee discussed about the Complainant. There is no evidence before me to suggest that additional information about the Complainant was disclosed by SW2 to the CFS employee other than what the notes indicate was discussed.

[para 29] There are three separate note entries, dated September 23, 25, and 29, 2015. The September 23 record was authored by social worker 1 (SW1); the September 25 and 29 records were authored by social worker 2 (SW2). The September 25 record outlines events and conversations that occurred that day during the Complainant's son's stay at the hospital. Part of the notes recounts the meeting between the Complainant, SW2, and a CFS employee. The Complainant's submission indicate that she believes the CFS employee had no further concerns following this meeting. SW2's notes dated September 29 discuss events and meetings between her and the Complainant that occurred the prior day (September 28). The notes indicate that the CFS employee attended the hospital to see the Complainant and/or her son that day (September 28). The notes state that SW2 had a phone conversation with the CFS employee that same day, about the Complainant, to relay the SW2's interactions with the Complainant that day. This appears to be the information that the Complainant alleges was disclosed by SW2 to CFS without authority.

[para 30] I accept the reasons provided by the Custodian for its disclosure of the Complainant's information to CFS, and that this disclosure is authorized under section 35(1)(p) of the HIA, and the cited provisions of the CYFEA. The Complainant argues that the Custodian disclosed information to the CFS beyond the time it was appropriate to do so, because the CFS employee had told the Complainant he had no concerns about her care of her son. The Complainant did not provide any evidence to support this claim. SW2's second record of notes, dated September 29, state that the CFS employee attended the hospital to follow up on the Complainant and her son on September 28, several days after the meeting between the Complainant and SW2. That is the same day that SW2 followed up with the CFS about the Complainant. It seems clear that CFS had not yet considered the matter closed by that date. As such, SW2 was authorized to disclose the Complainant's information to CFS for the same purpose as the initial disclosure.

[para 31] The Complainant also alleges that SW1 disclosed her information without authority (rebuttal submission at page 33) but the specific allegations relate to SW1's collection and use of the Complainant's information. The Complainant has not stated to whom she believes SW1 disclosed her information. Without this information, I cannot conclude that the Complainant's health information was disclosed by SW1.

[para 32] The Complainant states that the September 25 notes indicate that SW2 disclosed inaccurate information about the Complainant's mental health status to CFS. The Complainant points to a section in the notes in which SW2 comments on the Complainant's agitated manner and states in its unclear whether that is usual for the Complainant, or possibly related to a post-partum issue. There is no indication that this particular comment in the notes was communicated by SW2 to CFS. Regardless of whether that comment is the Complainant's health information, there is no indication that it was disclosed by SW2 and I cannot conclude that it was.

[para 33] I find that the Custodian had authority to disclose the Complainant's health information to the extent that it did so.

[para 34] I will consider the related accuracy concern in the relevant section of this Order.

Disclosure to the Complainant's son

[para 35] The Complainant has raised a concern that her son will be able to access her health information that has been included in her son's health records. She characterizes this possibility as a disclosure of her health information to her son. This issue is not listed in the Notice of Inquiry; however, I will briefly discuss the Complainant's concerns, to hopefully clear up some apparent confusion.

[para 36] The Complainant states that when she requested her own health information, her mother's information (contained in the Complainant's health records) was severed, as information about another individual.

[para 37] However, when the Complainant requested her infant son's health information (as his guardian), her own information in his records was also provided (i.e. it was not severed). She questions whether this means that her son will have access to *her* information in *his* health records, when he is old enough to request it himself.

[para 38] It seems likely that when the Complainant requested her infant son's health information, her own information was also provided (i.e. not severed) because it was information *about* the Complainant being provided *to* the Complainant. This is different from the Complainant's mother's health information, which was severed from the Complainant's health records when she (the Complainant) requested those. That the Complainant received her health information when she requested a copy of her son's records does not necessarily mean that her son would also receive her health information contained in his health records should he ever request a copy.

