# ALBERTA

# OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

# ORDER H2022-02

February 28, 2022

## ALBERTA HEALTH SERVICES

Case File Number 005187

**Office URL:** www.oipc.ab.ca

**Summary:** An individual made a correction request to Alberta Health Services (AHS) under the *Health Information Act* (HIA). Specifically, the Applicant requested that information be removed from a February 8, 2010 "call documentation" created (at least partly) on the basis of information her sibling had provided. The Applicant provided AHS a notarized document signed by her sister retracting the statements she had made.

AHS refused to correct the information as requested. The Applicant asked that this Office review AHS' decision.

The Adjudicator determined that the Custodian is not required to make the corrections as requested by the Applicant.

**Statutes Cited: AB:** *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1, 13, 14, 61, 80.

**Authorities Cited: AB:** Orders F2005-008, F2013-04, F2020-03, H2004-004, H2005-006, H2005-007, H2013-04, H2016-03, H2017-01, H2020-05

**Cases Cited**: *AHS v. Cardinal*, 2021 ABQB 678, *Covenant Health v. Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562

## I. BACKGROUND

[para 1] The Applicant made a correction request to Alberta Health Services (AHS) under the *Health Information Act* (HIA). Specifically, the Applicant requested that information be removed from a February 8, 2010 "call documentation" created (at least partly) on the basis of information her sibling had provided.

[para 2] The sibling had contacted a Crisis unit within AHS, and had made several statements about the Applicant's physical and mental health. The Applicant was undergoing medical treatment and was under the care of AHS health service providers. The information the Applicant has requested be corrected is contained in number of AHS Crisis reports (a February 8, 2010 intake call; AHS Crisis reports dated February 8 and 15, 2010, March 17, 2014, and April 10, 2014).

[para 3] The Applicant states that she obtained copies of these records in March 2014. She made a correction request on March 25, 2015, asking that the information in these records be corrected. AHS notified her in April 2015 that it would not correct the information.

[para 4] The Applicant states that in January 2016, her sibling signed a Statutory Declaration retracting the statements made to the AHS Crisis unit. The Applicant contacted AHS to ask how to have its previous correction decision reconsidered in light of the Declaration. The Applicant states that AHS told her to provide a copy of the Declaration. She states that AHS then appears to have considered the Declaration to be a new request, as it assigned a new file number. By letter dated March 8, 2016, AHS informed the Applicant that it was refusing this new correction request, as it lacked all the necessary information for AHS to make the corrections (for example, the Declaration did not specify what records contain the allegedly inaccurate information).

[para 5] The Applicant contacted the CEO of AHS, Dr. Yiu, and explained the situation. By letter dated October 25, 2016, Dr. Yiu responded; the Applicant provided a copy of that response, which states in part:

> I understand that in April 2015, you received a response from Alberta Health Services' (AHS) Information and Privacy Department regarding your request to correct or amend health information under the Health Information Act. Although your request was declined, other options were made available to you to either request a review of the decision by the Information and Privacy Commissioner, or to submit a written statement of disagreement of 500 words or less to AHS that would be attached to the record that was the subject of the request.
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> Although the timelines allowed for you to pursue either of these options have surpassed, AHS is prepared to offer you another opportunity to request a correction or amendment to your health information. In the event that your request is still declined, these two options would again be available to you for the timelines specified, and I would encourage you to consider these options.

[para 6] The Applicant made a new request for correction in November 2016. The Applicant states that this request is not the same as the initial request made in March 2015 because it contains new evidence (the Declaration) and because it contains a list of the health information to be corrected and an updated explanation for each correction requested.

[para 7] By letter dated December 18, 2016, AHS informed the Applicant that it would not correct the information as requested.

[para 8] The Applicant asked that this Office review AHS' decision. A senior information and privacy manager conducted a review, after which the Applicant requested an inquiry.

## II. INFORMATION AT ISSUE

[para 9] The information at issue consists of the Applicant's health information contained in AHS Crisis records, parts of which the Applicant has requested be corrected or removed.

