



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order P08-04

CROSS KING CRAUFORD PHYSICAL THERAPIST CORPORATION

Gale L. Prestash, Adjudicator

December 5, 2008

Quicklaw Cite: [2008] B.C.I.P.C.D. No. 35

Document URL: <http://www.oipc.bc.ca/orders/OrderP08-04.pdf>

Summary: Two complainants said the \$25.00 fee charged by a physical therapy clinic in addition to photocopy charges to provide copies of their clinical records was excessive and should be reduced or excused. The clinic set the fee based on its estimate of its cost for staff time and copying, following the guideline from its professional association. The adjudicator found that the fee was not reasonable. The circumstances were appropriate to order a partial refund.

Statutes Considered: *Personal Information Protection Act*, ss. 23, 32(2) and (3)(a), 36(2)(c), *Freedom of Information and Protection of Privacy Act*, B.C. Reg. 323/93, s. 7 and Schedule 1.

Authorities Considered: **B.C.:** Order F08-11, [2008] B.C.I.P.C.D. No. 19; Order P08-02, [2008] B.C.I.P.C.D. NO. 19; Order P08-03, [2008] B.C.I.P.C.D. No. 34.

1.0 INTRODUCTION

[1] Two complainants asked for copies of their physiotherapy records held by Cross King Crauford Physical Therapist Corporation, which is an “organization” under the *Personal Information Protection Act* (“PIPA”). I will refer to the organization as the “clinic.”

[2] The clinic charged the complainants for providing their records. The complainants paid the charges but some time later complained to the clinic that the charges were more than what PIPA allowed and asked for refunds, which the clinic refused. The complainants brought their complaint to this Office. Mediation through this Office did not fully resolve the dispute. This Office

investigated the two complaints as one file and one inquiry under Part 11 of PIPA was held.¹

[3] This Office invited the College of Physical Therapists of British Columbia (“College”) and the Physiotherapy Association of British Columbia (“Association”) to participate in this inquiry as intervenors. The Association participated; the College did not.²

2.0 ISSUE

[4] The Notice of Written Inquiry this Office sent to the parties stated that the issue to be decided is whether the fees charged by the organization were reasonable under ss. 32(2) and 36(2)(c) of PIPA.

[5] Section 51 of PIPA sets out the burden of proof for certain issues, but not the issue in this inquiry. Each party therefore provides argument and evidence to justify its position on the issue.

3.0 DISCUSSION

[6] **3.1 Preliminary issue**—In their initial submission the complainants raised the issue that the clinic had not given them written fee estimates before providing them the records, as required by s. 32(3)(a) of PIPA.³

[7] I have decided not to consider whether s. 32(3)(a) applies in this case. The only issue set out in the Notice of Inquiry was whether or not the fee was reasonable. The parties were advised through the process of the complaint, mediation and the inquiry that that was the issue. One of the purposes of mediation is to allow a complainant to raise issues for inclusion in an inquiry.⁴ The issue of the fee estimate was resolved in mediation,⁵ and the complainants gave no reason why it should be considered again. The clinic has not had an adequate opportunity to respond to the issue.

[8] **3.2 Background**—One of the two complainants asked the clinic receptionist to provide a copy of both complainants’ records.⁶ The receptionist told him there would be a charge to each of them of \$25.00 plus \$1.05 per page for the photocopying, but that she did not know what the total fees would be until she copied the records and counted the pages.⁷ When she had done that, she phoned the complainants, told them the amounts and that they could pick up the

¹ Portfolio Officer’s Fact Report, August 27, 2007, para. 5.

² September 14, 2007 letter to this Office from the College Registrar.

³ Complainants’ initial submission, para. 2.

⁴ Order F08-11, [2008] B.C.I.P.C.D. No. 19 at para. 12, including reference to earlier orders.

⁵ Portfolio Officer’s Fact Report para. 8.

⁶ It is clear from the record as a whole that the first complainant had the authority to make the request for the second complainant’s records.