2. Did the Custodian or the Custodian's Affiliate(s) collect and/or use the Complainant's health information with, or without, authority, within the terms of the Act?

[para 39] Custodians may collect health information under section 20 of the HIA, which states:

> *20 A custodian may collect individually identifying health information*
>
> *(a) if the collection of that information is expressly authorized by an enactment of Alberta or Canada, or*
>
> *(b) if that information relates directly to and is necessary to enable the custodian to carry out a purpose that is authorized under section 27.*

[para 40] Section 25 of the HIA states that no custodian shall use health information except in accordance with the Act. A custodian may use health information for the purposes authorized under section 27(1) of the Act. The relevant provisions state:

> *27(1) A custodian may use individually identifying health information in its custody or under its control for the following purposes:*
>
> *(a) providing health services;*
>
> *…*
>
> *(f) carrying out any purpose authorized by an enactment of Alberta or Canada;*

[para 41] As stated in the Notice of Inquiry, this issue is intended to address any use of the Complainant's health information relative to providing treatment for her son, and its inclusion in the son's health record.

[para 42] The Custodian has raised the possibility that the Complainant's own physician is not an affiliate of the Custodian, and may have disclosed the Complainant's health information to the Custodian. Specifically, the Custodian states that the Complainant's prenatal record was provided to the hospital at which the Complainant delivered her son. If the source of this information was an affiliate of the Custodian, then the Custodian did not collect it a second time, when the Complainant delivered her son. Rather, it was used by the Custodian. If the source of the prenatal record was another custodian, then the Custodian would have collected that information, prior to using it.

[para 43] Section 20(b) permits a custodian to collect health information that relates directly to and is necessary to enable a purpose set out in section 27.

[para 44] The prenatal record includes the Complainant's date of birth, care provider, medical history and family medical history, medications, and bloodwork results, including STI status. The Custodian states that the prenatal record informed health services that may be provided to her son.

[para 45] The Complainant argues that the information collected by the Custodian (if it was collected) was not directly related to and necessary for her son's care. She states (rebuttal submission, at pages 15-16):

> AHS did not specifically address the "relates directly to and is necessary" criteria (HIA 20(b)) when discussing maternal information as follows:
>
> - AHS also identified that HIA 20(b) applies and that information such as HIV status is required. (AHS 67, 68).
> - AHS discussed in a general manner that it can use information for providing health services to the newborn, maternal information may speak to risk factors such as maternal age, whether the mother is diabetic, GBS positive.(AHS 72- 77)
> - AHS indicates that the information was limited to discrete maternal factors that may or do affect a newborn's health (AHS 36.d)
>
> AHS used general terms about newborns and mothers rather than specifically addressing my Son and me. AHS did not prove that the collected information specifically: "relates directly to and is necessary to enable the custodian to carry out a purpose that is authorized under section 27" HIA 20(b).

[para 46] The Complainant further notes that after she expressed concerns about the contents of the discharge summary, the physician who authored the document agreed to amend portions of the document, including removing a reference to the Complainant's history of seizures, which had been in the original discharge summary. The Complainant states that this supports her argument that information about her seizures was not necessary for providing health services to her son.

[para 47] The term "necessary" has been discussed in past Orders of this Office with respect to the authority to collect and disclose personal information under the *Freedom of Information and Protection of Privacy Act* (FOIP Act). In Order F2008-029, the Director of Adjudication discussed the meaning of "necessary" relative to a disclosure of information for the purposes of meeting the goals of a program of the Public Body. She said (at paras. 51-52):

> … I find that "necessary" does not mean "indispensable" - in other words it does not mean that the CPS could not possibly perform its duties without disclosing the information. Rather, it is sufficient to meet the test that the disclosure permits the CPS a means by which they may achieve their objectives of preserving the peace and enforcing the law that would be unavailable without it. …
>
> …Again, I find that "necessary" in this context does not mean "indispensable", and is satisfied as long as the disclosure is a significant means by which to help achieve the goals of the program.

