



REVIEW REPORT 122-2016

Dr. Mynhardt (Outlook Medical Clinic)

July 15, 2016

Summary:

The Applicant requested a copy of his chart from Dr. Mynhardt of Outlook Medical Clinic for the time period January 2010 to the present. The Applicant received records but believed that records were missing from his chart. Therefore, he requested a review by the Information and Privacy Commissioner (IPC). The IPC found that Dr. Mynhardt made a reasonable effort to search for records. Therefore, the IPC did not have any recommendations.

I BACKGROUND

- [1] On April 26, 2016, Dr. Mynhardt (the doctor) of Outlook Medical Clinic (the Clinic) received the following access to information request from the Applicant:

All of my chart documentation from January 2010 to present.

- [2] On June 1, 2016, my office received a request for review from the Applicant's daughter. The Applicant included documentation that authorized his daughter to act on his behalf for the purpose of this review. The Applicant's daughter asserted that she believes the Applicant's file was incomplete and that pages and records were missing.

- [3] On June 2, 2016, my office contacted the doctor and determined that while records were provided to the Applicant's daughter, a covering letter pursuant to section 36 of *The Health Information Protection Act* (HIPA) was not provided to the Applicant.

- [4] Therefore, the Clinic sent the following letter dated June 2, 2016 to the Applicant's daughter:

I received a phone call from the office of the privacy commissioner whom informed me that you stated we have not provided you with a complete copy of his records. In your request for your father's records, it stated the dates of January 2010 onwards. To the best of my knowledge, we have provided you with complete copies. Please feel free to let us know which documents you are missing and we will check our records again.

- [5] On June 3, 2016, my office notified the Applicant and the doctor that it would be undertaking a review.

II RECORDS AT ISSUE

- [6] The doctor has asserted that his office has provided all the records requested by the Applicant. At issue are the efforts to search for documents.

III DISCUSSION OF THE ISSUES

- [7] The doctor is a "trustee" as defined by subsection 2(t)(xii)(A) of HIPA.

1. Did the doctor conduct an adequate search?

- [8] 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.

- [9] 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.

- [10] 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;
 - 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?

[11] The above list is not-exhaustive and is meant only to be a guide. Providing the above details is not a guarantee that my office will find the search conducted was reasonable.

Each case will require different search strategies and details depending on the records requested.

- [12] In its letter dated June 27, 2016, the Clinic, provided my office with a description of its paper filing system, its electronic medical record system, and the efforts it undertook to locate records responsive to the Applicant's request. Below is a summary.
- [13] Up until October 31, 2013, the Clinic used paper records. Patient records were filed alphabetically. To differentiate between two or more patients with the same name, the Clinic would add the date of birth and health numbers to the outer covers of the file. Staff would match health numbers on the chart to the health number of the record being filed. To respond to the Applicant's request, the Clinic photocopied all of the paper records on the Applicant's paper file from January 2010 to the "then current date". Presumably, this would be April 26, 2016 since that is the date that the doctor received the access to information request.
- [14] For electronic records, the Clinic started using ACCURO, an electronic medical record system on October 31, 2013. All records are stored electronically into patients' electronic charts. For example, physicians at the clinic will enter information directly into a patient's electronic chart. If paper records are received, the Clinic will scan the paper record and store the records electronically. Finally, the Clinic asserts that "all prescriptions, referrals, and other correspondence is also generated directly into the electronic record the patient". Therefore, to respond to the Applicant's request, the Clinic printed medical records from the Applicant's electronic chart.
- [15] Both the records that were photocopied from the paper records and the records printed from the electronic chart were sealed in an envelope for pick-up by the Applicant's daughter.
- [16] Further, as noted in the background section, the Clinic sent a letter dated June 2, 2016 to the Applicant requesting that the Applicant let it know which documents the Applicants is missing and that it will check its records again. In its letter dated June 27, 2016 to my office, the Clinic stated it has not received a response from the Applicant.

[17] Applicants need to be able to provide a reasonable basis for believing that records do exist. In an email exchange with my office on July 5, 2016, the Applicant's daughter said the following:

- 1) after November 2015, the Applicant was told to "present to Outlook hospital for his compression therapy",
- 2) the Applicant's daughter sent a few faxes to [name of health region employee] requesting her father be helped, and
- 3) The doctor has prescribed medication to her father in December 2015 but there are no records of that prescription in the records she was provided.

[18] My office provided the above to the Clinic to assist it in its search. The Clinic advised my office that the first two points would be communication between the Outlook Health Centre or Home Care as well as with a Heartland Health Region employee. It explained that the Clinic is a private physician office and is not on the same system as the Outlook Health Centre, Home Care, or the Heartland Health Region. For the third point, the Outlook Health Centre advised that the doctor had given the prescription to the Applicant in the Outlook Health Centre emergency room, not at the Clinic.

[19] I accept the Clinic's explanation that it would not have records pertaining to the three points listed in paragraph [17].

[20] Based on the above, I find that the doctor and the Clinic has made a reasonable effort to locate the records responsive to the Applicant's request.

IV FINDING

[21] I find that Dr. Mynhardt and the Clinic has made a reasonable effort to locate the records responsive to the Applicant's request.

V RECOMMENDATION

[22] I do not have any recommendations for the Clinic as it has made a reasonable effort to locate records responsive to the Applicant's request.

Dated at Regina, in the Province of Saskatchewan, this 15th day of July, 2016.

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