⁷ Clinic initial submission p. 1 and reply p. 2.

records.⁸ The total amounts were \$41.80 for 16 pages of records and \$42.85 for 17 pages.

[9] When the complainants came in, the clinic provided a letter for them to sign. It set out their request to the clinic for their records. It included the statement, “We have agreed to pay the fee for this service.”⁹ One of the complainants signed the request letter for both of them.

[10] Approximately 16 months later, they wrote to the clinic, referred to s. 32 of PIPA, said the charges were not “minimal” and asked for refunds.¹⁰ The clinic wrote back, said that the fee was minimal, was in compliance with PIPA and the Association’s guidelines, and that it would not give refunds.

[11] 3.3 The Participants’ Positions

The complainants

[12] The complainants said the \$25.00 part of the fee was not “minimal” as required by PIPA s. 32(2). They referred to the following statements in a guide for businesses this Office published:

A fee could include actual, out-of-pocket, costs such as copying and postage, but not a handling or processing fee.

If the request involves only a few pages of documents that are easy to locate, the fee should be small.¹¹

[13] They argued that the \$25.00 fee was a handling or processing fee and should not have been charged. They said that 16 and 17 pages were small volumes of records, they were regular patients of the clinic and their records were current and easy to locate. They picked up the records so there was no postage cost.

[14] They said they paid \$0.55 per page with no other fees charged for massage therapy records from the same clinic.¹² They said the same person did the copying, so the fee to cover time and cost to photocopy should be the same.

⁸ Clinic reply para. 2. It appears from the billing records provided by the complainants with their initial submission that they got the records on the same day they requested them—October 5, 2005.

⁹ Letter of request October 5, 2005.

¹⁰ The complainants’ letter asking for a refund is dated February 10, 2007. I have taken into account that, in general, the more time that goes by, the harder it is to marshal accurate evidence of what happened. The clinic responded on February 19, 2007.

¹¹ “A Guide for Businesses and Organizations to British Columbia’s *Personal Information Protection Act*” (February 2005) at page 33, available at [www.oipc.bc.ca/pdfs/private/a-GUIDE_TO_PIPA\(3rd_ed\).pdf](http://www.oipc.bc.ca/pdfs/private/a-GUIDE_TO_PIPA(3rd_ed).pdf). This document is a helpful guide. However, it is a guide and it is not binding.

¹² The complainants provided their January 31, 2007 billing statements for the massage records.

[15] The complainants submitted the following two documents:

- the Association's "Fee for Service Guideline" dated January 2007, one page¹³
- a form titled "Physiotherapy and Your Privacy – Request for Access to Personal Information," dated October 2004, two pages ("Request for Access form").¹⁴

[15] The complainants pointed to the following statement in the Request for Access form regarding photocopy charges:

Please note that a base fee of \$___ per page applies to each page copied.

[16] They said that meant that a handling fee was not reasonable. They mentioned the College's By-law 59 which addresses access to health care records (see below).

The clinic

[17] The clinic referred to the comments on fees in this Office's guide for businesses set out above, and to another statement from that guide:

If the request involves a large number of documents, and it takes a long time to locate and produce the documents, the fee could be larger, remembering that you are limited to charging a "minimal fee" for access to personal information and no fee at all for someone's employee personal information.¹⁵

[18] It also quoted from the College's By-law 59:

When a registrant provides access and the applicant requests a copy of the record, a copy must be provided. A charge may be applied to cover costs for photocopying and where appropriate, staff time in retrieving the documents.¹⁶

[19] The clinic also referred to the Association's Fee for Service Guideline section on copying records. That section reads as follows:

¹³ The Association also submitted a copy of this document.

¹⁴ At the bottom of page one of the form is the statement, "This information is provided by your physiotherapist, the Physiotherapy Association of BC and the College of Physical Therapists of BC in cooperation with the BCMA and the Office of the Information and Privacy Commissioner for BC, 2004."

