

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

REQUEST TO DISREGARD H2020-RTD-01

November 27, 2020

ALBERTA HEALTH SERVICES

Case File Number 008697

- [1] Alberta Health Services (“AHS” or the “Custodian”) requested authorization under section 87(1) of the *Health Information Act* (“HIA” or the “Act”) to disregard 62 correction/amendment requests from an individual whom I will refer to as the Applicant.
- [2] For the reasons that follow, I have decided to authorize AHS to disregard the 62 correction/amendment requests.
- [3] I have also authorized AHS to limit the Applicant to five correction/amendment requests per year, with a minimum of sixty calendar days between requests, for a period of two years.

Commissioner’s Authority

- [4] Section 87(1) of the HIA gives me the power to authorize a public body to disregard certain requests. Section 87(1) states:

87(1) At the request of a custodian, the Commissioner may authorize the custodian to disregard one or more requests under section 8(1) or 13(1) if

(a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the custodian or amount to an abuse of the right to make those requests, or

(b) one or more of the requests are frivolous or vexatious.

Background

- [5] On March 28 and 29, and April 5 and 11, 2018, AHS received a total of 62 correction/amendment requests from the Applicant under the HIA.
- [6] Prior to bringing this application to disregard 62 correction/amendment requests under the HIA, AHS had processed 16 correction/amendment requests from the Applicant dating

back to March 2018. Some of these requests were granted and the remainder were denied. The 16 correction/amendment requests previously processed by AHS were of a similar nature to the 62 correction/amendment requests currently before me.

[7] Both AHS and the Applicant provided written submissions under section 87(1) of the HIA.

The Correction/Amendment Requests

[8] Given the sensitive nature of health information, I find it is not necessary to provide details on the content of the Applicant's 62 correction/amendment requests. On the basis of the submissions before me, I have carefully reviewed both the information in the original record, and the correction/amendment requested by the Applicant.

[9] AHS has broadly summarized all 62 requests as requesting a correction or amendment of a health professional's opinion or observation. The Applicant argues that there are factual inaccuracies in the information recorded by the health professionals.

Analysis

Section 87(1)(a) – Request is repetitious or systematic

[10] "Repetitious" is when a request for the same records or information is made more than once. In the context of a correction request, it is repetitious when the same request is made more than once, or the request relates to the same records. "Systematic in nature" includes a pattern of conduct that is regular or deliberate.

[11] AHS received the 62 correction requests in three groups, over a time period of less than one month.¹ In its detailed submission, AHS provided examples of how a number of the correction requests were identical either to correction requests that it had already processed, or were identical to correction requests received on an earlier date. AHS stated:

The following sets of requests are repetitious in nature since they are requests to correct or amend the *same* information from the *same* record. Furthermore, the requests are also literally repetitious since the language used in each set of requests is *exactly* the same. Additionally, the requests are systematic in nature since they were sent to our office by the Applicant *a number of times in close succession* via regular mail in March and April of this year. We also wish to emphasize the timing of these correction or amendment requests, since these dates also coincide with the Applicant's other ongoing formal access to information requests the Applicant submitted for her

¹ 41 requests (2018-H-018 – 2018-H-058) were received on March 28 or 29, 2018, 12 requests (2018-H-059 – 2018-H-070) were received on April 5, 2018, and the remaining 9 requests (2018-H-071 – 2018-H-079) were received on April 11, 2018.

information with the Custodian (or Public Body where applicable); which will be addressed later in this submission.

[...]

In addition to the requests quoted above, the Custodian also submits that the Applicant's history of submitting the *same* access requests for information held by the Custodian/Public Body's *same* program areas in recent months demonstrate the *same* pattern of behavior or conduct illustrated in her correction or amendment requests that are also repetitious and systematic in nature.

[...]

The Applicant also requested access to her health records dating back to 2012 from the Custodian's Health Information Management's (HIM) department in January, March and April of this year. A closer examination of the timing and scope of these access requests with HIM show that most of the records requested was [sic] also the subject of the Applicant's sixty-one (61) [sic] correction or amendment requests. The access requests are also almost identical, thus demonstrating the same pattern of conduct or behavior of using the access and correction/amendment process in a systematic way to file requests that are repetitious in nature.

[12] I have reviewed the AHS's submission and I agree that a large number of the Applicant's access requests are repetitious, as the same correction or amendment request has been made for the same record more than once. Further, given the similar nature and pattern of the requests and the short time frame in which they were all received by the Custodian, I am satisfied that all 62 correction/amendment requests are systematic in nature.

