

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER H2021-09

September 22, 2021

COVENANT HEALTH

Case File Numbers 008390 and 008391

Office URL: www.oipc.ab.ca

Summary: An Applicant made an access request under the *Health Information Act* (HIA) to Covenant Health (the Custodian) for her complete file. The Custodian provided responsive records to the Applicant.

The Applicant requested a review of the Custodian's response as she believed further records should have been provided. Following that review, the Applicant requested an inquiry (file #008391). The Applicant also made a complaint that several employees of the Custodian had accessed her health information from the Alberta EHR (Netcare) in contravention of the HIA. Following an investigation into that complaint by this Office, the Applicant requested an inquiry (file #008390).

As the request for review and complaint relate to the same matter and arose from the Applicant's access request, both matters were addressed in this inquiry.

The Adjudicator found the Custodian and/or affiliates had authority to access the Applicant's health information.

The Adjudicator also found that the Custodian conducted an adequate search for records. The Custodian narrowed the Applicant's request with its first response, by providing only 'key documents'. However, this was remedied with the Custodian's second response.

Statutes Cited: AB: *Health Information Act*, R.S.A. 2000, c. H-5, ss. 1, 10, 27, 56.5, 62, 77, 80.

Authorities Cited: AB: Orders H2005-003, H2006-003, H2020-04, H2021-01

I. BACKGROUND

[para 1] On February 23, 2017, the Applicant made an access request under the *Health Information Act* (HIA) to Covenant Health (the Custodian) for her complete file. Specifically, she requested:

- University of Alberta Arrival, all psychiatric assessments all medical testing, all communications
- Grey Nun's Hospital files and assessment from Doctors and Nurses
- Who transported me to Grey Nun's from U of A
- Who accessed my files during that time and after January 4, 2017 to date
- Ambulance people in attendance Dec 8 at Alberta Works plus test reports
- Include any reports from PACT that you may have, or at least from the Alberta Health end of it.

[para 2] The Custodian received the request on February 24, 2017. It located responsive records and responded to the access request on March 22, 2017.

[para 3] On January 16, 2018, the Applicant requested a review of the Custodian's response as she believed further records should have been provided. Following that review, the Applicant requested an inquiry.

[para 4] Also on January 16, 2018, Applicant made a complaint that several employees of the Custodian had accessed her health information from the Alberta EHR (Netcare) in contravention of the HIA. Following an investigation into that complaint by this Office, the Applicant requested an inquiry.

[para 5] As the request for review and complaint relate to the same matter and arose from the Applicant's access request, both matters will be addressed in this inquiry.

II. INFORMATION AT ISSUE

[para 6] As this inquiry addresses the adequacy of the Custodian's response under section 10 of the Act, there are no records directly at issue.

III. ISSUES

[para 7] The issues in this inquiry, as set out in the Notice of Inquiry dated May 27, 2021, are:

1. Did the Custodian (or Affiliate) use the Applicant's health information in contravention of Part 4 of the HIA when its employees accessed it from the EHR (Netcare)?
2. Did the Custodian meet its obligations required by section 10(a) of the Act (duty to assist applicants)? In this case, the Commissioner will consider whether the Custodian conducted an adequate search for responsive records.

IV. DISCUSSION OF ISSUES

Preliminary issue – Custodian's use of external counsel

[para 8] The Applicant has objected to the Custodian's use of external legal counsel in this inquiry.

[para 9] The Applicant refers to section 77(5) of the Act, which relates to the inquiry process under the HIA. It states:

77(5) The person who asked for the review, the custodian concerned and any other person given a copy of the request for the review may be represented at the inquiry by counsel or an agent.

[para 10] The Applicant argues that there must be an exception to this rule prohibiting a Custodian from retaining external counsel if it has its own internal counsel.

[para 11] The Custodian has the ability to choose a representative for this inquiry, as does the Applicant (although I acknowledge that the cost of legal representation is prohibitive for many). There is no exception to this authorization set out in section 77(5).

1. Did the Custodian (or Affiliate) use the Applicant's health information in contravention of Part 4 of the HIA when its employees accessed it from the EHR (Netcare)?

[para 12] With respect to this issue, the Notice of Inquiry states:

The Applicant should clearly state why she believes each employee did not have authority to access her records.

