



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 062-2019**

**Dr. Bryan Robertson**

**May 14, 2019**

**Summary:**

The Applicant requested a copy of their examination records from Dr. Robertson of The Spectrum Eye Centre. After receiving the response from Dr. Robertson, the Applicant submitted an application for review to the Information and Privacy Commissioner (the Commissioner). The Applicant indicated in their application for review that Dr. Robertson did not provide all responsive records and that Dr. Robertson took longer than the prescribed 30-day deadline, as per subsection 36(1) of *The Health Information Protection Act* (HIPA). The Commissioner found that Dr. Robertson conducted a reasonable search for responsive records and that Dr. Robertson did not respond to the Applicant's request as required by subsection 36(1) of HIPA. The Commissioner recommended that Dr. Robertson ensure that appropriate processes are in place so that requests for access to personal health information are processed in accordance with the requirements of HIPA.

### **I BACKGROUND**

[1] On November 7, 2018, the Applicant requested a copy of their examination records from Dr. Bryan Robertson, of The Spectrum Eye Centre, as follows:

Request copy of all records related to [Applicant's] eye examinations, except the detailed eye charts, including all correspondence, notes, recorded conversations etc. between Dr. Bryan Robertson and the staff for the following appointments:

July 28, 2016

September 26, 2017

October 4, 2018  
November 7, 2018

- [2] On January 17, 2019, Dr. Robertson sent an email to the Applicant with a copy of the records requested. The email to the Applicant indicated that, “We have several more files to follow.”
- [3] On February 11, 2019, my office received an application for review from the Applicant. In their application, the Applicant noted that they had not received a response to their request for records and that they disagreed with the manner the trustee was providing access to records.
- [4] On February 19, 2019, my office wrote to Dr. Robertson to inquire as to whether more records would be provided to the Applicant, given the response provided to the Applicant on January 17, 2019. On February 27, 2019, Dr. Robertson called my office to confirm that:
- that all responsive records had been provided to the Applicant except for imaging documents;
  - the Applicant’s entire file was provided to them, not just the records related to the four appointments the Applicant requested on November 7, 2018; and
  - the remainder of the Applicant’s records – the imaging documents – would be provided to the Applicant via email on February 27, 2019.
- [5] My office provided the information obtained from Dr. Robertson of February 27, 2019 to the Applicant; however, the Applicant was still dissatisfied with the time it took Dr. Robertson to provide the requested records and also alleged that Dr. Robertson still had not provided all responsive records. In this regard, the Applicant stated that a hand written note exists from November 7, 2018, which was not provided along with the other records.
- [6] On March 4, 2019, my office notified Dr. Robertson and the Applicant of my intention to review Dr. Robertson’s search efforts and why the prescribed 30-day deadline, as per

subsection 36(1) of *The Health Information Protection Act* (HIPA), was not met. The notifications to both parties also stated that the review would address the allegation from the Applicant that Dr. Robertson did not provide a copy of a handwritten note that was given to Dr. Robertson on November 7, 2018.

[7] Upon receiving my office's notification, Dr. Robertson emailed my office on March 4, 2019, to reiterate that records responsive to the Applicant's request had been provided on January 17, 2019 and February 27, 2019. Dr. Robertson did not address the other issues noted in my office's notification.

[8] My office followed up with Dr. Robertson about whether he would provide a submission on May 7, 2019. Dr. Robertson emailed my office the same day and provided additional details regarding the search performed to locate responsive records and to address the allegedly missing handwritten note.

## **II RECORDS AT ISSUE**

[9] There are no records at issue as this review pertains to whether Dr. Robertson made a reasonable effort to search for responsive records and if Dr. Robertson complied with subsection 36(1) HIPA by responding to the Applicant's request within the prescribed timelines.

## **III DISCUSSION OF THE ISSUES**

### **1. Do I have jurisdiction to review this matter?**

[10] Subsection 2(t)(xii)(A) of HIPA provides the following definition of a trustee:

2 In this Act:

...

(t) "trustee" means any of the following that have custody or control of personal health information:

...

