ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2009-005

February 23, 2010

ODYSSEY HEALTH SERVICES

Case File Number P1109

Office URL: www.oipc.ab.ca

Summary: The Applicant believed that the Organization did not provide him with all information that he had requested from it. He asked for a review of the adequacy of the Organization's search for responsive records, which is part of its duty to assist him under section 27(1)(a) of the *Personal Information Protection Act* ("PIPA").

The Adjudicator found that the Organization did not conduct an adequate search for handwritten notes of one of its representatives, but found that it conducted an adequate search for other responsive records. Although the Applicant cited examples of records that he believed were missing in the documentation provided to him, the Adjudicator found that the Organization sufficiently responded to all of the Applicant's concerns about the adequacy of its search for these alleged records.

The Applicant requested information about payments to the Organization and its staff and consultants, but the Adjudicator found that this was not the Applicant's personal information. The information was not "about" him, as the payments were a matter between the Organization and an insurance company, not the Applicant. Under section 24(1) of PIPA, the Applicant may only request access to his own personal information, so the Organization had no duty to search for the information about payments.

As the Organization subsequently gave the Applicant the missing handwritten notes, the Adjudicator confirmed that it had now made every reasonable effort to assist the

Applicant and to respond to him as accurately and completely as reasonably possible under section 27(1)(a).

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1(i), 1(k), 4(3)(f), 5(3), 24, 24(1), 24(1)(a), 27, 27(1)(a), 49, 50(1), 52 and 52(3)(a); *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n)(viii) and 10(1); *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1(1)(f) and 7.

Authorities Cited: AB: Orders 98-003, 2001-016, F2003-001, F2003-009, F2007-029, F2009-001, P2006-004, P2006-005, P2006-006, P2006-007, P2006-012, P2007-002 and P2008-007.

I. BACKGROUND

[para 1] The Applicant was a patient of Odyssey Health Services (the "Organization"). At a meeting on April 16, 2008, he was given a copy of his clinical file, with the exception of certain raw psychological test data.

[para 2] In an e-mail dated May 24, 2008, and an identically worded letter dated May 26, 2008, the Applicant asked his psychologist ("Dr. M"), who is also the Director of the Organization, for a "copy of your interpretation of MMPI [Minnesota Multiphasic Personality Inventory] and Dr. [G]'s notes." In a letter dated May 27, 2008, the Organization told the Applicant that he had already been given a copy of his entire file, with the exception of the raw psychological test data.

[para 3] In an e-mail dated May 30, 2008, the Applicant asked for "information about; your, your workers and doctors involved with my treatment fees". In a letter dated June 4, 2008, the Organization again told the Applicant that he had already been given a copy of his complete file, adding that the file included the notes that the Organization had received from Dr. G as well as the Organization's progress reports consisting of Dr. M's interpretation of the MMPIs that the Applicant had completed.

[para 4] In a letter received by the Organization on July 10, 2008, the Applicant asked the Organization for "my health records that are missing from the information you provided me with". He specifically indicated that he was missing Dr. G's written notes from a visit that occurred on February 14, 2008, Dr. G's and Dr. O's written notes from an interview that occurred on April 24, 2007, and Dr. M's written notes from all meetings. The Applicant also requested a copy of Dr. M's interpretation of his MMPI results sent to Dr. G. Finally, he requested information about how much the Co-operator's Life Insurance Company (the "Co-operator's") paid the Organization, and how much the Organization paid the doctors and workers on the team treating the Applicant.

[para 5] In a letter dated July 18, 2008, Dr. M responded to the Applicant on behalf of the Organization as follows:

You have already been provided with Dr. G…'s report to me respecting the meeting that occurred on February 14th, 2008. You have also been provided with Dr. G…'s and Dr. O…'s notes to me from the initial interview on April 24th, 2007 as well as Dr. O…'s letters to me respecting the other occasions when he saw you. Finally, you have been provided with a copy of my letter to Dr. G…, which is dated February 7th, 2008, that outlines the information that I provided Dr. G… with regard to my interpretation of your MMPI data. I am enclosing further copies of those notes with this letter.

There is no other information in the Odyssey Health Services' file respecting your July 10th request for such notes.

I have asked both Dr. G… and Dr. O… to determine whether they have retained their handwritten notes from those interviews or whether they destroyed those notes after that had dictated their reports to me. Dr. O… did identify some handwritten notes and I have attached those here. If Dr. G… is able to provide me with any such notes, I shall forward copies to you.

[para 6] In response to the Applicant's request for information about fees paid by the Co-operator's, the Organization advised him, in its letter of July 18, 2008, to contact the Co-operator's directly. In response to the Applicant's request for information about fees paid to the doctors and workers treating him, the Organization provided information regarding hourly rates, but did not provide details of what staff and consultants were paid, on the basis that the Applicant was not entitled to such information.

