



Office of the Information and  
Privacy Commissioner of Alberta

March 3, 2014

Honourable Fred Horne  
Minister of Health  
208 Legislature Building  
10800 - 97 Avenue  
Edmonton, AB T5K 2B6

Dear Minister Horne:

**Re: Proposed Health Charter and Health Advocate Regulation**

In response to your public invitation for comments on the proposed *Health Charter and Health Advocate Regulation*, I am pleased to provide the following.

**Possible overlap and confusion of jurisdiction**

I believe there is the potential for confusion as concerns my role in providing oversight of the *Health Information Act* (HIA) and that of the Minister and the Health Advocate under the proposed *Charter and Regulation*.

Section 2 of the HIA sets out the purpose of the Act, with sections 2(a) and 2(d) addressing the privacy and confidentiality of health information, and individuals' rights to access health information, respectively. The HIA also establishes mechanisms by which individuals can exercise and enforce their rights to privacy and access to health information.

At the same time, the proposed *Health Charter* sets out patients' expectations, which include:

When I interact with the health system, I expect that I will:

- ...
- 4. Have the confidentiality and privacy of my health information respected.
- ...
- 10. Have timely and reasonable access to my personal health information.

Section 4 of the draft *Health Advocate Regulation* says that, with or without a complaint from an individual, the Advocate may investigate whether a person failed to act in a manner consistent with the *Charter*.

The Advocate's ability to investigate a complaint is constrained by section 4(3) of the *Alberta Health Act*, which reads:

4(3) Where the complaint relates to a matter that is within the jurisdiction of another person or body, the Health Advocate shall refer the complaint to that person or body.

This provision, however, depends on future Health Advocates being familiar with both the HIA and the jurisdiction of the Information and Privacy Commissioner, to avoid duplication of effort and confusion. Further, the lack of restrictions on the Health Advocate with respect to reviews initiated without a complaint could result in parallel investigations by my Office and the Health Advocate, with differing results.

Clearer provisions regarding potential jurisdictional overlap are available. See, for example, section 94 of the HIA which addresses the jurisdiction of the Ombudsman *vis-à-vis* the Information and Privacy Commissioner, and which states:

94 The Ombudsman may not investigate any matter that the Commissioner has the power to investigate or review under this Part unless the Commissioner agrees.

Section 9(1)(a) of the *Alberta Health Act* says the Minister may order certain entities to comply with the *Health Charter*. Some of the entities named may also be subject to the HIA as “custodians.” This creates a potential for overlap and confusion between the jurisdiction of the Minister of Health and the Information and Privacy Commissioner. Further, it appears there is no constraint placed on the Minister similar to that placed on the Health Advocate under section 4(3) of the *Alberta Health Act*, cited earlier.

#### **Office of the Advocate as a “public body”**

Section 12 of the *Health Advocate Regulation* amends the HIA to make the Health Advocate a “custodian” under the HIA; however, the *Regulation* is silent as to whether the Advocate is a “public body” under the *Freedom of Information and Protection of Privacy Act* (FOIP).

Because the Health Advocate is a custodian, individuals may make a request for access to their own health information under the HIA; however, the HIA does not include a right to make a request for records about the operations of a custodian. Rather, this right falls under FOIP with respect to public bodies. The ability of Albertans to request access to records about the operations of a public body supports the democratic principle of openness. To address this concern, I suggest that the Health Advocate be named a “public body” under FOIP in addition to a “custodian” under the HIA. I note that other advocates, such as the Mental Health Patient Advocate and the Child and Youth Advocate, are public bodies under FOIP.

#### **Health information vs. personal health information**

The proposed *Health Charter* makes reference to both “health information” (patient expectation #4) and “personal health information” (patient expectation #10). As these terms are not defined, it is not clear to me whether they are intended to mean the same thing; further, it is not clear whether or not “health information” is intended to have the same meaning as under the HIA. It may be helpful to provide definitions as well as to use the same terminology throughout the *Charter*, to avoid confusion.

#### **Closing Comments**

I support the goals and objectives of the *Alberta Health Act*, the *Health Charter* and the *Health Advocate Regulation*. I appreciate the opportunity to provide comments on the proposed *Health Charter* and *Health Advocate Regulation*.

I understand that, as part of the consultation process, Alberta Health will be publicly posting all written submissions. Please be advised that I will also be posting a copy of this letter on my Office's website.

Yours truly,

Jill Clayton  
Information and Privacy Commissioner

cc: Health Advocate and Health Charter Project Team, Alberta Health, P.O Box 1360, Stn. Main, Edmonton, AB, T5J 2N3, with an email copy to [albertahealthact@gov.ab.ca](mailto:albertahealthact@gov.ab.ca).