Both of the Applicant's requests for inquiry refer to page numbers of documents or records that have not been provided for the inquiry. Possibly the Applicant is referring to records she received from the Custodian in response to her access request. Those records have not been provided for the inquiry. The only information provided for the inquiry are the attachments to this Notice (the request for review/complaint and requests for inquiry). Any additional documents or records the Applicant wants to be considered, including any or all of the records she received in response to her access request, should be provided with her initial exchangeable submission, in accordance with Inquiry: Preparing Submissions (attached).

Applicable legislation

[para 13] The Custodian acknowledges that S, P, M and C are affiliates of the Custodian.

[para 14] Section 56.5 of the HIA states that no custodian shall use health information except in accordance with the Act.

[para 15] There is no provision in the HIA enabling affiliates to collect, use, or disclose information. However, section 62(2) states that any collection, use or disclosure of health information by an affiliate of a custodian is considered to be collection, use or disclosure by the custodian:

62(2) Any collection, use or disclosure of health information by an affiliate of a custodian is considered to be collection, use or disclosure by the custodian.

[para 16] Further, section 62(4) provides as follows:

62(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.

[para 17] Section 56.5 clarifies that an access of the EHR (Netcare) is a use of health information. It states:

56.5(1) Subject to the regulations,

(a) an authorized custodian referred to in section 56.1(b)(i) may use prescribed health information that is accessible via the Alberta EHR for any purpose that is authorized by section 27;

(b) an authorized custodian referred to in section 56.1(b)(ii) may use prescribed health information that is accessible via the Alberta EHR, and that is not otherwise in the custody or under the control of that authorized custodian, only for a purpose that is authorized by

(i) section 27(1)(a), (b) or (f), or

(ii) section 27(1)(g), but only to the extent necessary for obtaining or processing payment for health services.

(2) For greater certainty, the use pursuant to subsection (1) of prescribed health information that is accessible via the Alberta EHR does not constitute collection of that information under this Act.

(3) For greater certainty, the use pursuant to subsection (1) of prescribed health information that is accessible via the Alberta EHR does not constitute a disclosure of that information by

(a) the regulated health professional or authorized custodian who originally made that information accessible via the Alberta EHR pursuant to section 56.3,

- (b) *any other authorized custodian,*
- (c) *the information manager of the Alberta EHR, or*
- (d) *any other person.*

[para 18] Section 27 of the HIA lists the purposes for which a custodian may use health information. The Custodian has relied on section 27(1)(a) in each case. This provision states:

27(1) A custodian may use individually identifying health information in its custody or under its control for the following purposes:

- (a) *providing health services;*

[para 19] Section 1(1)(m) of the HIA defines “health services”. This provision states:

1(1) In this Act,

(m) “health service” means a service that is provided to an individual for any of the following purposes:

- (i) protecting, promoting or maintaining physical and mental health;*
- (ii) preventing illness;*
- (iii) diagnosing and treating illness;*
- (iv) rehabilitation;*
- (v) caring for the health needs of the ill, disabled, injured or dying,*

but does not include a service excluded by the regulations[...]

Applicant’s concerns

[para 20] The Applicant provided specific concerns with respect to the access of her health information in Netcare by four employees of the Custodian.

[para 21] The first concern relates to a social worker, S, who accessed the Applicant’s health information. The Applicant states that S “did not have applicant’s permission to access confidential mental health records nor did she have a need to know. The access occurred 20 minutes before applicant was discharged [from the hospital]” (initial submission, at para. 25).

[para 22] The second concern relates to a pharmacist, C. The Applicant states (initial submission at para. 26):

[C] accesses netcare on Dec 30 at 9:52 and prints inpatient consultation. This is a day that applicant is on a pass. Applicant may have been prescribed medication but was not taking any medication, this would have been revealed when [C] viewed Med Profile and also would be aware of this through team conferences. Manager states that pharmacist

routinely access patients information in Netcare but doesn't say that there is a need to print it.

[para 23] The third concern relates to an employee in the records department, P. She states that P viewed her demographic page 15 times without further action. The Applicant questions what P was looking for.

[para 24] The fourth concern relates to a pharmacist, M. The Applicant states that M accessed her information two hours after she was discharged from the hospital. She states that M “views ECG and other [files] but not applicant’s Med Profile” (initial submission at para. 28).

Custodian’s submission

[para 25] The Custodian states that three of the four employees referred to by the Applicant are no longer employed by the Custodian (S, P and C). It states that “[h]owever, there is a link between the Applicant’s health information and the employee’s role at the time they each accessed the Applicant’s information” (initial submission, at para. 50).

