



## **REVIEW REPORT 201-2016**

### **Regina Qu'Appelle Regional Health Authority**

**September 27, 2016**

**Summary:** The Applicant submitted an access to information request to the Regina Qu'Appelle Regional Health Authority (RQRHA) for a copy of his chart. RQRHA responded, advising that the records had been destroyed. The Applicant requested a review by the Information and Privacy Commissioner (IPC). The IPC found that RQRHA conducted a reasonable search for the records.

#### **I BACKGROUND**

[1] One January 30, 2016, the Regina Qu'Appelle Regional Health Authority (RQRHA) received the following access to information request:

I am hoping to receive/obtain a copy of my file/record(s) that might be found/located @ Pasqua Hospital from approx. 1991 to 1994 timeframe.

[2] On February 1, 2016, RQRHA responded to the Applicant, advising that the requested information had been destroyed pursuant to *The Hospital Standards Regulations* subsection 15(1).

[3] On August 4, 2016, my office received a Request for Review from the Applicant.

[4] As RQRHA did not appropriately respond to the Applicant pursuant to section 36 of *The Health Information Protection Act* (HIPA), my office addressed the duties imposed upon the health region when a request for personal health information is received. A trustee

must cite a subsection of section 36 of HIPA when responding to a request for personal health information. RQRHA advised that it had already undertaken to amend their response templates, and provided the changes to my office.

[5] On August 17, 2016, my office notified both the Applicant and RQRHA of my intention to review.

## **II RECORDS AT ISSUE**

[6] RQRHA has asserted that it has conducted an adequate search for the records. Therefore, there are no records at issue in this review. At issue are RQRHA's efforts to search for records.

## **III DISCUSSION OF THE ISSUES**

[7] RQRHA qualifies as a "trustee" pursuant to subsection 2(t)(ii) of HIPA.

### **1. Did RQRHA 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.
- 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.

[11] 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.

[12] In its submission, RQRHA advised that the search for records was conducted twice by different staff; two employees in the Health Information Management Services (HIMS) unit, and the Manager. RQRHA explained its search as:

When a patient chart is requested, the request is processed using the regional unique identifier known as the Medical Record Number (MRN) through the HIMS using the electronic tracking system, Med2020 WinRecs, and the patient's paper and electronic charts are stored numerically by this code. The MRN was retrieved for this individual and a paper and electronic search was conducted and the first 2 employees were unable to locate any patient records from this time either on site or at the 3<sup>rd</sup> party storage company contracted to the RQHR.

[13] RQRHA also searched in their Legacy Cross Reference database, however there were no physical charts associated with the visits in the database. RQRHA advised that this indicated that the patient chart appeared to have been stripped in accordance with their guidelines.

[14] In terms of RQRHA's search strategy, three separate employees searched for the records both physically and electronically. Each employee has received their Certified Health Information Management certification, and has been working with records management in RQRHA for a number of years. I find that having three separate employees search for the records is reasonable and meets the first and third parts of the above test.

[15] RQRHA invited my office to attend the HIMS office at the Pasqua Hospital to illustrate the steps an employee would take while searching for records in response to an access

request. I applaud RQRHA for taking the initiative to show my office in detail their search efforts.

[16] In the notice of review my office forwarded to RQRHA, I had also requested that RQRHA provide a certificate of destruction in order to prove that the record had been destroyed. In its submission, RQRHA advised that their HIMS unit does not request destruction certificates when disposing of records, and that “it is not practical to assign a destruction certificate to each individual chart”.

[17] The Applicant’s request was for records that were over 25 years old, and beyond the age that RQRHA’s policies permit to retain records. Furthermore, the date of the requested information preceded HIPA and its records retention requirements.

[18] As a retention schedule has not yet been proclaimed in HIPA, trustees must look to other Acts to determine records retention schedules. RQRHA has advised that their records retention policies within hospitals follow *The Hospital Standards Regulations*, which states:

15(1) Subject to subsection (2), the patient’s health record shall be retained by the hospital for a minimum period of ten years from the date of last discharge or until age nineteen if the patient is a minor, whichever period is the longer or for sure further period as may be deemed necessary by the hospital after consultation with the medical staff.

[19] It is important that trustees are accountable in their records management processes. In this case, RQRHA has *The Hospital Standards Regulations* to refer to, however not every trustee has an Act that can guide them regarding records retention. For this reason, I made the recommendation that subsection 17(1) of HIPA be amended so that every trustee must have a written retention schedule for personal health information that includes a minimum period of ten years from the date of last discharge or until age 19 or if the patient is a minor, whichever is longer. This recommendation was made in the document *Striking a Balance: Proposals for Amendments to The Health Information Protection Act*.

[20] The Manager of the HIMS department advised that before HIPA was established, it was the hospital's policy to destroy records as their expiration date came as per subsection 15(1) of *The Hospital Standards Regulations*, and no record of the destruction was kept at that time.

[21] RQRHA advised that following the creation of HIPA, the destruction policies have since changed. Presently, when a record reaches its retention, the HIMS department sends their staff to the storage facility to retrieve the records, and records the date of destruction in their system. If a large amount of records are to be destroyed at once, a third party will securely shred the records and provide the health region with a certificate of destruction.

[22] Based on the above, I find that RQRHA and the HIMS department have made a reasonable effort to locate the records responsive to the Applicant's request.

#### **IV FINDINGS**

[23] I find that there is no evidence that the records exist.

[24] I find that RQRHA has made a reasonable effort to locate the records responsive to the Applicant's request.

#### **V RECOMMENDATIONS**

[25] I do not have any recommendations regarding RQRHA. RQRHA has made a reasonable effort to locate records responsive to the Applicant's request.

[26] I recommend that the Minister of Health amend HIPA so that every trustee must have a written retention schedule for personal health information.

Dated at Regina, in the Province of Saskatchewan, this 27th day of September, 2016.

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