## III. ISSUE

[para 10] Per the Notice of Inquiry, dated October 15, 2020, the issues in this inquiry are:

1. **Did the [AHS] properly refuse to correct or amend the Applicant's health information, as authorized by section 13 of the HIA?**

2. **Did the [AHS] properly refuse to correct or amend the record pursuant to section 14 of the HIA?**

## IV. DISCUSSION OF ISSUES

*Preliminary issue – timeliness of Applicant's request for review*

[para 11] In its initial submission, AHS has argued that the Applicant missed her deadline to request a review of AHS' decision not to correct her information. It states (initial submission, at paras. 13-15, footnotes omitted):

> The First Request was rejected, and the decision of AHS was issued on April 27, 2015. The deadline to request a review of the First Request was approximately June 26, 2015. The Second Request was rejected, and the decision of AHS was issued on March 8, 2016. While the initial deadline had long passed, the deadline to request a review of the Second Request would in any event have expired on approximately May 7, 2016.
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> Despite the willingness of AHS to permit [the Applicant] a further opportunity to submit a revised Correction Request, for the purpose of these proceedings it is relevant to recognize that [the Applicant] failed to provide any new objective evidence or to identify a new error or omission of fact between the First Request and the subsequent correction requests, and further that the statutory timelines were made known to [the Applicant] in response to both the First Request and the Second Request. Nevertheless, she failed to exercise prudence in seeking a review of either of the earlier decisions, and failed to provide any objective evidence as to why the Correction Request should have been reconsidered.
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> Accordingly, AHS submits [the Applicant's] request for review and inquiry in these proceedings should be denied for failure to seek a review within the statutorily imposed deadline from the First Request. To permit her to rely on an identical application for correction or amendment and

seek a review of a decision after the expiry of the initial timeline provided for in section 74(2) of HIA would otherwise have the effect of nullifying the statutory timelines.

[para 12] Section 74(2) sets out the timeline for an applicant to request a review of a custodian's decision not to correct health information. It states:

> *74(2) A request under section 73 for a review of a decision of a custodian must be delivered to the Commissioner within*
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> *(a) sixty days after the person asking for the review is notified of the decision, or*
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> *(b) any longer period allowed by the Commissioner.*

[para 13] The crux of AHS' argument seems to be that because the Applicant's most recent request, made in November 2016, is substantially the same as the first request, the Applicant should not get another chance to request a review of the most recent response.

[para 14] AHS did not address the October 2016 letter from its own CEO, Dr. Yiu, explicitly providing the Applicant with another opportunity to request a correction to her health information. Dr. Yiu's letter (quoted above) also explicitly stated that if AHS declined another correction request, the options in section 14 of the Act – to request a review of the decision by this Office or to submit a statement of disagreement – would remain available to the Applicant.

[para 15] I am unclear why AHS' counsel is arguing that the Applicant ought not to have recourse to request a review by this Office when that recourse was explicitly granted by the CEO of AHS, in a letter that its counsel would have received with Applicant's request for review (also attached to the Notice of Inquiry).

[para 16] It is clear from Dr. Yiu's letter that AHS would be considering a correction request made by the Applicant after that letter to be a *new* request, with the statutory right of review that arises from such a request.

[para 17] AHS's response to the Applicant's most recent request is dated December 13, 2016. The Applicant's request for review was received by this Office on February 2, 2017. This falls within the sixty days to request a review, set out in section 74(2) of the Act.

[para 18] I therefore disagree with AHS' argument that the Applicant has missed her deadline to request a review.