[para 48] This standard is also consistently applied with respect to the authority to collect personal information under section 33 of the FOIP Act. Section 33(c) permits the collection of personal information where that information relates directly to and is necessary for an operating program or activity. This standard is also appropriate with respect to section 20(b) of the HIA: that provision is satisfied if the health information is a significant means by which to help a custodian carry out a purpose in section 27 of the HIA. In this case, the Custodian states that the information was collected for the purpose of providing a health service, per section 27(1)(a) (cited above).

[para 49] The Complainant is not satisfied with the Custodian's explanation that it collects and/or uses certain maternal information that may or does affect a newborn's health. The Complainant seems to be arguing that the Custodian had authority to collect her health information only if each item of information was *in fact* necessary to care for her or her son.

[para 50] This is too strict a test for determining what is necessary to collect. In Order F2012-05, I considered the collection of personal information under the FOIP Act by the WCB, in the course of determining a claimant's eligibility for benefits. The claimant in that case had argued that not all of the information collected about her was necessary to determine her eligibility. I found that the WCB did not have to ultimately rely on all the information it collected, in order for the collection to be authorized. I said (at para. 30):

> Often at least some of the information collected will not ultimately be relied on to make the determination; part of a case manager's job is to sort through the information that they have sought out or that is presented to them, to decide what is relevant. It would not be practical to thwart the work of investigators carried out in good faith, by the prospect that after the fact, what they collect will be judged, with hindsight, to be irrelevant as evidence and the collection to have been unauthorized. In my view, the investigator may collect any information that could reasonably be said to be related to the matter under investigation and potentially relevant. It need not ultimately be proven to be relevant in fact.

[para 51] In my view, this analysis applies to section 20(b) of the HIA as well. It may not be obvious to the Custodian (or an affiliate) at the time it collects health information what precisely will ultimately be required to provide health services. In this case, the information that the Custodian collected (if it was collected) is a prenatal record, containing information about the Complainant's pregnancy, from her treating physician. It seems clear that information in a prenatal record is reasonably related to health services provided to the Complainant during her delivery, and to her son following his birth.

[para 52] I find that if the information was collected by the Custodian, it was collected with authority under the HIA.

[para 53] As discussed above, if the Complainant's treating physician was an affiliate of the Custodian at the time he provided health services to the Complainant, then the Custodian *used* the information in the prenatal record, rather than collecting it. I have already determined that if the record was collected, the collection was authorized for the purpose of providing a health service, per section 27(1)(a). As such, it follows that the use of the information in that record was authorized for the same purpose.

[para 54] Other health information of the Complainant was used to provide health services to the Complainant and her son. In addition to the prenatal record, the Complainant objects to the use of her information contained in

- a delivery record, which contains Complainant's name, health care number, date of birth, details of the birth, and information about the son at birth, such as weight, health status, and care provided,

- an EONS form, which contains health information about Complainant, information about the delivery, and the health status of her son at time of labour and birth.

[para 55] The Complainant also specifically objects to the references to her seizures being used.

[para 56] The Complainant argues that this information was not necessary to treat her son and should not be included in his health records.

[para 57] In *Covenant Health v. Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562 the Court discussed the scope of 'health information' under the HIA. It noted that health information includes diagnostic, treatment and care information, which is defined in section 1(i) as including "any other information about an individual that is collected when a health service is provided to the individual…" The Court considered various situations in which information about a patient's family members might constitute the patient's health information. It concluded (at paras. 78-79, footnotes omitted):

> These hypotheticals suggest that "other information about an individual that is collected when a health service is provided to the individual" includes, at the very least, information about the mental or physical health of others that relates to the physical and mental health of an individual or a health service provided to an individual and is collected when a health service is provided to an individual. It may affect the diagnosis or the health service provided to the patient.
>
> There is no reason to conclude from the *Health Information Act* as a whole, including the statement of purpose in s. 2, that the information about B may not in some circumstances be A's health information. Had the Legislative Assembly wished to enact a more restricted definition of health information it could have stated that personal information about one may not be the health information of another.

