



REVIEW REPORT 121-2016

Heartland Regional Health Authority

August 12, 2016

Summary:

The Applicant submitted an access to information request to the Heartland Regional Health Authority (HRHA) for a copy of his chart. He appealed to the Information and Privacy Commissioner (IPC) because he believed he did not receive all the records in his chart. In the course of the IPC's review, additional records were provided to the Applicant. The IPC found that HRHA made a reasonable effort to conduct an adequate search for records. HRHA recognized it could have done better in responding to the Applicant's request and undertook initiatives to improve its processes. The IPC recommended that HRHA follow through with its initiatives to improve its processes.

I BACKGROUND

- [1] On April 26, 2016, the Heartland Regional Health Authority (HRHA) received the following access to information request:

All of my chart documentation from January 2010 to present. Please let me or my daughter, [name of daughter], know the cost. Also, please give the copies to my daughter, [name of daughter] if she comes to pick them up for me when they are ready.

- [2] On June 1, 2016, my office received written consent from the Applicant for his daughter to represent him in the review. Also, on June 1, 2016, my office received a Request for Review from the Applicant's daughter. She stated she received her father's file but she believed the file was incomplete. She asserted that pages and records were missing.

- [3] On June 2, 2016, my office notified the HRHA and the Applicant that it would be undertaking a review.
- [4] Also on June 2, 2016, HRHA wrote a letter to the Applicant and the Applicant's daughter stating it had provided all documentation in regards to outpatient visits, including physician notes and nurses' notes. However, it had not included two x-ray results in the records provided. Therefore, it stated that it would be copying and mailing the two x-rays to the Applicant.
- [5] Then, on July 15, 2016, HRHA sent another letter to the Applicant and the Applicant's daughter stating it found additional records and enclosed the additional records.
- [6] On August 3, 2016, my office confirmed with the Applicant's daughter that she was still not satisfied with the records she received and believed records were missing. Therefore, my office stated it would proceed with its review.

II RECORDS AT ISSUE

- [7] HRHA has asserted that it has provided all the records responsive to the Applicant's request. Therefore, there are no records at issue in this review. At issue are HRHA's efforts to search for records.

III DISCUSSION OF THE ISSUES

- [8] HRHA qualifies as a "trustee" as defined by subsection 2(t)(ii) of *The Health Information Protection Act* (HIPA).

1. Did HRHA conduct an adequate search?

- [9] The question is whether or not the trustee conducted a reasonable search. A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request.

[10] The threshold that must be met is one of “reasonableness”. In other words, it is not a standard of perfection, but rather what a fair and rational person would expect to be done or consider acceptable. HIPA does not require a trustee to prove with absolute certainty that records do not exist.

[11] When a trustee receives a notification letter from my office requesting details of its search efforts, the following can be included in the submission:

- Outline the search strategy conducted:
 - For personal information requests – explain how the individual is involved with the public body (i.e. client, employee, former employee etc.) and why certain departments/divisions/branches were included in the search;
 - For general requests – tie the subject matter of the request to the departments/divisions/branches included in the search. In other words, explain why certain areas were searched and not others;
 - Identify the employee(s) involved in the search and explain how the employee(s) is “experienced in the subject matter”;
 - Explain how the records management system is organized (both paper & electronic) in the departments/divisions/branches included in the search:
 - Describe how records are classified within the records management system. For example, are the records classified by:
 - alphabet
 - year
 - function
 - subject
 - Consider providing a copy of your organizations record schedule and screen shots of the electronic directory (folders & subfolders).
 - If the record has been destroyed, provide copies of record schedules and/or destruction certificates;
 - Explain how you have considered records stored off-site.
 - Explain how records that may be in the possession of a third party but in the public body’s control have been searched such as a contractor or information service provider. For more on this, see the OIPC resource, *A Contractor’s Guide to Access and Privacy in Saskatchewan* available on our website.
 - Explain how a search of mobile electronic devices was conducted (i.e. laptops, smart phones, cell phones, tablets).

- 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?
- What were the results of each employee’s search?
 - Consider having the employee that is searching provide an affidavit to support the position that no record exists or to support the details provided. For more on this, see the OIPC resource, *Using Affidavits in a Review with the IPC* available on our website.

[12] The above is a non-exhaustive list and is meant to be a guide only. Each case will require different search strategies and details depending on the records requested.

[13] In its submission, HRHA asserted that patient records for any patient who attends the Outlook Health Centre Emergency/Outpatient Department are stored in a patient file in the Outlook Health Centre Health Records Department. Therefore, there was not an extensive search for records other than to look to the Health Records Department. When it initially received the Applicant’s access to information request on April 26, 2016, a Health Records Clerk gathered some records and released them to the Applicant.