**1. Did the [AHS] properly refuse to correct or amend the Applicant's health information, as authorized by section 13 of the HIA?**

[para 19] Section 13 of HIA states:

> *13(1) An individual who believes there is an error or omission in the individual's health information may in writing request the custodian that has the information in its custody or under its control to correct or amend the information.*

*(2) Within 30 days after receiving a request under subsection (1) or within any extended period under section 15, the custodian must decide whether it will make or refuse to make the correction or amendment.*

*(3) If the custodian agrees to make the correction or amendment, the custodian must within the 30-day period or any extended period referred to in subsection (2)*

*(a) make the correction or amendment,*

*(b) give written notice to the applicant that the correction or amendment has been made, and*

*(c) notify any person to whom that information has been disclosed during the one-year period before the correction or amendment was requested that the correction or amendment has been made.*

*(4) The custodian is not required to provide the notification referred to in subsection (3)(c) where*

*(a) the custodian agrees to make the correction or amendment but believes that the applicant will not be harmed if the notification under subsection (3)(c) is not provided, and*

*(b) the applicant agrees.*

*(5) If the custodian refuses to make the correction or amendment, the custodian must within the 30-day period or any extended period referred to in subsection (2) give written notice to the applicant that the custodian refuses to make the correction or amendment and of the reasons for the refusal.*

*(6) A custodian may refuse to make a correction or amendment that has been requested in respect of*

*(a) a professional opinion or observation made by a health services provider about the applicant, or*

*(b) a record that was not originally created by that custodian.*

*(7) The failure of the custodian to respond to a request in accordance with this section within the 30-day period or any extended period referred to in subsection (2) is to be treated as a decision to refuse to make the correction or amendment.*

[para 20] In Order H2005-006, former Commissioner Work outlined a two-step process for determining whether section 13(6) applies to information that is subject to a request for correction or amendment. The first step is to consider whether all or part of the information at issue consists of a professional opinion or observation under section 13(6)(a) of the Act. If so, the custodian is not required to make a correction or amendment.

[para 21] If the information at issue is not a professional opinion or observation, the second step is to determine whether there are errors or omissions under section 13(1). If so, it may be corrected or amended, subject to the custodian's exercise of discretion.

[para 22] I will accordingly first consider whether the information at issue is a professional opinion or observation.

[para 23] Three requirements must be met in order for section 13(6)(a) to apply (Order H2004-004, at para. 17):

- There must be either a professional opinion or observation;
- The professional opinion or observation must be that of a health services provider; and
- The professional opinion or observation must be about the applicant.

*Is the information a professional opinion or observation?*

[para 24] The Custodian has the burden of proving the information is a professional opinion or observation (Order H2004-004). If it does not consist of a professional opinion or observation, it is the Applicant who has the burden of proving that there is an error or omission in her health information (Order H2004-004 at para. 12). If there is an error or omission in the Applicant's health information, it is the Custodian who has the burden of proving that it properly exercised its discretion when refusing to correct or amend the information (Order H2005-006 at para. 42).

[para 25] Whether information is a professional opinion or observation does not depend on the truth of its contents, but rather whether it consists of the impressions, perceptions, views and understandings of the author (Order H2005-006, at para. 64). "Professional" means "of or relating to or belonging to a profession"; "opinion" means "a belief or assessment based on grounds short of proof: a view held as probable"; "observation" means "a comment based on something one has seen, heard, or noticed, and the action or process of closely observing or monitoring" (Order H2004-004, at paras. 18-19).

[para 26] All of the information the Applicant requested be removed or corrected is contained in AHS Crisis records. The Applicant provided five records, four of which contain information the Applicant asked be corrected:

- The first record (dated February 8, 2010) contains notes made by of a call made to AHS Crisis by the Applicant's sibling. A social worker with AHS Crisis spoke with the sibling and made the notes. The Applicant identified seven items of information relayed by the sibling to the social worker that she wants corrected. The Applicant also identified a note of the social worker recommending next steps that she wants corrected.
- The second record (dated February 8, 2010) contains notes from the social worker's call to the Applicant. The Applicant identified one statement recorded as having been made by her to the social worker that she wants corrected.
- The third record (dated February 15, 2010) contains notes of an AHS Crisis nurse, Nurse L, recording phone conversations they had with the Applicant. The Applicant identified two items of notes taken by Nurse L that she wants corrected.
- The fourth record (dated March 17, 2014) contains notes of a different AHS Crisis nurse, Nurse J, recording phone conversations they had with the Applicant regarding calls made to the Applicant, messages they received from the Applicant, and a phone conversation between Nurse J and the Applicant (taking place on different days in March 2014). The Applicant identified two statements recorded as having been made by her to Nurse J she wants corrected.