[para 58] Following this analysis, while I agree that the health information of the Complainant continues to be her health information even when it is used to treat her newborn son, it *may also be* the health information of her son if it relates to the health of her son or to the health services provided to her son. In other words, the information can be about both the Complainant and her son at the same time.

[para 59] The Custodian has explained that the health information about the Complainant used when providing health services to her son is information about a mother that can directly affect the health of the child before and after birth. Having reviewed the information in the records, I accept this explanation. It is notable that the son was admitted to NICU following his birth, due to various concerns about his health soon after his birth. Fortunately, these concerns appear to have resolved. Nevertheless, it is reasonable for the health service providers to be aware of any information about the son's gestation and birth that could affect his recovery.

[para 60] The Complainant has specifically objected to the references to her history of seizures. From the information before me, the Complainant suffered seizures during her pregnancy. It seems reasonable to conclude that information about the seizures might be relevant to providing health services to the son after his birth.

[para 61] In each case, I accept that the Complainant's health information that was used when providing health services to her son was used with authority under section 27(1)(a). It is also my view that this information is health information of the son to that extent.

3. Did the Custodian take reasonable steps to protect the Complainant's and her son's health information as required by section 60(1) of the Act?

[para 62] As stated in the Notice of Inquiry, this issue addresses the Complainant's concerns about verbal disclosures and improper disposal of labels.

[para 63] Section 60 of the HIA requires a custodian to protect health information. It states:

> *60(1) A custodian must take reasonable steps in accordance with the regulations to maintain administrative, technical and physical safeguards that will*
>
> *(a) protect the confidentiality of health information that is in its custody or under its control and the privacy of the individuals who are the subjects of that information,*
>
> *(b) protect the confidentiality of health information that is to be stored or used in a jurisdiction outside Alberta or that is to be disclosed by the custodian to a person in a jurisdiction outside Alberta and the privacy of the individuals who are the subjects of that information*
>
> *(c) protect against any reasonably anticipated*
>
> *(i) threat or hazard to the security or integrity of the health information or of loss of the health information, or*
>
> *(ii) unauthorized use, disclosure or modification of the health information or unauthorized access to the health information,*
>
> *and*
>
> *(d) otherwise ensure compliance with this Act by the custodian and its affiliates.*
>
> *(2) The safeguards to be maintained under subsection (1) must include appropriate measures*
>
> *(a) for the security and confidentiality of records, which measures must address the risks associated with electronic health records, and*
>
> *(b) for the proper disposal of records to prevent any reasonably anticipated unauthorized use or disclosure of the health information or unauthorized access to the health information following its disposal.*
>
> *(3) In subsection (2)(a), "electronic health records" means records of health information in electronic form.*

[para 64] Section 8 of the Health Information Regulation to which section 60(1) refers, states in part:

> *8(3) A custodian must periodically assess its administrative, technical and physical safeguards in respect of*
>
> *(a) the confidentiality of health information that is in its custody or under its control and the privacy of the individuals who are the subjects of that information,*

> *(b) any reasonably anticipated threat or hazard to the security or integrity of the health information or to the loss of the health information, and*
>
> *(c) any unauthorized use, disclosure or modification of the health information or unauthorized access to the health information.*

Disposal of labels

[para 65] The Complainant states that labels were disposed of in the garbage, accessible to anyone who walked by. The labels include the patient's name, gender, date of birth, physician and healthcare number. The Custodian states that labels are disposed of either at the patient's bedside, in an opaque, sealed sharps container, or in the staff-only commons room, in a confidential bin. The Custodian states that the confidential bin in the commons room is emptied three times per day into a secured bin, which is then shredded. The Custodian further states (initial submission at para. 96):

> AHS recognizes there is a remote possibility that a family member of a baby in the RAH NICU may access a common room and may pilfer labels from confidential bins located in the common rooms. However, AHS submits that the standard is has to meet with respect to the safeguarding of health information is one of reasonableness, not perfection. AHS submits that the safeguards it has in place with respect to the disposal of labels in the RAH NICU that contain health information met that standard.