[para 26] With respect to S (the social worker), the Custodian argues that S was authorized to access/use the Applicant’s health information under section 27(1)(a) of the HIA. The Custodian states that the access related to her role with the Custodian, “as she created Progress Notes in Netcare in relation to the health care services she provided to the Applicant” (initial submission, at para. 53). The audit logs provided by the Applicant show that S accessed the Applicant’s health information on January 3, 2017.

[para 27] With its initial submission, the Custodian provided an affidavit sworn by an Information and Privacy Advisor with the Custodian (Advisor). The Advisor states that S met with the Applicant on December 30, 2016, to perform an assessment. From the submissions, I understand that the Applicant was discharged from the hospital on January 3, 2017. The Advisor states (affidavit, at paras. 10-11):

[S’s] documentation indicates that [S] will connect the Applicant with some community support services. On January 3, [S] participated in a team conference to review the Applicant’s needs. [S] then completed and sent a referral for the patient to the Edmonton Mental Health Outpatient Clinic.

During the provision of health care services to a patient, it is not unusual for a Social Worker to access a patient’s health information in Netcare. Covenant Health’s position is that this employee accessed the Applicant’s information in Netcare on January 3, 2017 in the performance of her work, and the accesses were not in contravention of Part 4 of the *Health Information Act*. A true copy of the accurate job description for the position [S] held at the applicable time period (“Social Worker II”) is attached to my affidavit as **Exhibit “H”**.

[para 28] With respect to P, the Custodian argues that P was authorized to access/use the Applicant’s health information under section 27(1)(a) of the HIA. The Custodian

states that P is a Coding Specialist in the Health Information Management area. The Custodian states that P's job duties

...required her to review patient records in detail in order to fulfill Alberta Health's mandatory coding requirements for Covenant Health using the International Statistical Classification of Diseases and Related Health Problems. In most, if not all cases, a Coding Specialist needs to access and view a patient's records in Netcare in order to perform these duties (initial submission, at para. 51).

[para 29] The Custodian argues that record keeping is an essential part of providing health services.

[para 30] The audit logs provided by the Applicant show that P accessed the Applicant's health information several times between January 24, 2017 and March 22, 2017. Most accesses were of patient demographics.

[para 31] In her affidavit, the Advisor states (at paras. 18-20):

The Applicant raised concerns about [P's] accesses to her Netcare record between January 24 and March 22, 2017... The Manager of Data and Decision Support confirmed to me on June 5, 2018 that [P] was the staff member who coded the Applicant's record. [P] completed the preliminary coding on January 24, 2017. The Netcare audit report shows that [P's] first access to the Applicant's record was on January 24, 2017 at 11:16 hours. At that time, the physician had not yet completed the Applicant's Discharge Summary, which is a key document needed to complete the coding process.

When a Discharge Summary is not available, a Coding Specialist may access Netcare on multiple occasions until the Summary has been completed in order to complete the coding of the patient's record. That is the only way they can access a Discharge Summary that is not on the physical paper chart. The 21st day of each month is the coding deadline (which means the previous month has to be coded and data has to be submitted to Alberta Health by that date). In order to meet the coding deadline, a coder may go in to Netcare several times to check if the Discharge Summary or other relevant documentation they need is available.

Normally there is a gap of a few days from the time a Discharge Summary is dictated by the physician and then transcribed by a transcriptionist. We have verified that the Discharge Summary was dictated by the Applicant's physician on March 20 and transcribed on March 22, 2017 at 02:23 hours, at which time it would have been available in Netcare. The Netcare audit report shows that [P's] last access to the Applicant's record was on March 22, 2017 at 14:49 hours. Covenant Health's position is that [P] accessed the Applicant's information in Netcare for job-related work duties, and the accesses were not in contravention of Part 4 of the *Health Information Act*.

[para 32] With respect to M, a pharmacist, the Custodian argues that he was authorized to access/use the Applicant's health information under section 27(1)(a) of the HIA. The audit logs provided by the Applicant show that M accessed the Applicant's health information on January 3, 2017.

[para 33] M is the only employee identified by the Applicant who continues to be employed by the Custodian. With its initial submission, the Custodian provided an affidavit sworn by M. He states that he was a clinical pharmacist at the time of the access, specializing in mental health. He states that he would have been covering mental health patients throughout the hospital, including interacting with patients and interdisciplinary teams.