[para 7] In undated correspondence responding to the Organization's letter of July 18, 2008, the Applicant acknowledged receipt of some of the information that he had requested, although he complained that he received some of it, only for the first time, with the July 18, 2008 letter. The Applicant further indicated that, while he had received certain reports, he had still not received Dr. G's *handwritten* notes from the interview of February 14, 2008, Dr. O's *handwritten* notes from the interview of April 24, 2007, and Dr. M's *handwritten* notes from all meetings, including with the Applicant's family doctor. He also made reference to the fact that he had not been provided with information regarding the payments that Dr. M and his team actually received.

[para 8] The foregoing letter of the Applicant was received by this Office on August 14, 2008, and was treated as a request for review. The Commissioner authorized a portfolio officer to investigate and try to settle the matter under the *Personal Information Protection Act* (the "Act" or "PIPA"). This was not successful and the Applicant requested an inquiry, by letter dated December 18, 2008.

[para 9] In accordance with a process of this Office in matters involving the adequacy of a search for responsive records, and in order for the Commissioner to decide whether to conduct an inquiry under section 50(1) of the Act, the Organization was asked

to provide an affidavit or statutory declaration setting out evidence regarding its search for responsive records. It provided an affidavit, sworn March 20, 2009 by Dr. M, to both this Office and the Applicant.

[para 10] The Applicant was then invited to respond to the Organization's affidavit. On review of his response, received April 21, 2009, the Commissioner decided to conduct an inquiry and a written one was set down.

II. RECORDS AT ISSUE

[para 11] As this inquiry addresses the Organization's duty to assist the Applicant and the adequacy of its search for responsive records, there are no records at issue. For context, however, the records that the Applicant believes have not been provided to him consist of information regarding the fees paid to individuals who treated him as well as various records regarding his treatment. The Applicant also believes that he did not receive certain information as early as he should have.

III. ISSUES

[para 12] The Notice of Inquiry, which was issued June 22, 2009, set out the following two issues:

> Is the information requested, or [any] of it, the Applicant's personal information?
>
> Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including duty to conduct an adequate search for responsive records)?

[para 13] In his submissions and other correspondence, the Applicant raises issues unrelated to the foregoing, such as issues regarding the professional services and heath-related treatment provided to him, his entitlement to benefits, the Organization's billing practices, and alleged overpayments from the Co-operator's to the Organization. This Office has no jurisdiction to address these matters.

[para 14] The Applicant also alleges that the Organization has recorded or used inaccurate or incomplete information about him. For instance, in the records already provided to him, he believes that there are professional statements and opinions about him for which there is no support. Because the Applicant's request for review raised only the Organization's duty to assist and the adequacy of its search for responsive records, I have no jurisdiction to address any other matters, including the Applicant's requests that certain of his personal information or health information be corrected or amended. The Applicant was advised by this Office in October 2009 that if he wishes to pursue this, he must first write to the Organization, which must then respond to his correction/amendment request before this Office has any jurisdiction to review the matter. The letter in October 2009 made it clear to the parties that the inquiry would only deal with the two issues set out above.

IV. DISCUSSION OF ISSUES

Is the information requested, or [any] of it, the Applicant's personal information?

[para 15] The above issue is relevant because, under section 24(1) of PIPA, an applicant may request access to his or her own personal information only. I will address this issue as it arises in my discussion below regarding the specific information requested by the Applicant.

Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including duty to conduct an adequate search for responsive records)?

[para 16] Section 27(1)(a) of PIPA sets out an organization's duty to assist as follows:

> *27(1) An organization must*
>
> *(a) make every reasonable effort*
>
> *(i) to assist applicants, and*
>
> *(ii) to respond to each applicant as accurately and completely as reasonably possible,*

[para 17] An organization's duty to assist an applicant under section 27(1)(a) of PIPA includes the obligation to conduct an adequate search (Orders P2006-006 and P2006-007 at para. 48). An organization has the burden of proving that it conducted an adequate search (Order P2006-012 at para. 11).

1. The information provided in July 2008

[para 18] In his request for review, the Applicant complained that he received certain information for the first time as an enclosure with the Organization's July 18, 2008 letter, rather than earlier. This information consisted of Dr. O's letter of April 24, 2007 to Dr. M, Dr. M's letter of February 7, 2008 to Dr. G with regard to his interpretation of the Applicant's MMPI data, and Dr. O's handwritten notes.

(a) Dr. O's letter of April 24, 2007 and his handwritten notes

[para 19] The Applicant made his request under the Act for Dr. O's letter and handwritten notes on July 10, 2008, when he asked for any information not yet provided to him and specifically referred to Dr. O's "written notes from my interview on April 24, 2007". Although the Organization indicates that it provided the Applicant's clinical file "at his request" at a meeting of April 16, 2008, I find that this was not in the context of a request under the Act. Rather, the Applicant was given his file informally, in other words by way of routine disclosure, at his final appointment with the Organization.

[para 20] Because the Applicant did not make a request under the Act for Dr. O's letter and notes until July 10, 2008, I find that the Organization conducted an adequate search, and otherwise met its duty in respect of providing those records, when it enclosed them with its July 18, 2008 response to the Applicant.

