

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER H2022-08**

November 14, 2022

Dr. Khaled Ateer

Case File Number 012061

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Complainant alleged that two employees (affiliates) of Dr. Ateer (the Custodian) accessed her Netcare file in contravention of the *Health Information Act* (the HIA). One employee, VM, was alleged to have had and disclosed the Complainant's health information to the Complainant's family. The Complainant postulated that the other employee, NM, might have accessed her Netcare file and passed information from there to VM.

The Adjudicator found that the Custodian was not responsible for VM's access to Netcare since VM was not employed by him at the time of access, and VM's access was made from a clinic other than the Custodian's.

The Adjudicator found that the Complainant's speculation that NM might have accessed Netcare improperly did not warrant further inquiry. The Adjudicator concluded that there was no basis on which to conclude that the HIA had been contravened.

**Statutes Cited:** **AB:** *Health Information Act*, RSA 2000, c. H-5 ss. 28, 62(2), 62(4), 60(1), 63(1), 80

**Authorities Cited:** **AB:** Orders H2020-01, H2020-02, H2022-01

## I. BACKGROUND

[para 1] On August 27, 2018, the Complainant made a request to Alberta Health Services for audit logs (the Audit Logs) listing who accessed her Netcare file from the period of April 1, 2006 to August 27, 2018. The Complainant made a second request for the Audit Logs on October 3, 2018, for the time period of July 1, 2008 to October 3, 2018.

[para 2] Once the Complainant received the Audit Logs she identified several occasions when, according to the Complainant, NM (affiliate), the Clinic Manager for Dr. Khaled Ateer (the Custodian) accessed her Netcare account for reasons unrelated to her medical care. The Complainant also identified several occasions when VM (affiliate), another employee of the Custodian, accessed her Netcare for reasons unrelated to medical care. The Complainant believes that NM and/or VM accessed her Netcare records to obtain sensitive health information that VM subsequently disclosed to the Complainant's family.

[para 3] On October 11, 2018, the Complainant filed a complaint alleging that her health information on Netcare had been accessed in contravention of the *Health Information Act*, R.S.A. 2000, c. H-5 (the HIA).

[para 4] Investigation and mediation were authorized to resolve the issues raised by the complaint, but did not do so. The matter proceeded to inquiry.

## II. ISSUES

**Issue A: Did the employee (affiliate) access health information in contravention of the *Health Information Act*?**

## III. DISCUSSION OF ISSUES

*Preliminary Matter – Affiliates not named as Respondents*

[para 5] Throughout the course of the complaint process, the Custodian was identified as the respondent. Under section 62(2) of the HIA, custodians are responsible for access to Netcare carried out by their affiliates (See for example, Order H2022-01 at para. 14). Neither VM nor NM, as affiliates, were added as Respondents. However, affiliates also bear their own responsibility to comply with the HIA under sections 62(4) and 28. Those sections state:

*28 An affiliate of a custodian must not use health information in any manner that is not in accordance with the affiliate's duties to the custodian.*

\* \* \*

*(4) Each affiliate of a custodian must comply with*

(a) *this Act and the regulations, and*

(b) *the policies and procedures established or adopted under section 63.*

Indeed, in Order H2020-01, an affiliate was named as a Respondent in order to address the issue of whether the affiliate had complied with sections 28 and 62(4) of the HIA.

[para 6] The factual circumstances in that Order H2020-01 were similar to those here: an affiliate was alleged to have accessed the complainant's Netcare file in contravention of the HIA. The custodian associated with the affiliate in Order H2020-01 was the respondent in a separate complaint which addressed the custodian's responsibility for the access in question. That complaint is the subject of Order H2020-02. In Order H2020-02, the Director of Adjudication found that it was not appropriate to consider whether the custodian was responsible for the affiliate's access to Netcare since she found the custodian had implemented proper safeguards against unauthorized access to Netcare, as required by sections 60(1) and 63(1) of the HIA.