[para 66] The Complainant argues that the sharps containers are easily accessed due to their proximity to baby cribs and walking paths; the Custodian agrees that the containers themselves are proximate to these areas but are nevertheless not accessible as they are sealed.

[para 67] The standard that applies when reviewing whether a custodian met its duty to take reasonable steps to maintain safeguards against unauthorized access etc. of health information is not a standard of perfection. I understand from the Custodian's submission that the labels are disposed of in one of two places: a sharps container or the confidential bin in the commons room.

[para 68] The Custodian did not mention whether the confidential bin in the commons room is sealed or secured. The Custodian did specifically mention that the sharps container is sealed, and that the shredding bin, in which the confidential bin is emptied three times per day, is secured. As this detail was not mentioned with respect to the confidential bin, I cannot conclude that it is secured or sealed. The Custodian did mention that the commons room is staff-only, though it is possible that non-staff could enter the room. From this acknowledgement I gather that the room may not be locked.

[para 69] In my view, the Custodian's practices regarding label disposal fall short of perfection, but not of reasonableness. The Custodian could take additional steps – specifically, securing the confidential bin in the commons room. However, it is not clear to me that this step is necessary to meet the obligation set out in section 60 of the HIA. I say this because while the confidential bin itself may not be secured, it is emptied into a secured bin several times per day; also, the area where the confidential bin is located is designated as staff-only. While the room may not be locked, individuals not authorized to be in the room would likely be noticed. These

security measures might not be sufficient for more sensitive patient information, but in my view they are sufficient for the disposal of labels.

Verbal disclosures

[para 70] The Complainant states that physicians and nurses spoke loudly when discussing health information of patients in the ward, including about the Complainant and her son.

[para 71] In its initial submission, the Custodian explains the setup of the NICU area of the hospital where the Complainant's son was treated, and the type of conversations that occur between health care practitioners. It states (at paras. 85-87):

> With respect to the concern regarding rounds occurring at the bedside and to provide context, please be advised that, in the RAH NICU, there are 9 rooms with each room having 6 to 9 babies in it. There may be up to 69 babies on the RAH NICU at any one time.
>
> Daily rounds occur where the health care team attends at each baby's bedside to hear updates, share information, and plan the care for the baby. Rounds occur at the bedside so that the baby can be observed by the health care team and so that there is sufficient space for all members of this multidisciplinary team to be present. In addition, it assists with the involvement of parents in their baby's care, who are often at the bedside holding their babies. If the care team does not attend at the bedside, it greatly reduces the ability of parents to be involved in these discussions.
>
> It is acknowledged that other families whose babies are in the same room as the baby that is being rounded upon may overhear conversations between the health care team, and between the health care team and families. However, in order to deliver health care services to the babies and involve families in that care, bedside rounds are required. It is not possible to allocate an individual room to each baby, as one nurse is assigned to care for two babies and the space at the facility does not allow for such room allocation.