[para 21] The Organization submits that the handwritten notes of Dr. O were not in its custody or under its control and that it therefore actually had no duty to search for and provide them to the Applicant. However, I find that the Organization did have custody and control of Dr. O's handwritten notes. I explain this in greater detail below when also discussing the handwritten notes of Dr. G.

(b) Dr. M's letter of February 7, 2008 to Dr. G

[para 22] Dr. M's letter of February 7, 2008 to Dr. G contained Dr. M's interpretation of the Applicant's MMPI. It accordingly fell within the Applicant's request for a "copy of [Dr. M's] interpretation of MMPI", which he made by e-mail on May 24, 2008 and again in a signed letter dated May 26, 2008.

[para 23] In its submissions, the Organization suggests that the Applicant's e-mail of May 24, 2008 did not constitute a proper access request under the Act. The Organization says that it has a policy regarding appropriate forms of communication, which requires patients – or at least patients such as the Applicant who have terminated their relationship with the Organization – to contact it by means other than e-mail or telephone in order to obtain a response.

[para 24] I do not have to decide whether or not the Applicant's e-mail of May 24, 2008 was a proper access request under the Act. He followed up with a signed letter with the identical request two days later. The Organization did not refer to that letter in its submissions, but the Applicant provided a copy of it when he requested the review by this Office. Whether or not the e-mail of May 24, 2008 was also a proper access request, the letter of May 26, 2008 was. The two day difference is insignificant in my determination below of whether the Organization met its duty to assist the Applicant.

[para 25] The Organization's letter of May 27, 2008 advised the Applicant that he had already been given a copy of his entire file, with the exception of the raw psychological test data. In its June 4, 2008 letter, the Organization specifically stated that Dr. M's interpretation of the Applicant's MMPI was included in progress reports that he had already been given. The Applicant disputes this, saying that he received Dr. M's interpretation of his MMPI, as found in Dr. M's letter of February 7, 2008 to Dr. G, for the first time as an enclosure with the Organization's July 18, 2008 correspondence. I note that Dr. M indicates in his affidavit that the Organization "discovered or received other records containing the Applicant's personal information from other parties" after the July 10, 2008 request, but I do not know whether these other records included the February 7, 2008 letter to Dr. G.

[para 26] I do not have to determine when exactly the Organization gave the Applicant his MMPI interpretation, as I find that the Organization conducted an adequate search for that information, regardless. Under section 10(1) of the *Freedom of Information and Protection of Privacy Act*, a public body must make every reasonable effort to locate responsive records, which does not require perfection; the fact that a public body did not find records on its first search does not prevent a finding that the public body made every reasonable effort (Order F2003-001 at para. 40). Moreover, the fact that responsive records have been overlooked may be mitigated if a public body responds in a timely, forthright way once the error is discovered (Order F2003-009 at para. 30). These principles are equally applicable to an organization's obligation to conduct an adequate search for responsive records under section 27(1)(a) of PIPA.

[para 27] Here, even if the Organization only first provided the Applicant with Dr. M's letter of February 7, 2008 to Dr. G at the time of its July 18, 2008 response – rather than in response to the Applicant's earlier requests of May 24 or 26, 2008 – I would find the late provision of the information excusable in this instance. In the event that the letter was not actually in the copy of the Applicant's file given to him informally on April 16, 2008, the Organization was reasonable in believing that it was. If the letter was not in the file, the oversight was quickly remedied on receipt of the Applicant's letter of July 10, 2008, in which he pointed to information that he believed was missing. Once the Applicant again drew attention to Dr. M's interpretation of his MMPI, it was provided. I also note that the delay between the request of May 24 or 26, 2008 and the provision of Dr. M's letter on July 18, 2008 was not overly lengthy. All of the foregoing leads me to conclude that, if Dr. M's letter of February 7, 2008 was indeed provided late, the lack of perfection does not mean that there was a failure to conduct an adequate search.

[para 28] Conversely, if the Organization already provided the Applicant with Dr. M's letter of February 7, 2008 when it gave the Applicant his file informally on April 16, 2008, I would also find that the Organization met its duty to assist in advising the Applicant, on June 4, 2008, that he already had it.

2. The information about payments and fees

[para 29] In his request for review, the Applicant complained that he was still missing information relating to payments to Dr. M and his team. As set out in the background above, the Applicant asked for "information about how much the Co-operator's payed you and how much you payed the doctors and workers on your team while treating me".

[para 30] Under section 24(1) of PIPA, an individual may request access to "personal information about the individual". In an inquiry under PIPA, it is important to remember that an organization is required to provide to an applicant only the applicant's own personal information and that a request for information that is not the applicant's personal information is not a proper request under PIPA (Order P2007-002 at para. 27).