Section 87(1)(a) –Or amount to an abuse of the right to make those requests

[13] AHS stated:

Given all of the above, the Custodian asserts that the Applicant's sixty-one (61) [sic] requests for correction or amendment to her health information amount to an abuse of the right to make those requests under the *Act* because they are repetitious and systematic in nature. It is the Custodian's position that the given the volume, scope and timing of the requests under both Acts; the requests are also *excessive* by reasonable standards. Furthermore, the Applicant's access and correction/amendment requests were all made within a short period of time and it appears that the Applicant used both this Act and the FOIP Act's access regimes in a systematic way to send new requests for correction or amendment to the Custodian.

[The Custodian then provided a time table outlining the timing of all of the historical access and correction/amendment requests received by the Custodian at that time.]

The abuse of the right to make these requests on the part of the Applicant is also evidenced by the way she communicates with affiliates of the Custodian; even after the fact that a formal request for correction or amendment under the *Act* was carried out in good faith.

[AHS then provided an example of the Applicant's correspondence to an affiliate; however, to protect the confidentiality of the Applicant's health information, only a small portion is included below]:

[...] Good for you, you got part of what I said right, but you screwed up big time on a BIG and Major and critical statement I made. And erred on a lesser statement [redacted].

You just didn't listen properly or your recall/memory is just 'not up to snuff.'

[...] What kind of bias do you think might occur due to the choice of words you made when you wrote that Encounter Report?

Do you ever think about the effect your words/reports can have on a patient/client?

Hopefully you will improve your listening skills, and work on improving your memory when it comes to making notes about what someone has said. [...]

In *Request for Authorization to Disregard Access Requests – Grant MacEwan College* (March 13, 2007), the former Commissioner defined abuse to mean misuse or improper use. Specifically, the Commissioner found that the Applicant in that matter was not using FOIP for the purpose for which it was intended, but as a “weapon to harass and grind the College” and as a “means to bend the College to her will”. Indeed, the Applicant's sixty-one (61) [sic] requests for correction or amendment were intentionally and deliberately designed to “harass and grind” the Custodian and its affiliates in a systematic way and her vindictive and aggressive follow up communications, as evidenced by her letter quoted in part above, further illustrates how the Applicant uses the Act as a “means to bend the Custodian to her will:

Additionally, in Order No. 110-1996, the Office of the Information and Privacy Commissioner of British Columbia states the following observation regarding applicants who abuse the mechanisms available through access and privacy legislation:

“I am sympathetic to the plight of the School Board in this particular instance. I think that its efforts to help this applicant have been excessive in light of its other responsibilities to students and taxpayers. A statutory scheme of access to general and personal information is only going to work for innumerable public bodies and applicants if common sense and responsible behavior prevail on both sides. This is not the first applicant whom I have to regard as making excessive, indeed almost irrational demands on a public body. The most problematic applicants are those who are using the Act as a weapon against a public body after an unrelated episode that has left them unhappy or contemplating litigation or, as in this case, preparing to arbitrate a claim of unjust dismissal (emphasis added)”

The Applicant's personal attacks levelled against the Custodian's affiliates were unnecessary and uncalled for since a formal request for correction or amendment was

already carried out by the Custodian in good faith. The Applicant's previous access and correction/amendment requests were also received and processed in good faith in the last couple of months. The Custodian also wrote to the Applicant on April 9, 2018 to let her know about her rights under the Act, specifically, that if she disagrees with the outcome of her request, she may either ask for a formal review with the Commissioner or submit a statement of her disagreement as per section 14(1) of the Act.

Please note that, as of this date's writing, the Custodian has *not* received any notice for either a review with the Commissioner or her statement of disagreement. For this reason, the Custodian asserts that the nature of the Applicant's follow up communication with the Custodian's affiliates further illustrates how her requests are "excessive, indeed almost irrational demands" (OIPC of British Columbia Order No. 110-1996), which amounts to an abuse to make those requests under the Act.

The Custodian also wishes to reiterate that the Applicant was given the option under the Act, regarding 201-H-006-2a and 2b, to either request a formal review or attach a statement of disagreement to her record if she was dissatisfied with the Custodian's decision. The fact that, as of this date's writing, the Applicant has *not* exercised either of them and opted to write a personally scathing letter to the Custodian's affiliate instead, shows that the Applicant's requests are deliberately being used as a tool to "harass and grind" the Custodian and its affiliates and "bend [them] to her will" (OIPC of Alberta's *Request for Authorization to Disregard Access Requests – Grant MacEwan College*, March 13, 2007).