- The fifth record (dated April 10, 2014) contains notes of Nurse J, regarding a phone conversation between them and the Applicant. The Applicant has not identified any particular information she requests be corrected on this record.

[para 27] In Order H2013-04, I accepted an argument that a professional opinion or observation included circumstances in which a custodian "recorded his understanding of what he was told by the Applicant, and that the Custodian's assessment of the Applicant was based on these understandings" (at para. 27). This Order was upheld on judicial review, in an oral decision.

[para 28] The information the Applicant requested be corrected in the second and fourth record is comprised of health service providers' understanding of what was told to them by the Applicant. The Applicant argues that these statements were recorded inaccurately, and provided a version of the statements she believes to be correct. At this point, it is not possible for me to verify with any certainty which version of the statements is correct. Further, these are the statements the health care providers understood the Applicant to be making at the time they recorded the calls. In my view, this information consists of observations the health service providers recorded at the time of the calls. Therefore, I find that this information consists of professional observations.

[para 29] The information in the third record the Applicant requested be corrected consist of assessments made by Nurse L based on the nurse's understanding of the conversation with the Applicant. These assessments are professional opinions. The last item of information on the first record, documenting the next steps recommended by the social worker, also consists of the social worker's assessment and professional opinion.

[para 30] The remaining seven items of information in the first record consist of statements made by the sibling, most of which the sibling has recanted in a sworn statement. In other words, the statements made by the sibling were accurately recorded but were not true, according to the sworn retraction.

[para 31] The social worker making the notes of the call with the sibling was recording their understanding of the conversation, the same way that they were recording their understanding of their conversations with the Applicant. The question is whether the fact that the sibling provided the information about the Applicant to the social worker is relevant to whether it is a professional opinion or observation.

[para 32] In Order H2016-03, I accepted that a health service provider is recording a professional observation when recording information about a patient provided by the patient's spouse. In my view, the same can be said about information provided by a sibling. This conclusion is supported by the Court of Queen's Bench decision, *Covenant Health v. Alberta (Information and Privacy Commissioner)*, 2014 ABQB 562, in which the Court determined that information provided by someone other than the patient is still the patient's health information if it is collected for the purpose of providing health services to the patient (see para. 74).

[para 33] I understand that in this case, the information provided by the sibling is information the sibling knew was untrue, based on the sworn retraction. However, the ultimate truthfulness of the information does not change the fact that the information was recorded and assessed by the heath service provider. Whether the health services provider should have followed up, or verified the information, is a separate question.

[para 34] All of the information at issue consists of a professional opinion or observation for the purposes of section 13(6)(a).

[para 35] In her retraction, the sibling states that some of the information recorded in the AHS Crisis records is different from what she actually said to the Crisis employee. Past Orders under the FOIP Act have found that whether statements were inaccurately recorded is often not ascertainable through an inquiry process, and that it is appropriate to refuse to correct information where a factual determination cannot be made (Orders F2005-008, F2013-04, F2020-03). In my view, this analysis applies to correction requests under the HIA as well.

[para 36] To illustrate the difficulty in determining with any certainty whether a statement was accurately recorded, I note that the Applicant provided two different accounts of what she said to an AHS Crisis employee in one conversation. In one of the AHS Crisis notes, an AHS Crisis employee records the Applicant as having made a statement regarding suicide. In her 2016 request for correction, the Applicant refutes the accuracy of this note; she states that she told this employee that she would consider quitting her medical treatment. In her November 2021 response to this inquiry, the Applicant again points to this note in the AHS Crisis notes and states that she told the employee she was not suicidal but made a joke about the possibility.

[para 37] The point about this discrepancy between what the Applicant said in her 2016 correction request and what she said in her November 2021 response to this inquiry is not to undermine the Applicant's credibility. Rather, it is to emphasis the difficulty in recalling *precisely* what was said in a conversation that took place years prior.