[para 31] I note that the Applicant's letter of July 10, 2008 to the Organization indicated that he was making his access request under both PIPA and the *Health Information Act* (the "HIA"). However, the Applicant's various access requests were subject only to PIPA. While section 4(3)(f) of PIPA states that PIPA does not apply to health information to which the HIA applies, the information requested by the Applicant is not subject to the HIA. This is because section 7 of the HIA permits an access request to a custodian and Odyssey Health Services is not a "custodian", as defined in section 1(1)(f) of the HIA. In order to be a custodian under the HIA, Odyssey must be paid under the Alberta Health Care Insurance Plan for the provision of health services. The evidence here is that the services provided to the Applicant were funded by the Co-operators.

[para 32] Because Odyssey was an "organization" under section 1(i) of PIPA and subject only to that Act, it was required to provide access to the Applicant's personal information only (subject to any exceptions to disclosure, but that is not an issue in this inquiry).

[para 33] Under section 1(k) of PIPA, "personal information" means "information about an identifiable individual". The Organization submits that the information that the Applicant requested about the fees and wages paid to the Organization's psychologists, workers and consultants is not the Applicant's personal information. It says that this information is not about the Applicant, as "about" an individual means more than just "related" to an individual. In support, it cites Order P2006-004 (at para. 12):

> The Act defines "personal information" as "information about an identifiable individual". In my view, "about" in the context of this phrase is a highly significant restrictive modifier. "About an applicant" is a much narrower idea than "related to an Applicant". Information that is generated or collected in consequence of a complaint or some other action on the part of or associated with an applicant – and that is therefore connected to them in some way – is not necessarily "about" that person.

[para 34] Here, I find that the information that the Applicant requested about how much the Organization paid the doctors and workers on the team that treated him – as well as the information that he requested about how much the Co-operator's paid the Organization – is not his personal information. The evidence is that the Applicant's treatment was covered by the Co-operator's and that he did not pay for any professional services or treatment himself. The information regarding payments and fees exists as a result of the Applicant's treatment, so that it is connected to him in some way, but it is not "about" the Applicant. While the Applicant appears to have received refunds for his out-of-pocket expenses, this still does not make the requested information regarding payments and fees about him. The refunds to the Applicant are a matter separate from the payments from the Co-operator's to the Organization, and separate from the payments from the Organization to its consultants and staff.

[para 35] The Applicant's allegation of overpayments to the Organization is also not sufficient to render the information about him, again because the matter of payments is between the Co-operators and the Organization, and between the Organization and its consultants and staff. In other words, the payment information that the Applicant requested is, as the case may be, information about the Co-operators, the Organization and/or the latter's staff and consultants. Finally, the possibility that the amount of the various payments might indirectly reveal something about the Applicant's treatment, such as how much treatment he received, does not mean that it is his personal information. There should be a more direct connection between the information requested and the applicant requesting it in order to make the information "about" him or her, rather than merely "related" to him or her.

[para 36] The Applicant submits that the Organization should provide all relevant records to the Commissioner so that he (or myself as the assigned Adjudicator) can decide whether they contain the Applicant's personal information. However, a determination of whether an applicant has requested his or her personal information under section 24(1) is normally to be made on the basis of the request itself. Here, on review of the Applicant's actual request and for the reasons just set out, I find that he did not request his own personal information when he asked for the information about payments and fees. Having said this, I do not preclude the possibility of a future case where information about fees not actually paid by an individual might be his or her personal information. The answer depends on the nature of the request and the facts and circumstances.

[para 37] Because the information about payments and fees was not the Applicant's personal information, the Organization had no obligation to consider providing access to that information under section 24 of PIPA and therefore no obligation to conduct an adequate search for it as part of its duty to assist under section 27. An organization's obligation under PIPA is to conduct a reasonable search for the records actually in its custody or under its control that are properly the subject of an access request (Order P2006-005 at para. 33). An organization does not breach its duty to assist when it does not provide information that is not an applicant's personal information within the meaning of PIPA (Order P2006-005 at para. 38).

[para 38] As for the Organization's more general duty to assist the Applicant with respect to his request for information about the payments and fees, I find that the Organization fulfilled its duty. The Organization made every reasonable effort to assist the Applicant and to respond to him as accurately and completely as reasonably possible when, in its letter of July 18, 2008, the Organization advised him to contact the Co-operator's directly, provided general information regarding hourly rates paid to staff and consultants, and stated that details of what its staff and consultants were paid could not be provided because the Applicant was not entitled to that information.

3. The personal information of the Applicant

[para 39] In his request for review, the Applicant complained that he was still missing Dr. M's handwritten notes from all meetings and Dr. G's handwritten notes from a meeting on February 14, 2008. In subsequent correspondence to this Office and his submissions in this inquiry, the Applicant alleges that additional records are missing.

[para 40] The Organization does not dispute that the handwritten notes of Dr. G. and Dr. M – or any other records in relation to the Applicant apart from those about the payments and fees discussed above – consist of the Applicant's personal information. I find that the handwritten notes, and records other than those relating to the payments and fees to Dr. M and his team, are the Applicant's personal information. Both parties submitted copies of some of the information from the Applicant's file and it consists of facts about the Applicant as well as observations, views and opinions about him. Such facts, observations, views and opinions are "about" the Applicant [see, e.g., Order P2008-007 at para. 18, making comparisons to the definition of "personal information" under section 1(n)(viii) of the *Freedom of Information and Protection of Privacy Act*].