[para 34] He states (affidavit, at paras. 5-6):

For each patient, it is my practice to review the order(s) of the physicians and reconcile that information with each patient's existing medication list, as well as how that may affect the health of each patient. As part of this reconciliation, I routinely access a patient's information in the Alberta Netcare Portal system to check the following things for each patient in my care, if applicable:

- a. the patient's list of current and past medications;
- b. the patient's history of adverse drug reactions;
- c. the patient's recent and historic lab work;
- d. the patient's drug levels;
- e. the patient's toxicities;
- f. the patient's recent and historic blood work;
- g. the patient's recent and historic liver function;
- h. the patient's recent and historic renal function;
- i. the patient's recent and historic urinalysis information;
- j. the patient's history of mood disorder and/or other mental health issues;
- k. the patient's recent and historic ECG; and
- l. the patient's consults and history.

While the above list is not exhaustive, it gives a spectrum of items that I check on every patient admitted to my team. I assess all medications for appropriateness, efficacy, tolerance, and actual or potential drug interactions. My assessment includes overall health of the patient (including mental health and all comorbidities) and his/her tolerance to their existing medications with any new medications that have been ordered. My review of the above is also to assess whether or not a patient has or may have any congenital issues that would or could be affected and whether newly prescribed medication would or could adversely affect their physical or mental health.

[para 35] M states that the Applicant was prescribed several medications during her admissions. He further states (at paras. 13, 15-16):

At 11:00 a.m. on January 3, 2017, it was documented in the Social Work Progress Notes, attached as Exhibit "f" to my affidavit, that I was involved in the "Tuesday Team Case Conference" when the Applicant's progress and readiness for discharge was discussed. I have no recollection specifically regarding this meeting, only that I always attend these meetings if I am on shift and am often asked to participate to answer questions regarding medications prescribed, if any come up. I have no specific recollection of any questions arising in relation to the Applicant or me providing any specific responses.

...

The accesses to the Applicant's health information in the Alberta Netcare system on January 3, 2017 by myself would be considered routine and a part of my normal practice as a pharmacist in the Mental Health Unit when a patient is admitted and has prescriptions to be maintained or is given new prescriptions during the course of their admission. Paragraph 11 details the list of medications given to the Applicant, and it was therefore necessary to review the related patient information. Numerous medications commonly used to treat mental health diagnoses carry a known risk of causing or exacerbating cardiac conduction abnormalities, so QTc measurement via ECG is considered standard of care for safety and in particular may have side effects affecting the heart, which is why I reviewed the Applicant's ECG information.

I also understand the Applicant has concerns with my Netcare accesses in particular, as she was apparently discharged at the time of my review. As a pharmacist, I am not notified when a patient is discharged. My department would not have been notified of the patient's transfer and/or discharge until the next day when the patient would have been removed from our daily census report. With an average of 35 patients in our care on a daily basis, the pharmacists only have time to review records considered to be absolutely necessary within Netcare.

[para 36] With respect to C, the Custodian states that C accessed the Applicant's information as part of her role as a pharmacist. The Custodian argues that C was authorized to access/use the Applicant's health information under section 27(1)(a) of the HIA. The audit logs provided by the Applicant show that C accessed the Applicant's health information C accessed the Applicant's information on December 30, 2016.

[para 37] In her affidavit, the Advisor states that C is no longer employed with the Custodian; however, the Advisor confirmed that C was employed in the same role as M at the time the Applicant's information was accessed. The Advisor states that the information provided by M is also applicable to C. The Advisor further states (affidavit, at para. 16):

I have personally reviewed the accesses of [C], however, and I submit that the Netcare accesses made by [C] on December 30, 2016 would be considered usual accesses in her normal course of business when caring for a patient. Upon review of the file and all related materials, I do not believe [C] had reason to access the Applicant's health information in the Alberta Netcare Portal system, other than to perform her required and expected job duties.

Analysis

[para 38] The Custodian has provided detailed and convincing reasons for the accessed of the Applicant's health information by S, P, M and C.

[para 39] S's progress notes related to her interactions with the Applicant were provided to me in the submissions. The progress notes support the Custodian's submissions. I accept that S provided health services to the Applicant, in her role as social worker. The date of S's access of Netcare coincide with her treatment of the

Applicant. I agree that section 27(1)(a) authorized this use of the Applicant's health information.