[para 38] Lastly, I note that the Applicant pointed to one item of information that was clearly recorded erroneously. In one case, the AHS Crisis employee recorded the sibling as making a statement about the Applicant but the sibling's name appears where it should have been the Applicant's name. The Applicant points to this sentence as "incorrect/careless documentation by [the employee] at AHS Crisis." I agree that the sibling's name is likely an error. However, the Applicant seems to point to this error as support for her allegations that the employees at AHS Crisis were not particularly thorough. Given the context of her correction request as a whole, I do not understand the Applicant as arguing that she wants this apparent typo corrected. Nor would it serve her purposes to do so.

*Is the professional opinion or observation that of a health services provider and is it about the Applicant?*

[para 39] A health service provider is defined in section 1(1)(n) of HIA as an individual who provides health services. Under section 1(1)(m) of the Act, health services includes a service provided for the purpose of diagnosing and treating illness.

[para 40] The information constituting a professional opinion or observation is information recorded by a social worker and two nurses working in the AHS Crisis area.

[para 41] In Order H2017-01 the adjudicator noted the different types of health service providers who may be involved in providing care. She said, at para. 20:

> For the most part, the authors of the chart notes were nurses providing the Applicant with treatment. On one occasion the note is written by a social worker and on another, by a registered dietician. The nurses, social worker, and registered dietician were providing the Applicant a health service, either by specifically treating the Applicant's illness or coordinating and caring for the health needs of the Applicant.

[para 42] In this case, the Applicant argues that she was not a client of AHS Crisis. However, it is clear that this unit was providing health care services to the Applicant, whether she requested them or not.

[para 43] The opinions and observations in the information at issue is about the Applicant, whether or not the information is true.

[para 44] I find that section 13(6)(a) applies to the information subject to the correction request. Therefore, the Custodian is not required to correct the information as requested.

**Exercise of discretion**

[para 45] In Orders H2005-006 and H2005-007, former Commissioner Work stated:

> When an applicant has not discharged the burden of proof to show that there are errors or omissions, a custodian properly exercises its discretion when it refuses to correct or amend that information under section 13(1) of HIA. When the information consists of a professional opinion or observation that is accurately recorded under section 13(6)(a) of the Act, a custodian properly exercises its discretion when it refuses to correct or amend that information, as there is no error or omission and therefore nothing to correct or amend.

[para 46] In her rebuttal submission, the Applicant referred to Order H2020-05, in which the adjudicator concluded that when evaluating a request for correction or amendment under the HIA, relevant questions include:

- whether the information is likely to be used in the future;
- if it is likely the information will be used, for what purpose; and
- is the information sufficiently accurate and complete for that purpose?

[para 47] In her submission, the Applicant has argued that the false information provided by her sibling continues to have negative consequences for her health care. She argues that the analysis in Order H2020-05 is applicable here.

[para 48] The Applicant argues that the case at hand involves "a third party purposely tampering with health records by supplying unsolicited false health information that is having detrimental effects on [the Applicant's] health care", and that the nature of the records at issue here should be a factor in my decision.

[para 49] The Applicant also alleges that, to the extent that the statements made by the sibling indicate an unwillingness on the Applicant's part to follow medical advice, they have negatively affected treatment she has been offered since those statements were made and recorded. She has provided letters from her family physician to this effect. The Applicant argues that these circumstances mirror those in Order H2020-05, and that the analysis in that Order should apply in this case.

[para 50] At the time of the Applicant's rebuttal submission, a judicial review application had been made regarding Order H2020-05, which was before the Court of Queen's Bench. The Custodian argued that if I were to consider the application of that Order, I should place this file in abeyance pending the outcome of the judicial review.

[para 51] I agreed with the Custodian on this point and placed the file in abeyance. On August 25, 2021, the Court issued its decision in the judicial review of Order H2020-05 (*AHS v. Cardinal*, 2021 ABQB 678) (*Cardinal*), upholding the Order, and I recommenced the inquiry.