¹⁵ Guide at p. 33.

¹⁶ Initial submission, pp. 2-3.

CHART COPIES

FOR LEGAL PURPOSES \$75 + \$1/pg

For a patient or third party payer a reasonable fee may be charged for producing a copy of a record, accounting for time and photocopying charges.

Refer to the College of Physical Therapists of BC's Practice Statement #1 Clinical Records and to the PABC Privacy of *[sic]* Toolkit on the Members Only page for further information.

[20] The clinic said that when it got the complainants' request for a refund it consulted with the College about the fees charged and "was advised that the fees charged met the parameters of the guidelines of CPTBC and are deemed reasonable."¹⁷ The clinic said the charges barely covered its cost of photocopying, the receptionist's time and part of its cost for extra staff to cover the front desk. It said the \$25.00 fee was not a handling or processing fee, and that it would have suffered a financial loss if it had charged less.

[21] The clinic described its business operation as follows. It has seven therapists, one full time receptionist, and a part-time receptionist and office manager. It described the tasks of the receptionist position, and said the position is exceptionally busy. If the busy front desk is left unattended "for prolonged periods of time" it is costly for the clinic, and difficult for the receptionist.¹⁸ The photocopier is not in the clinic—the clinic is located in an aquatic centre and the machine is in the front office of the centre. As a result of the photocopier location and the busy front desk duties, the receptionist can only copy clinical records at certain times of day, and the clinic must bring in its part-time receptionist for more time than it normally would. Otherwise, the clinic must get the copying done after regular hours, which creates additional expense.

[22] The clinic described the steps it has to take to provide patient records as follows:

The chart retrieval in itself may vary from a few minutes to an hour. Pages are counted and estimates need to be given. Authorization letter for release of information must be sent out, or patients may need to be contacted to come into the clinic to sign release forms. The clinical records have to be sorted and cross-referenced with the computer to ensure all the dates of attendance are recorded and correct, chart entries are legible and are signed. Any discrepancies need to be clarified and corrected with the attending therapist. After photocopying, the pages have to be re-examined to ensure no pages are missed, all entries are photocopied clearly, and photocopies are collated, and the chart has to be recompiled in

¹⁷ Initial submission, p. 2.

¹⁸ Initial submission, p. 3.

a chronological order. Clinical records are checked and rechecked for omissions and errors to ensure they are accurate prior to release.¹⁹

[23] The clinic estimated that the receptionist would have taken at least 40 minutes to do those steps for each of the complainants' records. The clinic said it did not take long to retrieve the complainants' charts,²⁰ but that it took time to do the other steps because there were so many pages.²¹ It described 16 and 17 pages of clinical records as a "vast" number of pages, created over the course of a year of therapy.²²

[24] As to the complainants' comparison with the fees they were charged for massage therapy records, the clinic replied that the receptionist did not copy those, the massage therapist did. In its view comparing fee guidelines between different professions is irrelevant to the question of whether the fees it charged were reasonable.²³

[25] The clinic's position was that given its personnel costs, the photocopying fees, and the fee guideline for physiotherapists, the fees it charged were "reasonable, legitimate, minimal, ethical and within the fee guidelines of the OIPC, College of Physical Therapist [sic] of BC, and the Physiotherapy Association of BC."²⁴

The Association

[26] The Association's Chief Executive Officer said that when it created the Fee for Service Guideline it considered that the fee for copying patient charts should be charged on a cost recovery basis and what costs were reasonable to include. It surveyed other medical associations to ensure its guideline was based on similar assumptions.²⁵

[27] It considered that reasonable costs for copying patient charts were the cost of producing the copy, and the personnel time to do it. It did not recommend a per copy fee in recognition that different clinics will have different overhead or direct costs of photocopying. It considered that personnel time would be spent on the following steps:

...the time to retrieve the file, prepare the file for copying, copy, compile the copies, review the copies for clarity and accuracy, package the copies,

¹⁹ Initial submission, p. 3.