[para 40] With respect to the pharmacists, M's affidavit clearly sets out his role and purpose in accessing the Applicant's health information in Netcare. I accept that section 27(1)(a) authorized this use of the Applicant's health information. With respect to C, who is no longer employed by the Custodian, the Custodian was limited to applying M's explanation to C as well, given that their positions were the same.

[para 41] The Custodian cites Order H2021-01, which discussed the type of evidence that could support an affiliate's reason for accessing health information when significant time had passed since the access and the inquiry. It states (at paras. 27-28):

That said, the employee needn't necessarily recall that particular access of information for the Custodian to present a reasonable explanation or argument as to its authority for the access. Order H2020-04 addressed several complaints about EHR accesses that occurred from 2006 to 2012; the complaint about those accesses was made in 2014. While a significant time had passed for some of those accesses, the explanations provided by the custodian in each case were accepted. For example, an employee of the custodian accessed a complainant's EHR in 2013; the explanation that was accepted in that case was that the employee's role included administering a waitlist and that the complainant was on a waitlist for a procedure at the time (see paras. 75-77). There is no indication in the Order that the employee in question specifically recalled accessing that complainant's information on that date. The link between the employee's role of administering a waitlist and the complainant's being on a waitlist was sufficient.

In this case, if the Custodian could show a link between the Complainant's information and the employee's role at the time they accessed the Complainant's information, such an explanation may be sufficient even if the employee could not recall their precise actions or intentions when they accessed the information several years ago. For this reason it is my view that the passage of time between the access and the Complainant's complaint is not necessarily fatal to the Custodian's ability to make its case here.

[para 42] This analysis also applies where the relevant employee is no longer employed with the custodian and cannot provide their own explanation for the access at issue. In this case, I accepted M's explanation for his access of the Applicant's health information; much of M's explanation would apply to other pharmacists in the same role, such as C. The dates of C's access coincide with the Applicant's stay in the hospital. Nothing in the submissions indicates that C's access was for any purpose other than providing health services to the Applicant, as described in M's affidavit. I agree section 27(1)(a) authorized this use of the Applicant's health information.

[para 43] Lastly, with respect to P, the Custodian explained that P was responsible for coding health information in Netcare. It states that it is required to code health information following the International Statistical Classification of Diseases and Related Health Problems.

[para 44] The International Classification of Diseases is maintained by the World Health Organization (WHO), which describes it as follows¹:

ICD is the foundation for the identification of health trends and statistics globally, and the international standard for reporting diseases and health conditions. It is the diagnostic classification standard for all clinical and research purposes. ICD defines the universe of diseases, disorders, injuries and other related health conditions, listed in a comprehensive, hierarchical fashion that allows for:

- Easy storage, retrieval and analysis of health information for evidenced-based decision-making
- Sharing and comparing health information between hospitals, regions, settings and countries
- Data comparisons in the same location across different time periods

Based on clinical input, research and epidemiology, ICD has become a tool that is suitable for many uses in health, as:

- Monitoring of the incidence and prevalence of diseases,
- Causes of death
- External causes of illness
- Codes for antimicrobial resistance, in line with GLASS
- Primary care and family medicine concepts have been incorporated into ICD-11
- Medicaments (INN - ATC), allergens and chemicals, histopathology (ICD-O 3.2), are embedded in ICD-11
- Codes for full documentation of patient safety, in line with the WHO patient safety framework
- Dual coding for traditional medicine diagnoses
- Primary care settings
- Recording of rare diseases
- Casemix or Diagnosis Related Groupings (DRG), resource allocation
- Embedding of guidelines

[para 45] I understand that the Custodian is required to code its health information using this classification. As such, I accept that properly coding health information is a necessary part of providing a health service.

[para 46] I also accept the Custodian's explanation regarding P's job duties, and that she accessed the Applicant's health information on Netcare numerous times, waiting for a transcribed Discharge Summary.

¹ <https://www.who.int/classifications/classification-of-diseases>

[para 47] While P is an affiliate of the Custodian, it is not clear that P was acting as an affiliate whether she accessed Netcare on behalf of the Custodian. In Order H2020-04, I described the difference as follows (at para. 66):

While both C.H. and G.M. are affiliates in their own right under the Act, in this case, they were acting under the instruction of the Custodian, on its behalf. The Custodian cannot act except via its own employees (or contractors). This includes accessing the EHR. Only affiliates can access the EHR (as opposed to an employee who is not also an affiliate). The HIA grants affiliates their own authorities for accessing the EHR; however, I do not interpret this to mean that every access by an affiliate must be under their own authority. Where an affiliate is acting on behalf of the Custodian, they can rely on the Custodian's authority to access the EHR. In this case, the Custodian had the same authority as Drs. E.C. and S.D. to access the Complainant's health information under section 27(1)(a); that C.H. and G.M. performed that function does not alter this authority.