(a) The handwritten notes of Dr. G (and Dr. O)

[para 41] Under section 24(1)(a) of PIPA, an organization has an obligation to consider providing access to an applicant's personal information "where that information is contained in a record that is in the custody or under the control of the organization." The Organization submits that the handwritten notes of Dr. G and Dr. O were not in its custody or under its control, and that it therefore had no duty to search for them under section 27(1)(a). Conversely, the Applicant says, in his request for review, that Dr. G indicated that his written notes were the "property" of Dr. M should Dr. M choose to ask for them.

[para 42] I find that the Organization had custody and control of the handwritten notes of Dr. G and Dr. O. Although Dr. M's affidavit, sworn on behalf of the Organization, states that Dr. G and Dr. O have "their own files respecting their interaction with the Applicant", I note that the Applicant's "Consent to Assessment" form attached to the affidavit indicates that the Applicant's assessment was under the joint supervision of Dr. G, Dr. O and Dr. M. The Organization indicates that it is an interdisciplinary practice that provides a variety of health-related services, and all three doctors jointly supervised the Applicant's interdisciplinary assessment. The "Consent to Assessment" further states that a report would be prepared outlining "the opinions of Odyssey Health Services". I interpret this to mean that all three doctors were part of the Organization itself with respect to its dealings with the Applicant. This is confirmed, in my view, by the fact that Dr. G and Dr. O (along with Dr. M) signed a letter dated August 7, 2007 to the Co-operator's on behalf of the Organization and on the Organization's letterhead (see "Evidence #18" submitted by the Applicant).

[para 43] Because Dr. G and Dr. O supervised the Applicant's assessment and signed a letter on behalf of the Organization, I find that Dr. G and Dr. O are members of

the Organization, akin to officers or employees, insofar as the services provided to the Applicant are concerned. All personal information of the Applicant contained in records held by Dr. G and Dr. O is accordingly also in the custody and under the control of the Organization. This is even if the information is not placed in the Applicant's clinical file. (I make no comment on whether other doctors were representatives of the Organization or whether their handwritten notes or other records pertaining to the Applicant's treatment would be in the Organization's custody or under its control.)

[para 44] I found earlier in this Order that the Organization conducted an adequate search in response to the Applicant's request for Dr. O's notes, and therefore met its duty to assist in respect of them. Dr. O's notes were provided to the Applicant on July 18, 2008, shortly after they were requested on July 10, 2008.

[para 45] As for Dr. G's notes, the Applicant requested them on May 24, May 26 and again on July 10, 2008. Dr. M indicates that, following the Applicant's letter received July 10, 2008, he left voice mail messages for Dr. G inquiring as to whether he had notes respecting his interaction with the Applicant. Dr. M did not receive a response prior to his letter to the Applicant on July 18, 2008. Dr. M states that Dr. G subsequently indicated that he was uncertain as to whether he had any additional notes, felt that he most likely did not, but assured Dr. M that he would conduct a thorough search and provide any notes that he was able to locate. Once this matter proceeded to a review by this Office, Dr. M again telephoned and wrote to Dr. G. Dr. M indicates that Dr. G then provided additional notes to the Organization on November 7, 2008, and the Organization provided a copy to the Applicant on November 10, 2008.

[para 46] I considered whether the matter regarding Dr. G's notes was subject to a settlement mediated by the portfolio officer under section 49 of the Act, or was otherwise resolved, in which case an inquiry into that matter would arguably not be available under section 50(1). However, because the Applicant continued to express concerns, in his December 18, 2008 request for an inquiry, about the Organization's search for Dr. G's notes (in that he questions whether Dr. G was actually contacted by Dr. M in July 2008), I find that the matter has not been settled or resolved.

[para 47] Orders of this Office dealing with a public body's duty to assist under section 10(1) of the *Freedom of Information and Protection of Privacy Act* have set out principles regarding an adequate search, which are equally applicable to an organization's duty to assist under section 27(1)(a) of PIPA. Specifically, an adequate search has two components in that every reasonable effort must be made to search for the actual records requested, and the applicant must be informed in a timely fashion about what has been done to search for the requested records (Order 2001-016 at para. 13; Order F2007-029 at para. 50). The decision as to whether an adequate search was conducted must be based on the facts relating to how a search was conducted in the particular case (Order 98-003 at para. 37).

[para 48] I find that the Organization did not make every reasonable effort to search for Dr. G's notes. The possible location of the notes (i.e., with Dr. G) was apparent, and

the Organization has not provided an acceptable explanation as to why they were not located until November 2008. Dr. G's personal failure to provide them earlier to Dr. M is not an acceptable reason for the delay, as I found above that Dr. G was himself a member of the Organization insofar as the treatment of the Applicant was concerned. When an organization receives an access request, it is incumbent on whoever is designated to oversee the search for records to ensure that all locations of potentially responsive records in the Organization's custody or under its control are actually searched. Under section 5(3) of PIPA, a designated individual is responsible for ensuring that the organization complies with the Act.