[para 72] The Custodian argues that it met its obligations under section 60 with respect to discussing health information in the vicinity of other patients and visitors. It states (initial submission, at paras. 88-90):

> Nonetheless, AHS submits that it has met its section 60 obligation, as a result of the general policies that it has in place with respect to the protection of health information. The relevant policies are:
>
> > a. the AHS Information Security and Privacy Safeguards Policy (#1143) [Tab 21], at Principles and section 1.1, 1.2 and 1.4], which recognizes AHS duty to protect the privacy and confidentiality of information in its control and provides for the provision of mandatory education and training on information security and privacy principles to AHS people to ensure all AHS people have sufficient awareness to protect the security, privacy, and confidentiality of AHS information; and
> >
> > b. the AHS Privacy Protection and Information Access Policy (#1177) [Tab 22], which sets out AHS' lnfoCare behaviours, including the requirement to safeguard information [s 1 (1)(c)] and that AHS people are require to comply with the lnfoCare behaviours [s 4.1].
>
> In addition to these general policies and with respect to the specific facts at hand, AHS expects its health care providers to determine if there are actions they can take to protect the confidentiality of their conversations, such as speaking with a lowered voice, looking for relatively quiet areas

> where they cannot be overheard, limiting the amount of patient information discussed in a non-private setting, and having family meetings or sensitive conversations in a private meeting room, if possible. Whether it is possible to take some or all of these actions, depends on the space limitations and efficient work flow in the unit. It is noted that these discussions are occurring between health care providers in order to provide health services to patients.

[para 73] The policies cited by the Custodian (provided with its submission) address patient privacy in a general way. The Custodian referred to having conversations with patients and/or family in private rooms if possible, but the Complainant's concerns relate to conversations between health service providers about a patient, in the vicinity of the patient and/or guardians. The Custodian has explained that the health care team will conduct rounds, attending each child in the unit. The teams discuss the child's progress and care, preferably in the presence of the child's guardians, so that the guardians can be involved in the discussions.

[para 74] The importance of having discussions among the members of the health care team, and involving the guardians seems clearly to ensure the best care of the child, and to ensure the guardians, as ongoing caregivers, understand the child's care. Any measures taken to enhance privacy must still allow the health service team to provide a high standard of care to each child. For example, lowering voices is a good practice, to the extent that it does not impede the participants from hearing and understanding all pertinent details.

[para 75] It is also clear that while private rooms for each child may permit the highest degree of privacy, it is not possible within the current system. In general, the hospital setting is not conducive to a high degree of patient privacy. However, the first priority in a hospital setting must be patient care, over patient privacy. Safeguards taken to protect patient privacy can't jeopardize appropriate patient care.

[para 76] Given this, I accept that the Custodian is limited in the steps it can take to prevent conversations among the health service provider team and/or the patient's guardians being overheard by others in the vicinity. Being cognizant of volume, and having separate rooms available for some conversations where appropriate, are reasonable steps. It is not clear to me what additional steps would be reasonable to impose, given the priority of patient care and the constraints of the hospital setting.

[para 77] I find that the Custodian has met its obligations under section 60 of the HIA.

4. Did the Custodian or the Custodian's Affiliate(s) take reasonable steps to ensure the accuracy of information as required by section 61?

[para 78] As stated in the Notice of Inquiry, this issue addresses the Complainant's concern about the accuracy "of the Social History section".

[para 79] Section 61 of the Act requires a Custodian to make a reasonable effort to ensure that health information is accurate and complete before using or disclosing the information. It states:

> *61 Before using or disclosing health information that is in its custody or under its control, a custodian must make a reasonable effort to ensure that the information is accurate and complete.*

[para 80] In Order H2002-005, former Commissioner Work adopted the definition of "reasonable" used in Order 98-002 with respect to the term "reasonable effort" as it appears in the *Freedom of Information and Protection of Privacy Act* (FOIP Act). He said (at para. 22):

> The standard imposed by section 61 of the Act for a custodian to make 'a reasonable effort' is not a standard of perfection. In Order 98-002, Commissioner Clark adopted the definition of 'reasonable' in Black's Law Dictionary: "fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view." I am adopting this definition for section 61 of the Act.