[para 48] Whether P was acting under her own authority as an affiliate, or acting on behalf of the Custodian, the result is the same. I agree section 27(1)(a) authorized this use of the Applicant's health information.

[para 49] I find that the Custodian and/or affiliates had authority to access/use the Applicant's health information.

2. Did the Custodian meet its obligations required by section 10(a) of the Act (duty to assist applicants)? In this case, the Commissioner will consider whether the Custodian conducted an adequate search for responsive records.

[para 50] With respect to this issue, the Notice of Inquiry states:

The Applicant's request for inquiry for Case File #008391 identifies two records she believes are missing: a 6-page fax sent by a social worker to a mental health clinic, and a discharge summary signed by Dr. Mills. If the Applicant believes other records are missing she should clearly identify and describe what records are missing, and why she believes they exist.

As above, both of the Applicant's requests for inquiry refer to page numbers of documents or records that have not been provided for the inquiry. Possibly the Applicant is referring to records she received from the Custodian in response to her access request. Those records have not been provided for the inquiry. The only information provided for the inquiry are the attachments to this Notice (the request for review/complaint and requests for inquiry). Any additional documents or records the Applicant wants to be considered, including any or all of the records she received in response to her access request, should be provided with her initial exchangeable submission, in accordance with Inquiry: Preparing Submissions (attached).

In its initial submission, the Custodian should address the records identified as missing by the Applicant in her request for inquiry and/or initial submission.

[para 51] Section 10 of HIA states:

10 A custodian that has received a request for access to a record under section 8(1)

(a) must make every reasonable effort to assist the applicant and to respond to each applicant openly, accurately and completely.

[para 52] Past Orders of this office have determined that a custodian is in the best position to show that it conducted an adequate search for responsive records; therefore, the burden of proof is on the custodian to show that it has done so (see Orders H2005-003 and H2006-003).

[para 53] Regarding the test for whether an adequate search was conducted, former Commissioner Work stated the following in H2005-003 (at paras. 19-21):

These FOIP Orders have not established a specific test for adequacy of the search; this is a question of fact to be determined in every case. The standard for the search is not perfection but rather what is “reasonable” in the circumstances. The decision about adequacy of a search is based upon the facts of how the search was conducted in the particular circumstances. In order to discharge its burden of proof under FOIP, a public body must provide sufficient evidence to show that it has made a reasonable effort to locate responsive records.

In its written and oral submissions, the Custodian argued that the FOIP approach to interpretation should be applied to the parallel provision in HIA. I accept this argument. I hereby adopt the above described FOIP criteria and approach for deciding whether the adequacy of the search and therefore the duty to assist under section 10(a) of HIA has been satisfied by a custodian.

To address the Applicant’s concerns, I must review the thoroughness of the Custodian’s search. In its written and oral submissions, the Custodian provided detailed descriptions of the steps that were taken, the communications that occurred, the documentation utilized and the efforts that were made to attempt to locate the information requested.

Explanation of the Custodian’s search

[para 54] With its initial submission, the Custodian provided an affidavit sworn by an Access and Disclosure Specialist (Specialist), who processed the Applicant’s access request.

[para 55] The Specialist states that she followed the standard procedure for locating all responsive records, which she outlined as follows (affidavit, at para. 6):

- Reviewed the access to information requests to ensure all the required details were provided to facilitate processing the request (full name of individual, date of birth, personal health number, time frame of the requested records, type of health records being requested);
- Reviewed the request to confirm that the Applicant was authorized to request and ultimately receive the information; and

- Accessed the appropriate information systems to determine if and where records responsive to the request were located. In this case, the Power Trac system and VAX (the Admission, Discharge, Transfer (ATD) system) were reviewed.

[para 56] The Specialist described the scope of the search as follows (affidavit, at para. 7):

- Physical records;
- Microfilmed records;
- Off-site records;
- Chart tracking systems, including PowerTrac and QDoc;
- Admission, Discharge and Transfer system, VAX; and
- Alberta Netcare Portal.