- [14] The Applicant chose to provide a response. She provided a lengthy explanation and justification for each of the correction/amendment requests at issue. Some were withdrawn. Generally, the Applicant raised concerns with the accuracy of the information about her and stated that she has "no control over whom the notes/documents are provided to, and what can be interpreted or misinterpreted from that information". She also reiterated that this was "a 'create the truth' vs. 'representing the truth' situation".
- [15] The Applicant disputed the Custodian's characterization of her requests and distinguished her situation from the cases relied on by the Custodian. For example, she took the position that the letter she had written to an affiliate should not be viewed as an abuse of her right to make requests, "when this letter has nothing to do with the right to access my health information, or my right to make requests for correction/amendment". The Applicant explained as follows, "I felt that [the affiliate] should be made aware of the issue(s) that are likely to occur due to her incorrect statements. Reading about it from the perspective of an Urgent Services client could make it "more real" for her, in realizing that notes matter in the future for a patient/client. And, that patients/clients can suffer further hardships due to incorrect statements."
- [16] The Applicant pointed out that since receiving the Custodian's application under section 87(1) of the HIA, she had requested a review by my office and submitted a Statement of Disagreement to the Custodian. She also stated:

I find it disturbing and disappointing that health care professionals can be shown how wrong their statements are, have it verified for them, and they are somehow still allowed to “hide” (my opinion) behind Section 13 of the Act claiming that it is a professional view or opinion.

Does this mean that information health care professionals write is irrefutable and always true? I would disagree with this, given what I have read in my medical information.

Is there no concern from the health care professional about the issues their incorrect statements can cause a client/patient in the future?

- [17] I acknowledge the Applicant’s position that the HIA gives her a right to request corrections or amendments of her health information. However, the right to request corrections or amendments is not an absolute right. In previous decisions under the *Freedom of Information and Protection of Privacy Act*, I have held that section 55(1)(a) of that Act clearly contemplates that the systematic nature of access requests, in and of themselves, may amount to an abuse of the right to make those access requests.² This principle is equally applicable to correction/amendment requests, and given the nearly identical wording of section 87(1), this principle is also equally applicable under the HIA.
- [18] As submitted by AHS, all of the requested corrections or amendments would alter the record of a health professional’s opinion or observation. The Applicant’s position is that her correction/amendment requests will change factual inaccuracies. It is clear that some of the requested corrections/amendments would completely alter the nature of the record, whereas others could be characterized as correcting factual inaccuracies. Despite the Applicant’s provision of portions of a polygraph test and frequent references to it in her submission, it is not clear on the evidence before me whether the information in the records accurately reflects what the Applicant reported at the time of treatment or whether the health professional inaccurately recorded information.
- [19] When considering whether the systematic nature of requests may amount to an abuse of the right to make those requests, I may consider the requests as a whole, as in this case. I find that AHS has met its burden under section 87(1) of the HIA. I agree with AHS that when considered in their entirety, the large number of requests, the nature of the requested corrections/amendments, the short time period in which they were submitted, and the systematic nature of the Applicant’s requests constitute an abuse of her rights under the Act.
- [20] I find that the Applicant’s 62 correction/amendment requests amount to an abuse of the right to make those requests.

² See, for example: F2020-RTD-04 at para 26 and F2019-RTD-02/H2019-RTD-01 at para 47.

[21] Because I have found that section 87(1)(a) applies, it is not necessary for me to consider whether the Applicant's requests are also frivolous or vexatious under section 87(1)(b) of the HIA.

[22] On the basis of the evidence before me, I have decided to exercise my discretion under section 87(1)(a) of the HIA. AHS is authorized to disregard the Applicant's correction/amendment requests 2018-H-018 – 2018-H-079.

Request for Authorization to Disregard Future Correction/Amendment Requests

[23] AHS also requested two further authorizations:

- To disregard any future requests from the Applicant regarding corrections or amendment requests for a period of two years effective from the date of this decision; and
- Upon completion of that two year period, that the Applicant be limited to submitting three requests for correction or amendment for a period of two years.

[24] I am not prepared to accede to AHS' first request set out above. While I have found that the Applicant's 62 correction/amendment requests within a period of less than one month were an abuse of her rights to make such requests, I am not satisfied that she should be completely prevented from making correction or amendment requests in the future.

[25] However, in these circumstances I find that some reasonable limits are required on the Applicant's exercise of her rights under the HIA. In F2020-RTD-05, which dealt with a different individual under FOIP, AHS requested, and I granted, limitations on that individual's ability to make access requests. F2020-RTD-05 limited that applicant to five access requests per year, with a minimum of sixty calendar days between submissions for a period of two years. A similar limitation is appropriate in this case.

[26] Therefore, I will authorize AHS to limit the Applicant to five correction/amendment requests per year, with a minimum of sixty calendar days between those requests for a period of two years. This will allow the Applicant to still make correction or amendment requests, but will also require her to be selective about the records she seeks to correct or amend.

Decision

[27] AHS is authorized to disregard the Applicant's 62 correction/amendment requests 2018-H-018 – 2018-H-079 under section 87(1)(1) of the HIA.

[28] AHS is further authorized to limit the Applicant to five correction/amendment requests per year under the HIA, with a minimum of sixty calendar days between those requests for a period of two years.

Jill Clayton
Information and Privacy Commissioner

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