[para 81] A provision similar to section 61 exists in the FOIP Act (section 35(a)). Orders with respect to that provision have interpreted "every reasonable effort" to mean:

> Every reasonable effort is an effort which a fair and rational person would expect to be done or would find acceptable; the use of "every" indicates that a public body's efforts are to be thorough and comprehensive and that it should explore all avenues in verifying the accuracy and completeness of the personal information. (See Orders F2006-018 at para 111 and F2017-39)

[para 82] A custodian's duty under section 61 is described in Order H2020-05 (at para. 31):

> In my view, section 61 is best interpreted as requiring information to be accurate and complete *enough* for the purposes for which it will be used or disclosed. The requirement that a custodian take *reasonable* steps to ensure accuracy and completeness, suggests that the standards of accuracy and completeness are not absolute, but rather, specific to the situation. In other words, what steps are reasonable to ensure accuracy may depend on the nature of the information and the purpose for which it will used or disclosed. Information to be used in order to provide medical services, such as surgery, may require more extensive steps to ensure accuracy than information that is recorded in the course of a medical visit that is not likely to be used or disclosed for any purpose in the future. However, in both cases the standard is not perfection, but what is reasonable in the circumstances in which the information is used.

[para 83] I agree with this analysis and will apply this standard in this case.

[para 84] In her request for inquiry, the Complainant states that there are inaccuracies in the information about her that was included in her son's health record. She states that she was told by this Office about the ability to make a correction request. She states that it should not be her concern to try to correct the inaccurate information. This issue is not strictly about whether the information is accurate, but about whether it is sufficiently accurate and complete for the purpose for which it will be used or disclosed.

[para 85] The Complainant states that the physician who authored a discharge summary included information in the Social History section when the physician was not present during the relevant events. The Complainant states that the physician informed her that the information originated with a social worker, SW2.

[para 86] The information in the Social History section relates to the misunderstanding between the Complainant and the Custodian regarding her intent to discharge her son against

medical advice (discussed earlier in this Order). The Complainant's concern seems to be that the information in the social history section is not health information and ought not to be contained in health records. She also states that the physician who authored the discharge summary does not have the accurate or complete information regarding the events.

[para 87] In the Social History section, the physician briefly summarized a particular event and resolution. Not every event needs to be recorded by a person who had first-hand knowledge of the event, for the account to be sufficiently accurate and complete. From the information in the records, there doesn't appear to be anything inaccurate about the limited information provided in the summary.

[para 88] In her rebuttal submission, the Complainant raises additional concerns about the accuracy of information. She states (at pages 6-7):

> The Social Workers were not authorized to provide a health service to me (AHS 36.c) but they did and used inaccurate individually identifying health information about me. The NICU Social Worker (SW2) provided a health service to me and created, used and disclosed a false health record about the mother having mental health issues, PPD, psychosis which is inaccurate using speculative terms such as "it is unclear." She also used and disclosed other inaccurate information about me. Reasonable effort was not made to ensure the accuracy thus contravening HIA 61.
>
> She further indicated that she and [the CFS employee] had concerns about my mental health but [the CFS employee] told me he did not have any concerns. There is no documentation directly from [the CFS employee] indicating that he had concerns. Reasonable effort was not made to ensure the accuracy of whether [the CFS employee] actually did have concerns or not. HIA 61 is contravened.
>
> The NICU Social Worker (SW1) used and disclosed inaccurate information about me when providing a health service to me of psycho-social assessment. AHS did not take reasonable steps to ensure the accuracy of those false health records and is thus in contravention of HIA 61.
>
> …
>
> The Netcare record has the old copy of the Discharge Summary (Appendix L) and was not updated which is in contravention of the accuracy requirement of HIA 61.

[para 89] Regarding the first concern about SW2's recording of mental health issues, SW2's notes, discussed earlier in this Order, note the Complainant's agitation during a meeting and commented that it is unclear to SW2 whether this was usual for the Complainant or possibly related to a post-partum issue. Contrary to the Complainant's argument, it does not appear that SW2 diagnosed the Complainant with a disorder in this record. The information the Complainant has objected to is better characterized as SW2's professional opinion about the Complainant's apparent agitation on a particular day (i.e. that it is unclear whether this was normal for the Complainant or not). There is nothing before me to indicate that there is anything inaccurate or incomplete about this information.