[para 57] The Specialist states that she used the Applicant's personal health number, date of birth and full name to search.

[para 58] The Specialist states that the Custodian's Health Records Department has a general procedure for completing access requests. She states (affidavit, at paras. 10-11):

This procedure involves identifying the key documents in an Applicant's health records and providing copies of the key documents, rather than copies of all the pages in the records, when the Access and Disclosure Specialist determines that a response which provides an applicant with copies of the key documents will satisfy the applicant's request.

As a result of my searches for the Applicant's health records and my assessment that providing the key documents would meet the Applicant's needs, I produced copies of the Applicant's records to the best of my skill and ability.

[para 59] These records were provided to the Applicant on March 22, 2017.

[para 60] The Specialist states that upon receiving the Applicant's request for review, the Specialist has changed her standard practice, and now calls the requestor to confirm the scope of the request.

[para 61] The Specialist also states that after receiving the Applicant's request for review, the Custodian's Health Information & Privacy area asked her to provide the Applicant with a complete copy of all the pages in the Applicant's health record from her hospitalization between December 28, 2016 to January 3, 2017.

[para 62] The Custodian states that the second release of records included the items identified by the Applicant as missing in her request for review. It was provided to her on June 5, 2018.

[para 63] I accept that the Custodian's search for records was adequate. However, in my view, by deciding to provide the Applicant with only 'key documents' rather than

copies of all pages in the records, the Custodian unilaterally narrowed the scope of the Applicant's request.

[para 64] I agree that it is a better practice to contact an applicant to confirm whether they would be satisfied with key documents rather than copies of every page of records, which is the Custodian's updated practice.

[para 65] Only one item of information identified in the Applicant's request for review was again identified as missing in her request for inquiry: the signed copy of a discharge summary. As will be discussed below, this record was provided to the Applicant in both the first and second release of records.

[para 66] While the Custodian unilaterally narrowed the Applicant's request with its first response, this issue was remedied when it provided the Applicant with the remaining records in June 2018.

[para 67] The Applicant identified four records she believes continue to be missing from the Custodian's response. The Custodian has provided information relating to each identified item; I will consider each item below.

Specific records identified by the Applicant

[para 68] In her initial submission, the Applicant states that the copy of a Summary Discharge provided to her states that it was signed electronically "yet there is no indication that this is e-signed on the record and would like a copy of this record showing the a-signature that is held in CHGN facility" (initial submission, at para. 6).

[para 69] With its initial submission, the Custodian provided an affidavit sworn by an Information and Privacy Advisor with the Custodian (Advisor), which states (at para. 26):

The Applicant has had concerns that the document does not have a proper signature. However, it has been standard practice for Covenant Health to use electronic signatures for approximately seven years in order to authenticate health records, including discharge summaries. It clearly indicates at the end of the document "Electronically signed by Philip Mills 24-Mar-2017 09:34". Covenant Health's position is that this document is fully complete, and the Applicant's request for same was complied with in both the original disclosure dated March 22, 2017 and in the second disclosure dated June 5, 2017.

[para 70] I have reviewed the Summary of Discharge and accept the Custodian's explanation. The Applicant seems to believe that there exists a records with Dr. Mills' actual signature; this is incorrect. Therefore, the Custodian has provided the relevant record to the Applicant.

[para 71] Applicant is also seeking six pages of a fax sent by a Social Worker to the Edmonton Mental Health Clinic. The Custodian located only two pages of that fax. In its initial submission, it states (at para. 30):

Paragraph 8 of the Applicant's submission refers to faxed records by a Covenant Health employee that were sent to the Edmonton Mental Health Clinic. Although the fax transmission sheet found on the Applicant's health record states that there were a total six pages, only two pages relating to this fax were placed on the health record. These two pages were disclosed to the Applicant. When faxed documents are placed on a patient's health record, copies of records available in Netcare are not retained and therefore were not available on the Applicant's health record at the Grey Nuns Community Hospital to be provided to the Applicant in response to her request for access.