*Application of Order H2020-05*

[para 52] In Order H2020-05, the adjudicator reviewed precedents from other jurisdictions regarding correction of information and data integrity. She concluded (at paras. 46-51):

> Alberta's health information correction process is similarly focused on protecting the integrity of health records. In other words, the process is one in which it may be as important to preserve the errors in medical reporting as it is to ensure information is accurate.
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> Section 2(e) of the HIA establishes that a purpose of the HIA is to provide individuals with a right to request correction or amendment of health information about themselves. What value would such a right have if the need to preserve the authenticity of health records will, in almost all cases, require leaving a record in its original state? In my view, the right to request correction or amendment is directed at the future use to which health information may be put, rather than to correct past mistakes. The right to request correction may be seen, in part, as supporting section 61, as it allows applicants to request that custodians make reasonable efforts to ensure that health information that could be used or disclosed in the future is reasonably accurate and complete.
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> As was discussed in the case cited above, even when a record contains a documented error, the original record should not necessarily be changed, as the error is part of the authentic record and may be needed as evidence. For example, if a health services provider documents that he or she treated a patient's left arm, when in fact it was the right that was treated, the health services provider has made an error. However, if one were to simply obliterate the reference to the left, and replace it with "right", as a result of receiving a correction request, evidence of poor record keeping potentially affecting the quality of care, as well as evidence of the error, would be lost. At the same time, to avoid future confusion, if the record were to be used to provide treatment in the future, or disclosed for the purposes of establishing a patient's entitlement to benefits, the

version of the record to be shared would need to be amended or corrected to ensure that the patient's future care or legal entitlements are not adversely affected by the error. Correction or amendment would be necessary in such a case to ensure that custodians relying on the record in the future comply with section 61.

Errors in health records or health information that, while not technically incorrect, result in ambiguity or incompleteness, can result in a decrease in the quality of health services if such information is relied on in the provision of health services. As a result, while the integrity of the original health record should be maintained and preserved, amended or corrected versions of the record could be made available for subsequent use or disclosure, so as to support the purpose for which the record will be used or disclosed.

In my view, therefore, when evaluating a request for correction or amendment, the following questions should be asked:

1. Is the information likely to be used in the future? For example, is the information located in a paper record to which no one has access, or is the information part of an electronic health record accessible by many health service providers?
2. If it is likely that the information will be used or disclosed in the future, for what purpose is the information likely to be used or disclosed? For example, could the information be used to provide medical treatment in the future?
3. Is the information sufficiently accurate and complete to be reasonably used for those purposes? For example, could the information in question as it is written have a negative effect on treatment in the future or result in unfairness?

If it is foreseeable that the information may be used in the provision of treatment, and there is an error, omission, or inaccuracy in the records that could affect the treatment given if a custodian relies on it, or the manner in which health services are given, then the custodian should correct or amend the information or take steps to ensure that it is sufficiently accurate for the purposes for which it foresees the record could be used. In making this determination, it should find out the Applicant's reasons for seeking correction and amendment, and address these in its decision. In other words, a custodian should find out why the applicant believes the information to be inaccurate or incomplete and why the applicant believes that the information could lead to negative or undesirable consequences. However, in some cases, the concerns leading to the request may be self-evident.

[para 53] By letter dated August 27, 2021, I asked the Custodian to address the following questions:

The Custodian's submission should discuss whether the analysis in Order H2020-05 applies in this case. If so, how; if not, why not. The discussion should address how/whether the analysis applies if all or some of the information at issue *is* a professional observation or opinion within the terms of section 13(6) and if all or some of the information at issue *is not* a professional observation or opinion within the terms of section 13(6).

From the attachments to the Applicant's request for review, it appears that the Crisis records at issue in this inquiry were/are stored on the EHR and are accessible to health care providers. Can the Custodian confirm this, and explain how Crisis records are generally used/shared? Are there any limitations placed on the use/sharing of these records? It might be helpful to provide a brief

> overview of what AHS Crisis is, and how it operates with respect to the provision of health services.
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> The Custodian should also address the application of the duty in section 61; specifically, the discussion of that duty in Order H2020-05 and *AHS v. Cardinal* and how it applies in this case.