[para 90] The Complainant also questions the accuracy of SW2's notes where they indicate a conversation SW2 had with the CFS employee in which they both expressed concerns about the Complainant. SW2's notes a few days later clearly indicate that she spoke with the CFS employee again, and the employee "was pleased" with the Complainant's progress. It is clear

that SW2 followed up with the employee and recorded the employee's subsequent views about the Complainant. Therefore, it seems that SW2 did take additional steps to ascertain whether the CFS employee had concerns about the Complainant. The Complainant did not express any concern about the accuracy of the notes of that subsequent conversation.

[para 91] The Complainant states that SW1 used and disclosed inaccurate information about the Complainant in providing a psycho-social assessment. The Complainant's concern appears to be that SW1 spoke with her when the Complainant was recovering from a surgical procedure. The Complainant states that she was still medicated and not in a position to provide consent to the collection of her information. She indicates that she would not have shared as much information with SW1 as she did, had she been fully recovered from the medication.

[para 92] Most of the information the Complainant states is inaccurate is information SW1 recorded as being said to her by the Complainant. The Complainant has indicated that she was medicated and therefore might not have provided (or communicated) the information as accurately as possible. I have only this one record of notes from SW1; subsequent social work visits with the Complainant were conducted by SW2. The notes of SW1 that the Complainant objects to include brief mentions of the Complainant's residence and the possible future participation of the biological father. The apparent purpose of these notes is to provide some brief personal background of the Complainant. There is no indication that the information therein will be used or disclosed for any particular purpose relating to the Complainant. This information does not appear to have been referred to in subsequent social worker interactions or notes.

[para 93] Moreover, the general theme in the Complainant's submissions is that she is unhappy about the amount of information about her that has been recorded and used by various employees of the Custodian. In order to verify the accuracy of the Complainant's living situation and relationship with her son's biological father, the Custodian would have to collect *more* information about the Complainant, not less. The Complainant's concern seems to be more related to the amount of information about her in her son's health records, which has been addressed above, and less about the accuracy and completeness of the information about her.

[para 94] The Complainant also notes that SW1 commented that the son was being treated for high blood pressure, which is factually incorrect. I agree that the medical notes indicate the son had low blood pressure; however, there is no indication that this information in the social worker's notes is likely to be used or disclosed for any purpose within the terms of section 61. It seems reasonable to conclude that a person making a decision about the Complainant or her son to which the son's blood pressure was relevant would refer to the records of health service providers, rather than to the social worker's notes.

[para 95] Lastly, the Complainant states that Netcare still contains the old discharge summary, which contains inaccuracies. The Complainant provided a copy of the old summary, which indicates it was printed in March 2018. The Custodian states that an amended discharge summary was created in April 2019 by the same physician, after a meeting between that physician and the Complainant about the contents of the original discharge summary. The Custodian provided a copy of the amended summary with its initial submission. Based on this,

there is no reason to expect that the old discharge summary continues to be used or disclosed by the Custodian.

[para 96] Nothing in the submissions and records before me indicates that the Custodian failed in its duty to ensure information used to make a decision about the Complainant and/or her son was accurate and complete for the purpose for which it will be used or disclosed.

IV. ORDER

[para 97] I make this Order under section 80 of the Act.

[para 98] I find that the Custodian had authority to collect, use and disclose the Complainant's health information.

[para 99] I find that the Custodian did not fail to take reasonable steps to protect the Complainant's and her son's health information as required by section 60(1) of the Act.

[para 100] I find that the Custodian did not fail to take reasonable steps to ensure the accuracy of the information as required by section 61.

_____

Amanda Swanek
Adjudicator