[para 72] The affidavit of Advisor further explains (at para. 12):

The fax transmission sheet found on the Applicant's health record shows that a total of six pages were sent; however, only two pages relating to this fax were placed on the health record. Subsequently I was able to disclose only the two pages found on the health record to the Applicant. When preparing for the Inquiry, I made inquiries about the pages that appeared to be missing from the Applicant's health record. I was advised by the Edmonton Mental Health Clinic that on the copy of the fax retained in their records, a scanning clerk had written "Removed Netcare from fax referral – Inpatient Consult – UAH 28 Dec 2016 Pages 3 – 6". This meant pages 3 to 6 were consultation records found in the Netcare system. As neither the Edmonton Mental Health Clinic, nor the Grey Nuns Community Hospital, retain information already available on Netcare, these pages were not available on the Applicant's health record to be provided in response to her request for access to information. Attached as **Exhibit "I"** to my affidavit is a re-creation of what we believe was sent by [the Social Worker] to the Edmonton Mental Health Clinic.

[para 73] I accept the Custodian's explanation, and find that its efforts to locate the six pages of the fax are sufficient to meet its duty under section 10.

[para 74] The Applicant also specified in her initial submission that she is seeking "proof of agreement for follow up care at a mental health clinic." The Custodian's initial submission indicates that this information is located in Social Work Progress Notes, at page 15 of the initial records provided to the Applicant. I have reviewed that page, and it appears to contain the information the Applicant is seeking. It may be that the Applicant believes there is some other record but she has not explained what other record she believe exists. It is not apparent from the records before me that any separate record of agreement exists or ought to exist. At various points in her submission, the Applicant indicates that she did not agree to the provision of certain health services; it may be that the Applicant means to indicate that she did not agree to the follow up care at a mental health clinic. In any event, I am not satisfied that there is another record in the Custodian's custody or control that ought to have been provided to the Applicant.

[para 75] At page 61 of the second set of records provided to the Applicant (on June 5, 2018) is a memo from the Access and Disclosure Specialist to the Applicant's physician, dated February 28, 2017. The memo is seeking input from the physician regarding the release of records requested by the Applicant. The memo refers to records that were attached to it; the Applicant asks what records were attached.

[para 76] This memo, along with pages 57-60 of the second set of records, are not responsive to the Applicant's access request. These pages include a copy of the Applicant's access request, the Custodian's first response to that request (dated March 22, 2017), and what appear to be internal forms used by the Custodian when processing access requests. The timeframe of the Applicant's access request was December 27, 2016 to January 4, 2017; these records, including the memo, post-date the Applicant's request. It is not clear why the Custodian included these records in its second response to the Applicant. In any event, as these records are not responsive to the Applicant's request, they also do not fall within the scope of this inquiry.

[para 77] That said, the context and content of the memo present a reasonable explanation regarding the records likely attached to the memo, which may satisfy the Applicant. The memo is dated four days after the Custodian received the Applicant's access request. In the memo, the Specialist informs the Applicant's physician that the Custodian received an access request from the Applicant. The Specialist asks the physician to review the attached records and provide a medical opinion regarding disclosure of the records to the Applicant. It seems clear from the context that the records attached to that memo are the records the Custodian had located as responsive to the Applicant's access request.

[para 78] From the information before me, I understand that the Custodian provided the Applicant with copies of all records it located as responsive. In other words, nothing before me indicates that the Custodian withheld information under any exceptions in the Act. Therefore, the records attached to the memo are likely the same records the Applicant received from the Custodian in its first and/or second response.

Additional concerns raised by the Applicant

[para 79] In several instances, the Applicant questions the accuracy of information in the records. This does not fall within the scope of this inquiry, such as the time of her admission to a facility, and notes recorded by health service providers. The Applicant may request a correction from the Custodian if she wishes.

[para 80] The Applicant questions the relationship between the Custodian and Alberta Health Services (AHS), as both logos appear on some records provided to her. While this issue does not fall within the scope of this inquiry, the Custodian provided an explanation of the relationship between it and AHS for the Applicant's information. I need not reproduce that explanation here.

Conclusion regarding section 10

[para 81] I find that the Custodian conducted an adequate search for records. The Custodian narrowed the Applicant's request with its first response, by providing only 'key documents'. However, this was remedied with the Custodian's second response. Given this, I find that the Custodian met its duty under section 10(a) of the Act.

V. ORDER

[para 82] I make this Order under section 80 of the Act.

[para 83] I find that the Custodian and/or affiliates had authority to access/use the Applicant's health information.

[para 84] I find that the Custodian conducted an adequate search for records.

[para 85] I find that the Custodian did not initially meet its duty to assist the Applicant when it first processed and responded to the Applicant's request. However, the Custodian remedied this error with its subsequent response to the Applicant, fulfilling its obligations under section 10(a).

Amanda Swanek
Adjudicator