[para 54] The Applicant was also given an opportunity to respond.

[para 55] The Custodian argues that in Order H2020-05, the adjudicator found that the information at issue was not a professional opinion under section 13(6). The discussion of section 61 in that Order, and the subsequent judicial review decision, is therefore not applicable.

[para 56] I agree that the facts in Order H2020-05 are different than the facts in this case, and that those different facts affect the application of the analysis in Order H2020-05 to this case. The adjudicator's findings and analysis were summed up at paragraph 77 of *Cardinal*:

> The Adjudicator found that section 13(6) of the *Act* did not apply to the information at issue in this case because the information was not a professional opinion or an observation of a health services provider. Section 13 does not contemplate a circumstance where an amendment request or correction is made in respect of information that does not come within section 13(6). Because section 13 did not address the issue before her, she considered the purpose of the *Act*, the duty to ensure information is accurate, and the scope the powers of the Commissioner under section 80. The approach she adopted in this case to address information that does not fit within the scope of section 13(6) was reasonable and consistent with the provisions of the *Act*.

[para 57] For this reason, the analysis in Order H2020-05, which sets out questions to consider when determining whether or how to correct health information, does not apply in this case. As section 13(6) applies to the information at issue, the Custodian is not required to correct it.

[para 58] Before leaving this section of the Order, it is worth noting the Custodian's submission regarding the limitations on the accessibility of the AHS Crisis records at issue. In its October 2021 response, the Custodian states (at paras. 35-40, footnotes omitted):

> 35. AHS Health Information Management ("HIM") cannot confirm whether the records at issue are stored on the provincial Electronic Health Record (EHR) commonly known as Netcare. HIM was unable to locate the specific records upon a review of Netcare, however, as access permissions are established by Alberta Health, which is the Information Manager of Netcare, there is potential that clinical service providers may have access permissions in Netcare that is not available to HIM. Nevertheless, the potential that health information exists in Netcare which is not available to view by HIM is understood to be only a remote possibility.
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> 36. As the records were not located by HIM in Netcare, AHS Legal placed a request for information on the location of the disputed records to an AHS Addictions and Mental Health Access and Disclosure Specialist (the "Specialist"). The Specialist has access to records which exist outside of Netcare, specifically those that are created by Access 24/7 or its predecessors and are maintained on other EHR's. Based on discussions with the Specialist, it has been determined that the records at issue exist solely in electronic format under an archived EHR which is known as e-Clinician.

> 37. e-Clinician was established in or around 2013 and was the designated EHR for records created by Addictions and Mental Health, which at that time was a successor to the Edmonton Mental Health Crisis Line. The EHR where the records would have originally been stored in 2010 is understood to no longer be operational; however, it appears that the records were migrated to e-Clinician after that system was established.
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> 38. e-Clinician ceased to be an active EHR in 2019 when AHS launched a new system known as Connect Care. e-Clinician records which were created between 2017 and 2019 are understood to have been fully migrated to Connect Care, except for Media Scan documents (i.e., paper documents that are scanned into an EMR) which have not been migrated to Connect Care. All Media scans prior to launch of Connect care in Nov 2019 are still only viewable in e-Clinician. Limited records from e-Clinician which would have been created in 2016 are also understood to have been migrated to Connect Care.
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> 39. All remaining records on e-Clinician which were created between 2013 and 2016, including those migrated to the system from prior EHR's in 2013, are therefore accessible only through access to e-Clinician, unless they were previously uploaded to another EHR such as Netcare. However, as noted, a review of Netcare did not locate the responsive records. Therefore, it is likely that they exist solely in e-Clinician.
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> 40. At present e-Clinician exists in archival mode only and is not capable of editing. Records which exist in e-Clinician are understood to be accessible for access requests but cannot be changed. Further, access to e-Clinician is limited to clinical service providers who have authorized permissions to access and view that EHR. Limitations on the use and sharing of records in e-Clinician would be subject to a clinical users' permissions. Given the foregoing, it is understood that there are significant limitations on the use and disclosure of the disputed information of [the Applicant] that would be stored on e-Clinician.