- (xii) a person, other than an employee of a trustee, who is:
  - (A) a health professional licensed or registered pursuant to an Act for which the minister is responsible;

[11] Dr. Robertson is the sole owner of The Spectrum Eye Centre in Regina. Dr. Robertson is a licensed optometrist in accordance with *The Optometry Act* in Saskatchewan and a registered member of the Saskatchewan Association of Optometrists. As such, Dr. Robertson qualifies as a trustee pursuant to subsection 2(t)(xii)(A) of HIPA and therefore, my office has jurisdiction to conduct this review.

## 2. Is HIPA engaged in this matter?

[12] HIPA is engaged when three elements are present: 1) personal health information, 2) a trustee, and 3) the personal health information involved is in the custody or control of the trustee.

[13] In regards to the first element, personal health information is defined by subsection 2(m) of HIPA, which provides:

2 In this Act:

...

(m) “personal health information” means, with respect to an individual, whether living or deceased:

(i) information with respect to the physical or mental health of the individual;

(ii) information with respect to any health service provided to the individual;

(iii) information with respect to the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;

(iv) information that is collected:

(A) in the course of providing health services to the individual; or

(B) incidentally to the provision of health services to the individual;

or

(v) registration information;

[14] The Applicant requested access to their eye examination records and records related to their appointments at The Spectrum Eye Centre. Dr. Robertson provided the Applicant with their entire patient records, including eye examination and eye imaging records. This information qualifies as personal health information in accordance with HIPA.

[15] I have already determined that Dr. Robertson is a trustee pursuant to HIPA, therefore the second element is present. In regards to the third element, Dr. Robertson's submission indicates that The Spectrum Eye Centre maintains the Applicant's personal health information within its Electronic Records Management (EMR) system. Therefore, the personal health information of the Applicant is in the custody or control of Dr. Robertson.

[16] As all three elements are present, I find that HIPA is engaged in this matter.

**3. Did Dr. Robertson perform a reasonable search for responsive records?**

[17] My office's notification to Dr. Robertson requested that he describe his search strategy, in line with my office's *IPC Guide to Exemptions* and/or *IPC Guide to HIPA*.

[18] My office's Guides states that the following information – a non-exhaustive list meant to be used as a guide only – can be provided by a public body in their submission to describe its search strategy:

- An explanation of why certain areas were searched and not others.
- Identify the employee(s) involved in the search and explain how the employee(s) is/are experienced in the subject matter.
- Explain how the records management system is organized.
- Explain how you have considered records stored off-site.

- Which folders within the records management system were searched and explain how these folders link back to the subject matter requested? For electronic folders – indicate what key terms were used to search if applicable.
- On what dates did each employee search?
- How long did the search take for each employee?

[19] A reasonable search for records is one in which the individual performing the search is experienced in the subject matter and expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

[20] According to Dr. Robertson's May 7, 2019 submission, he advised that he conducted the search for relevant records himself. Dr. Robertson stated that the search for records involved searching through the computers of the south and east offices of The Spectrum Eye Centre. The search also involved searching through the Centre's EMR system. Images and exams found as part of the search were converted to PDF format for the Applicant's ease of reference. Dr. Robertson did not indicate how long the search for records took.

[21] According to Dr. Robertson, he compiled all the relevant records and placed them on a secure server. Dr. Robertson then sent an email to the Applicant so that the Applicant could access and download the records from the server. Dr. Robertson also sent an email to the Applicant on January 17, 2018, which had ten documents attached. These documents were copies of records retrieved and compiled in response to the Applicant's request.

[22] As part of his submission, Dr. Robertson included a list of all the records that were provided to the Applicant. There is a total of twenty-seven records on the list that range in dates from 2014 – 2018. As stated earlier, in their application for review, the Applicant confirmed that Dr. Robertson provided them with more records than they had requested.