[para 49] I found earlier in this Order that the Organization conducted an adequate search in response to the Applicant's request for Dr. M's interpretation of his MMPI, even if a particular letter containing the interpretation was provided late. This is because, if the letter was indeed provided late, the Organization was reasonable in believing that the letter was in the copy of the file already given to the Applicant, the Organization quickly responded when the Applicant again requested the information, and the overall delay was not particularly significant. I cannot likewise excuse the Organization's failure to provide Dr. G's notes in a more timely fashion. Dr. G's handwritten notes were not reasonably presumed to be in the Applicant's file (unlike his dictated report for instance), their possible location with Dr. G was clear, and the delay up to November 2008 was too lengthy. These differences explain why I have excused the Organization's alleged lack of perfection in one instance but not the other.

[para 50] I conclude that the Organization did not make every reasonable effort to assist the Applicant in relation to his request for Dr. G's notes, and to respond to him as accurately and completely as reasonably possible under section 27(1)(a). However, because the notes have now been provided to the Applicant, I find it unnecessary to require the Organization to perform any further duty in relation to Dr. G's notes.

(b) The handwritten notes of Dr. M and all other allegedly missing information

[para 51] The handwritten notes of Dr. M that pertained to the services provided to the Applicant were in the custody and under the control of the Organization, as Dr. M is the Organization's Director. The Organization therefore had an obligation to consider providing access to them under section 24 of the Act and an obligation to conduct an adequate search for them as part of its duty to assist under section 27.

[para 52] The Applicant alleges that he did not receive all of Dr. M's notes because he remembers Dr. M taking notes at monthly meetings with him, knows that Dr. M frequently telephoned or met with consultants and the Co-operators, and knows that Dr. M issued invoices for meetings and conversations, yet the Applicant did not get notes that he believes were prepared by Dr. M at these various times. He also cites Dr. M's failure to provide notes in connection with a telephone conversation that Dr. M had with the Applicant's family doctor. The Applicant finds it hard to believe that Dr. M prepared no notes on these various occasions because Dr. M would have required the information

for other purposes, the information was about important matters, and if Dr. M prepared no notes, he must have an unlikely "photographic memory". The Applicant also alleges that the Organization does not want to disclose all of the notes relating to the Applicant because they may be evidence of unethical practice.

[para 53] In his request for an inquiry dated December 18, 2008, and his response of April 21, 2009 to the Organization's affidavit regarding its search, the Applicant alleges that various other records are missing. He says that the Organization's staff members were very detailed with their handwritten notes, recording even short telephone conversations, yet he did not obtain all anticipated copies. The Applicant cites the example of Ms. J. and says that she had meetings and conversations in respect of which he has received no notes. He also says that he is missing an investigation by Ms. E regarding his gym attendance as well as notes regarding a telephone conversation between Ms. E and Dr. G on February 14, 2008.

[para 54] In its letter of July 18, 2008, the Organization referred to Ms. J and Ms. E as "our" therapists, and Dr. M indicated in an affidavit that Ms. J and Ms. E were under his supervision. I therefore assume that Ms. J and Ms. E were employees of the Organization whose notes in relation to the Applicant were in the custody or under the control of the Organization. The Organization therefore had a duty to search for them.

[para 55] In his submissions during the inquiry itself, the Applicant refers to various other information that he believes has still not been provided to him. He believes that there is other missing information because there are references to reports, letters, conversations, interviews and other information in the records that have already been provided to him, but he has not received copies of these reports, letters, conversations, interviews and other information. For instance, the Applicant notes that the Organization mentions symptoms and opinions taken from documentation obtained from the Applicant's family doctor and other physicians, yet the Applicant cannot find the relevant documentation in the records already provided to him. He also points to views and statements attributed to others, indicating that he can find no record of those views or statements in the documentation that he has been given.

[para 56] Although, in his request for review, the Applicant alleged only that the handwritten notes of Dr. G and Dr. M were missing, I will also address the allegedly missing notes of Ms. J and Ms. E, and indeed any other record in the custody of under the control of the Organization that the Applicant believes was prepared but not received by him. In his letter of July 10, 2008 to the Organization, the Applicant asked for "my health records that are missing from the information you provided me". This was effectively a request for all of his personal information in the custody or under the control of the Organization that he did not already receive when informally provided with his file at the meeting of April 16, 2008. The Organization therefore had a duty to search for it, and the Applicant's request for review may be interpreted as merely citing examples of the alleged inadequacy of the Organization's search for responsive records.

[para 57] In his request for an inquiry, the Applicant complained that he did not receive copies of the Organization's letters in July and November 2008 asking Dr. G for his handwritten notes. However, these letters were prepared after the Applicant's access request of July 10, 2008, so they were not subject to it.