[para 59] From the foregoing, I understand that the AHS Crisis records of concern to the Applicant are not readily accessible as part of her health records.

*Conclusion regarding the Custodian's exercise of discretion*

[para 60] I accept the Custodian's explanation that the information at issue constitutes a professional opinion or observation under section 13(6). Following Order H2005-006, I find the Custodian properly exercised its discretion to refuse to correct or amend the Applicant's records.

*Additional concerns of the Applicant*

[para 61] The Applicant's submissions contain several letters from her family physician, Dr. W. Dr. W states in her most recent letter (October 23, 2021, attached to the Applicant's November 2021 submission) that there are two letters of concern that contain erroneous information in the Applicant's medical file; both are consult letters. Dr. W states that the conclusions of the two health care practitioners in the consult letters were based on the false information provided by the Applicant's sibling, including the information provided by the sibling to AHS Crisis. In her letter, Dr. W outlines her belief that erroneous diagnoses were made by one or both health care practitioners in their letters, and the negative consequences for the Applicant that have arisen from these letters and/or diagnoses.

[para 62] I do not have a copy of these consult letters, although their contents have been described in the Applicant's submissions. They are not part of the Applicant's correction request, and as such, are not within the scope of this inquiry. It is not clear whether the health care practitioners are affiliates of the Custodian, such that the Custodian would be the appropriate respondent.

[para 63] Some of the arguments in the Applicant's rebuttal and additional submissions might be interpreted as allegations that one or both of the health care practitioners who authored the consult letters used information from the AHS Crisis records (or other information from the Applicant's sibling) without authority or without taking reasonable steps to ensure its accuracy, as required under the HIA. If so, such as complaint also does not fall within the scope of this inquiry, as it was not previously raised. Again, it is unclear whether the Custodian in this case would be the appropriate respondent.

[para 64] I do not know if the Applicant has made a separate correction request or complaint with respect to these consult letters, or taken any other action in that regard. The Applicant's submissions indicate that she may have pursued a complaint with the relevant college against one of the health care practitioners, relating to a diagnosis that may have relied on information provided by the sibling. That appears to be an appropriate avenue; as stated in Order H2002-005, it is not within the jurisdiction of this Office to determine whether a diagnosis is accurate.

**2. Did the [AHS] properly refuse to correct or amend the record pursuant to section 14 of the HIA?**

[para 65] Section 14 explains the procedure for refusing to make a requested correction. It states:

> *14(1) Where a custodian refuses to make a correction or amendment under section 13, the custodian must tell the applicant that the applicant may elect to do either of the following, but may not elect both:*
>
> > *(a) ask for a review of the custodian's decision by the Commissioner;*
> >
> > *(b) submit a statement of disagreement setting out in 500 words or less the requested correction or amendment and the applicant's reasons for disagreeing with the decision of the custodian.*
>
> *(2) An applicant who elects to submit a statement of disagreement must submit the statement to the custodian within 30 days after the written notice of refusal has been given to the applicant under section 13(5) or within any extended period under section 15(3).*
>
> *(3) On receiving the statement of disagreement, the custodian must*
>
> > *(a) if reasonably practicable, attach the statement to the record that is the subject of the requested correction or amendment, and*

> *(b) provide a copy of the statement of disagreement to any person to whom the custodian has disclosed the record in the year preceding the applicant's request for the correction or amendment.*

[para 66] With each response to the Applicant's correction request, the Custodian informed the Applicant that it was refusing the request and gave her the options outlined in section 14(1). In this case, the Applicant has chosen to seek a review of the Custodian's decision under section 14(1)(a); therefore, the statement of disagreement option in section 14(1)(b) is no longer open to her.

[para 67] Nothing before me indicates that the Custodian failed to follow the process set out in section 14.

## V. ORDER

[para 68] I make this Order under section 80 of the Act.

[para 69] I find that the Custodian properly refused to correct or amend the items for which the Applicant requested a correction.

_____
Amanda Swanek
Adjudicator