[para 7] It seems then that the complaint might have been handled differently throughout the complaint review and inquiry processes. However, in light of information provided in the parties' submissions that clarify the facts of this matter, I find that it is not necessary to revisit the process of this Inquiry. As described below, once the facts are understood, it is apparent that there is no basis on which I may conclude that the HIA has been contravened by the Custodian.

**Issue A: Did the employee (affiliate) access health information in contravention of the *Health Information Act*?**

[para 8] According to the Complainant, at the time of the accesses in question, NM was friends with VM, with whom the Complainant was experiencing difficulties in her personal life. The Complainant describes that she has ended her friendship numerous times, including in 2014 and 2018. It appears that the Complainant commenced some type of legal action against VM in 2018. The Complainant alleges that VM repeatedly revealed sensitive medical information about the Complainant to the Complainant's friends, children, ex-husband, and extended family. The Complainant believes that VM or NM accessed her Netcare records to obtain that information. The Complainant does not allege that NM revealed her health information to her friends, children, ex-husband, or extended family. I surmise then that the Complainant believes that NM may have obtained her health information from Netcare and passed it to VM.

[para 9] Since my reasons for finding that there is no basis on which I could conclude that the Custodian has contravened the HIA with regard to access by VM differ from the reasons for NM, below, I address the allegations in respect of VM and NM, separately.

### *Access by VM*

[para 10] The complaint focusses almost entirely on the actions of VM. Access by VM is also the subject of a different Inquiry, concerning a different custodian. For the reasons below, the Custodian in this case does not appear to be responsible for access by VM.

[para 11] According to the Custodian, VM's employment with him ended in late 2014. The Audit Logs show that VM accessed the Complainant's Netcare records after that time. The only entry listing VM as the one who accessed Netcare is dated October 28, 2015. The Audit Logs also show that VM accessed the Complainant's Netcare file from a different clinic than the Custodian's. As VM was no longer employed by the Custodian, and did not access Netcare through the Custodian's clinic, the Custodian is not responsible for that access. Accordingly, I do not consider access by VM further in this Order.

### *Access by NM*

[para 12] As noted, the complaint focusses largely on the actions of VM. Having determined that the Custodian is not responsible for the actions of VM alleged in the complaint, the only matter left to consider is the speculative allegation that NM might have accessed Netcare improperly.

[para 13] The Audit logs indicate that on July 24, 2013, NM accessed the Complainant's demographic and medication profile information at 11:04:35am and 11:04:39am, respectively. The Audit logs also indicate that on August 1, 2014, NM accessed the Complainant's demographic, lab results, and chemistry information at 9:21:56am, and accessed the Complainant's demographic information again at 9:22:45am. The Complainant notes that she did not have an appointment at the Custodian's medical clinic on the days when NM accessed Netcare.

[para 14] The Custodian notes that NM's employment with him ended in 2015, and he was not able to contact her about the accesses to Netcare at issue in this Inquiry. The Custodian states that NM had training in proper access to Netcare, and that part of NM's duties were to assist medical office assistants and physicians in their duties, as well as to provide coverage for absent employees. My understanding is that the Custodian suggests that these duties could account for access by NM. The Custodian argues that it is impossible to speculate about the need to access the Complainant's medical information seven to eight years ago, and for that reason it is impossible to conduct a fair inquiry into access to the Complainant's Netcare records.

[para 15] There is little, if anything, in the allegations regarding NM for the Custodian to answer for, either in terms of the Custodian's safeguards against unauthorized Netcare access, or responsibility for access by NM. The Audit Logs show that NM accessed the Complainant's Netcare file on two occasions for very small amounts of time, but nothing more. Given NM's diverse job duties, there could be any number of reasons why access took place as part of providing health services, including administration of patient

information. While the Complainant presents a theory about another reason why NM might have accessed Netcare, she has not provided a foundation that supports inquiry into the Custodian's role in the matter any further than has already occurred. Accordingly, the matter ends there.

#### **IV. ORDER**

[para 16] I make this Order under section 80 of the HIA.

[para 17] I find that there is no basis to conclude that Custodian failed to comply with the HIA.

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John Gabriele  
Adjudicator