[para 58] Before it is reasonable to ask an organization to show that it conducted an adequate search for particular records that an applicant is seeking, or provided an adequate response, an applicant must first provide some basis for the idea that the organization is or may be in possession of the particular records that it failed to locate, or failed to provide (Order P2006-012 at para. 12). The Applicant has provided some basis here, as set out in my summary above regarding the records and information that he believes are missing. The Organization now has the burden of proving that it conducted an adequate search because it is in a better position than the Applicant to establish whether an adequate search was done (Order P2006-012 at para. 11).

(c) The adequacy of the search for responsive records

[para 59] I found above that the Organization did not initially conduct an adequate search for Dr. G's notes, but now has. In this part of the Order, I will review the adequacy of the Organization's search for all other responsive records.

[para 60] Principles regarding the obligation to search for records as part of the duty to assist were set out earlier. Here, I add that, in general, evidence as to the adequacy of a search should cover the following points: who conducted the search; the specific steps taken to identify and locate records responsive to the applicant's access request; the scope of the search conducted (e.g., physical sites, program areas, specific databases, off-site storage areas, etc.); the steps taken to identify and locate all possible repositories of records relevant to the access request (e.g., keyword searches, records retention and disposition schedules, etc.); and why it is believed that no more responsive records exist than what has been found or produced [Order F2007-029 at para. 66, discussing the obligation to conduct an adequate search under section 10(1) of the *Freedom of Information and Protection of Privacy Act*].

[para 61] The Organization provided an additional affidavit, sworn August 24, 2009 by Dr. M. On review of that affidavit, Dr. M's other affidavit of March 20, 2009, the background correspondence between the parties and the Organization's submissions in this inquiry, I find that the Organization conducted an adequate search, both for the specific records that the Applicant believes to be missing and generally. The Organization has presented the following sworn evidence in this regard:

- It is the practice of the Organization that all documents forming part of a patient's clinical file are physically kept in locked cabinets in the Organization's office, being its office in Vancouver B.C. in the Applicant's case;
- The administrative assistant at the Vancouver office was instructed to make a complete copy of all of the contents of the Applicant's file (with the exception of the raw psychological test data) and provide it and the original file to Dr. M so

that he could ensure that all information (other than the test data) had been copied;
- The Applicant has already been provided with any notes of Ms. E regarding his gym attendance;
- Ms. J was contacted again and she advised that all of her notes in the Applicant's clinical file have been provided to him and she has no other records relating to the Applicant in her possession;
- The Applicant has been provided with all notes and letters relating to the Organization's dealings with Dr. G, Dr. O and the Applicant's family doctor;
- The allegedly missing records that the Applicant believes to be associated with various invoiced meetings and telephone conversations do not exist, either because Dr. M or staff made no notes during the meetings or conversations, the Applicant is mistaken about the date of the meeting or conversation (in that the invoice reflects the date that the Organization obtained a copy of a record or entered information into its system, rather than the date of a meeting or conversation, and the Applicant has already received a copy of the particular record), the invoice reflects a conversation between a third party consultant and the Applicant himself (rather than the Organization), or the Applicant has already received the existing records associated with the meeting or telephone conversation;
- The Applicant is mistaken in his belief about the existence of notes allegedly taken at other times, including during Dr. M's or staff's conversations with the Applicant's family doctor and the Co-operators, as no such notes were taken and clinically significant information would be included in the Organization's written progress notes already provided to the Applicant; and
- Other than the raw psychological test data, there are no records of the Organization respecting the Applicant's clinical treatment that have not been provided to him.

[para 62] The foregoing satisfies me that the Organization has conducted an adequate search for records (apart from Dr. G's notes, discussed earlier). Among other things, the Organization has indicated who conducted the search, where and with whom other responsive records may have existed, and why no additional information has been located, particularly in reference to the Applicant's concerns regarding specific records allegedly in existence. It has explained the scope of its search and the steps taken, which I find to have been reasonable.

[para 63] I also find that the Organization has informed the Applicant in a timely fashion about what has been done to search for additional records. Following the Applicant's access requests, the Organization responded on July 18, 2008 to the effect that it had provided the Applicant with all available information, and it specifically responded to the Applicant's concerns about particular records at that time. Following the Applicant's additional concerns set out in his correspondence to this Office on December 18, 2008 and April 21, 2009, the Organization has responded through its submissions in this inquiry, which the Commissioner said, in a letter to the parties on June 15, 2009, would be the appropriate forum.

[para 64] I considered whether the Organization must still inform the Applicant *directly* about its search for records by way of a letter to him (as in the case of a public body who failed to respond directly to an applicant who had drawn a specific concern to its attention in Order F2009-001 at para. 25). However, I find it sufficient here for the Organization to explain its search for various records in the context of this inquiry itself, as the Applicant raised his concerns about those various records after his review by this Office was initiated. As just explained, the Organization did respond directly to the Applicant in July 2008 regarding the records to which he had specifically drawn its attention at that time. The Organization has now sufficiently informed the Applicant about its search for records that the Applicant has only more recently alleged to be missing.