[14] On June 2, 2016, when my office notified HRHA that the Applicant’s daughter believed pages and records were missing, the Health Records Clerk ran a report from one of its computer applications to determine the dates in which the Applicant visited the Outlook Hospital. She compared the records that were released to the Applicant and determined there were two x-rays which were not provided to the Applicant. Therefore, on June 2, 2016, HRHA copied the x-rays and mailed them to the Applicant.

[15] Also, on June 2, 2016, the Health Records Clerk found some additional records. She emailed HRHA’s Privacy and Access Officer on June 2, 2016 to determine if it would be okay to release the additional records. Unfortunately, HRHA’s Privacy and Access Officer overlooked the email at that time. However, on July 15, 2016 (over a month later

- after the email was sent), HRHA's Privacy and Access Officer found the email and immediately sent the additional records to the Applicant and the Applicant's daughter.
- [16] On August 3, 2016, the Applicant's daughter advised my office she believed a prescription from the time period December 2-4, 2015 was missing from her father's file. My office approached HRHA about this particular missing prescription. HRHA stated that actual prescriptions are not kept in patient charts. However, physician notes are made on patient charts. HRHA pointed out to my office that there are notes dated December 4 on an outpatient form that was provided to the Applicant. The notes are instructions for the application of ointments and the wrapping of the Applicant's legs.
- [17] Section 35 of HIPA provides that trustees have a duty to assist Applicants to ensure they respond to access to information request openly, accurately and completely. This includes communicating with Applicants to help them understand what records the public body has in its custody or control. Such communication can help Applicants request and gain access to the records they are seeking. In its submission, HRHA provided my office with copies of emails from January 2016 to April 2016 between HRHA and the Applicant's daughter. The emails show how HRHA made efforts to understand what information the Applicant and his daughter were seeking, and how the Applicant can request access to such information. I find that the email exchanges demonstrate HRHA was fulfilling its duty to assist the Applicant.
- [18] Additional communication between the trustee and the Applicant may help the Applicant in understanding why certain records, such as the actual prescription that the Applicant seeks, are not included in the records provided to the Applicant. In this case, not only could HRHA explain why the actual prescription is not in the Applicant's chart but to also explain that the Applicant could submit a separate access to information request to the pharmacy.
- [19] In terms of HRHA's search strategy, I find that using the report to identify the dates and times of the Applicant's visits to the Outlook Hospital provides a good basis for HRHA's search for records. Comparing the records it has gathered with the dates/times of the

patient's visit is a good method to be reasonably sure that HRHA has located all the responsive records.

[20] In its submission, HRHA admitted that it could have done better to respond to the Applicant's request. First, HRHA's Privacy and Access Officer stated she has removed rules she had set up on her email account to ensure emails will not be misfiled in the future. Second, HRHA admitted the Health Information Clerk's uncertainty about which records are releasable contributed to records not being initially disclosed to the Applicant. Therefore, HRHA's Privacy and Access Officer and the Health Information Management Supervisor are developing one-hour training sessions to educate regional health information staff on the release of information.

[21] Based on the above, I find that HRHA has made a reasonable effort to conduct an adequate search. Further, I find that HRHA is taking appropriate initiatives to improve its process of responding to access to information requests.

[22] While HRHA is striving to improve its process of responding to access to information requests, I encourage all regional health authorities to review its processes to respond to access to information requests, especially the search for records. Each regional health authority cover a large geographical area in the province and deliver a wide-range of services and programs in a variety of settings, including hospitals, long-term care facilities, and public health centers. When responding to an access to information request, it can be an onerous task for the regional health authority's access and privacy officer to conduct a comprehensive search for records within the legislated timeline. The search must be for records in all formats, including records stored in electronic systems. On the other hand, it can be incredibly bewildering to a citizen to understand what records are in the custody or control of the regional health authority, and what records are in the custody or control of a separate trustee. I strongly encourage regional health authorities, as a part of its explicit duty to assist under section 35 of HIPA, to communicate with Applicants to clarify precisely what information the Applicant seeks. This communication can 1) narrow the scope of a request and reduce the amount of work to search and gather

records, and 2) increase the likelihood of the Applicant gaining access to the records that he or she seeks.

IV FINDINGS

[23] I find that HRHA has fulfilled its duty to assist.

[24] I find HRHA's search strategy to be reasonable.

[25] I find HRHA's initiatives to improve its process of responding to access to information requests is appropriate.

V RECOMMENDATION

[26] I recommend that HRHA follow through with its initiative to develop and deliver one-hour training sessions to educate regional health information staff on the release of information, as described in paragraph [20].

Dated at Regina, in the Province of Saskatchewan, this 12th day of August, 2016.

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