- [23] Based on Dr. Robertson's submission, and the other information obtained during this review, I find that Dr. Robertson conducted a reasonable search for responsive records.
- [24] In the notification to Dr. Robertson, my office also requested that Dr. Robertson address the hand written note that the Applicant alleges a staff member gave to Dr. Robertson during the Applicant's appointment on November 7, 2018, which was not included with the records provided to them.
- [25] In this regard, Dr. Robertson's submission indicates that he recalls the Applicant having an exam on November 7, 2018. After the Applicant left The Spectrum Eye Centre, the Applicant returned later that day and gave a note to the receptionist. According to Dr. Robertson, the note was a request from the Applicant for their exam records. Dr. Robertson confirms that he remembers looking at the note but that the note was later shredded that same day, as it was not considered part of the Applicant's medical record.
- [26] HIPA does not explicitly require a trustee to keep copies of requests for access to records or the package of records provided to an Applicant. However, practically speaking, a trustee should retain a copy of these records until all the timelines related to the right of an Applicant to request a review by my office, or an appeal to the court, have expired. This would ensure that if an Applicant does request a review or make an appeal, a trustee will have copies of all the relevant records related to the access request, which can then be provided to my office or the court on request.

**4. Did Dr. Robertson respond to the Applicant's request in accordance with the prescribed timelines in HIPA?**

- [27] Subsection 36(1) provides that a trustee must make every reasonable effort to respond to a request within 30 days after receiving the request, as follows:

**36(1)** Within 30 days after receiving a written request for access, a trustee must respond to the request in one of the following ways:

- (a) by making the personal health information available for examination and

providing a copy, if requested, to the applicant;

(b) by informing the applicant that the information does not exist or cannot be found;

(c) by refusing the written request for access, in whole or in part, and informing the applicant:

(i) of the refusal and the reasons for the refusal; and

(ii) of the applicant's right to request a review of the refusal pursuant to Part VI;

(d) by transferring the written request for access to another trustee if the personal health information is in the custody or control of the other trustee.

[28] A trustee may extend the period set out in subsection 36(1), as per subsections 37(1) and 37(2), which provide:

37(1) A trustee may extend the period set out in subsection 36(1) for a reasonable period not exceeding 30 days where:

(a) the request is for access to a large number of records or necessitates a search through a large number of records or there is a large number of requests, and completing the work within the original period would unreasonably interfere with the operations of the trustee; or

(b) consultations that are necessary to comply with the request cannot reasonably be completed within the original period.

(2) A trustee who extends a period pursuant to subsection (1) shall give notice of the extension to the applicant within 30 days after the request is made.

[29] The Applicant requested access to their personal health information on November 7, 2018. Dr. Robertson responded in part to the access request on January 17, 2019. Additional records were provided to the Applicant on February 27, 2019. In accordance with HIPA, Dr. Robertson should have responded to the Applicant's request on December 7, 2018, as Dr. Robertson did not extend the period set out in subsection 36(1).

[30] In his submission, Dr. Robertson indicated that there were personal circumstances that prevented him from handling the request from the Applicant for a period of time. I



recognize that there may be instances where personal circumstances may prevent a trustee from processing a request for records. However, if Dr. Robertson was aware that he would not be able to respond to the Applicant's request in accordance with the prescribed timelines in HIPA, Dr. Robertson should have authorized someone else within The Spectrum Eye Centre to respond to the Applicant's request.

[31] While Dr. Robertson eventually provided the Applicant with the requested records, I find that Dr. Robertson did not respond to the Applicant's request as required by subsection 36(1) of HIPA. As such, a failure to respond to the Applicant's request for access within the period mentioned in subsection 36(1) is deemed to be a decision by Dr. Robertson to refuse to provide the Applicant with access to their personal health information.

[32] I recommend that Dr. Robertson ensure that appropriate processes are in place so that requests for access to personal health information are processed in accordance with the requirements of HIPA.

#### **IV FINDINGS**

[33] I find that Dr. Robertson conducted a reasonable search for responsive records.

[34] I find that Dr. Robertson did not respond to the Applicant's request as required by subsection 36(1) of HIPA.

#### **V RECOMMENDATION**

[35] I recommend that Dr. Robertson ensure that appropriate processes are in place so that requests for access to personal health information are processed in accordance with the requirements of HIPA.

Dated at Regina, in the Province of Saskatchewan, this 14<sup>th</sup> day of May, 2019.

Ronald J. Kruzeniski, Q.C.  
Saskatchewan Information and Privacy  
Commissioner