(d) The Applicant's outstanding concerns

[para 65] In response to the Organization's submissions and evidence, the Applicant still believes that he has not received certain information, or that the Organization has not sufficiently responded to all of his concerns. On review of these outstanding concerns, I still find that the Organization has now conducted an adequate search for records and met its duty to assist the Applicant.

[para 66] For instance, the Applicant alleges that he has still not received the interpretation of his raw psychological test data, yet the Organization indicates that this is found in the letter of February 7, 2008 to Dr. G, already given to the Applicant. The Applicant appears to believe that he has not received everything relating to the interpretation of his MMPI because what he has received is not the same as another interpretation of raw test data, which he attached to his submissions. However, this other interpretation is in relation to a different test (a "Career Assessment Inventory" rather than the "Minnesota Multiphasic Personality Inventory"). It would appear that the interpretation of the MMPI is not presented in the same format or to the same extent as the other type of inventory. The Applicant believes that the sentences written by Dr. M about his MMPIs do not qualify as his professional interpretations of them, but the Organization has explained that this is all that the interpretations consisted of.

[para 67] The Applicant again says that he has not received any notes reflecting certain meetings, conversations or invoices, yet the Organization has explained why particular notes do not exist. The Applicant submits that the Organization did not specifically ask Ms. E again about missing records, yet the Organization has responded by saying that any available records that did not form part of the Applicant's file have been requested and obtained from third parties. The Applicant submits that he has not received certain consent forms, yet the Organization says that he has. The Applicant believes that he is missing information on which various statements about him were based, yet the Organization says that all information supporting the various professional conclusions and opinions regarding the Applicant are in the file already received by him.

[para 68] The Applicant alleges that the Organization is hiding records or destroyed them after his access request was made. He also claims that an employee of the

Organization once accidentally showed him her notes but then said that he should not see them. For its part, the Organization submits that it does not follow from the fact that an organization was once in possession of records that it retained copies of them (Order P2006-012 at para. 13). It cites examples where Dr. M used his handwritten notes to dictate a progress report but did not keep a copy of the handwritten notes themselves. I accept the Organization's evidence that it has searched for, located and provided all notes responsive to the Applicant's access request that were still in existence at the time of his access request.

[para 69] The Applicant argues that the Organization misled him into believing that it had provided his "complete" or "entire" file when it now says that it provided him with his "clinical" file. This appears to reflect the Applicant's concern about not receiving information about payments and fees, in that this information may not be "clinical" but is still somewhere in the Organization's possession. However, as I found earlier, the Organization had no duty to search for or provide the information about payments and fees. The Organization only had a duty to search for records containing the personal information of the Applicant, which the Organization happens to refer to as the Applicant's "clinical" information.

[para 70] The Applicant alleges that additional information is missing, for the first time, in his response to the Organization's submissions. Regardless of the specific allegation of the Applicant about any particular record, the Organization has satisfied me that it conducted an adequate search. It has repeatedly stated, in its letters to the Applicant and submissions in this inquiry, that the Applicant has received all available information (except the raw psychological test data). The Organization's affidavit evidence, as summarized above, demonstrates to me that it has now searched for all records containing the Applicant's personal information in its custody or under its control.

[para 71] The Applicant submits that the Organization should provide him with the information that he believes is missing, rather than merely say that it has already been provided. Elsewhere, he submits that the Organization should confirm that he received the notes of Ms. J, rather than say that she has no records in her possession that do not appear in the clinical file. In response, the Organization repeats that an administrative assistant was instructed to make a copy of the Applicant's complete file, Dr. M reviewed it, employees (such as Ms. E and Ms. J) store all notes and records in the file, and the Organization has searched for any additional notes that are not on the file and has found none. Dr. M swears, in one of his affidavits, that he personally compared the Applicant's original file to the copy prepared by the administrative assistant, which I presume to be the copy provided to the Applicant on April 16, 2008 (as this was when he was provided with his file). Given the sworn evidence of the Organization, it has met its burden of establishing an adequate search for records.

[para 72] Finally, the Applicant notes that the Organization did not comment on some of his other concerns, such as those about the accuracy of his personal information including professional opinions about him, and about the nature and quality of the

professional and health-related services provided by the Organization. As explained earlier, these matters are outside the scope of this inquiry.

V. ORDER

[para 73] I make this Order under section 52 of the Act.

[para 74] I find that the Organization did not initially conduct an adequate search for one set of notes requested by the Applicant (those of Dr. G), but that it has now conducted an adequate search for them. I find that the Organization has conducted an adequate search for other records containing the Applicant's personal information in its custody or under its control, and has made every reasonable effort to assist the Applicant and to respond to him as accurately and completely as reasonably possible under section 27(1)(a) of the Act.

[para 75] Under 52(3)(a) of the Act, I confirm that the Organization has now performed its duty under section 27(1)(a).

Wade Riordan Raaflaub
Adjudicator