²⁰ Clinic's reply at para. 1.

²¹ Initial submission, p. 2, reply submission, para. 1.

²² Initial submission, p. 2, reply submission, para. 1.

²³ Reply submission, para. 3.

²⁴ Initial submission, p. 2.

²⁵ Association submission, para. 2.

re-assemble the file, and return the file to storage, provide the file to the client.²⁶

[28] It noted that this clinic had additional personnel cost because the copier was not in the clinic and that that required additional personnel expense to cover the front desk. It was of the view that the fees the clinic charged in this case were reasonable out-of-pocket costs including personnel time.

[29] **3.4 Fees for Access**—In Order P08-03,²⁷ I discussed the sections of PIPA that are relevant to a complaint about the fees an organization charges for access and Adjudicator Catherine Boies Parker's consideration of those sections and what is a "minimal" fee in Order P08-02.²⁸ I apply that reasoning here.

[30] I disagree with the Association and the clinic on the extent of records review that the clinic needed to do. I agree that the clinic had to review the records to make sure that the complainants got all responsive records and that the photocopy quality was adequate. However, it was not reasonable for the clinic to include costs in the fee for access where it reviewed the records for professional or administrative reasons that were not needed to respond to the access request or that should have been done in the ordinary course. For example, ensuring that all chart entries were signed and cross referencing between records to ensure dates of attendance were recorded and correct might be reasonable or necessary to meet professional requirements but ought not to be part of the fee charged at the time of the request for access.

[31] There was no evidence that the content of the 16 and 17 pages required much consideration for the circumstances set out in s. 23(4) of PIPA.

[32] As regards the Association's description of the physical steps the clinic likely had to take to respond to the complainants' requests, there is no evidence that those steps in this case were complex or demanding. Sixteen and 17 pages are not, contrary to the clinic's assertion, large volumes of records to physically handle and photocopy.

[33] The clinic said the receptionist's time was included in the photocopying fees,²⁹ and that locating the records did not take long.³⁰ It said the \$25.00 fee was to cover the steps the receptionist had to take other than photocopying and its cost for the extra staff to cover the front desk while the receptionist went to the photocopier.³¹ The complainants argued that the staff's time should be covered by the \$16.80 and \$17.85 photocopy charges.³²

²⁶ Association submission at para. 4.

²⁷ [2008] B.C.I.P.C.D. No. 34.

²⁸ [2008] B.C.I.P.C.D. No. 18.

²⁹ Initial submission, p. 3.

³⁰ Clinic reply, para. 1.

³¹ Reply at para. 1.

³² Initial submission, paras. 1 and 3.

[34] Considering all of the steps that the clinic's staff had to take, the 80 minutes that it estimated the task took for the two files together was generous to say the least. I appreciate that the time was an estimate and that the clinic likely did not track actual staff time for such a task. The amount of time is in any case only one factor to consider.

[35] The clinic expressed concern that when the receptionist left the front desk to go to the photocopier, that created "potential loss of revenue through missed calls, breach of security but also pose[d] a great inconvenience to many patients."³³ It emphasized that getting copies made was a significant impairment to its daily business and created exceptional costs.

[36] Part of the service that the clinic must provide to its patients is to respond to their access requests for a "minimal" fee, objectively assessed. Access requests usually involve photocopying. I do not accept that the complainants should bear all of the clinic's estimated cost for staff time to cover the front desk because its receptionist had to go away to the photocopier. Nor does the number of pages of records readily support the claim of "exceptional" costs.

[37] The clinic said the fee barely covered its staff cost for that time but did not say what its actual staff cost was or what it paid for the photocopies. I do not suggest that small organizations faced with access requests for modest amounts of information need to prove every minute and penny spent, but information about photocopy costs is commonly available and could be supplied in evidence.³⁴

[38] The evidence as a whole supports that the clinic incurred more costs than the \$16.80 and \$17.85 that the complainants paid for the photocopies. It does not support total fees of \$41.80 and \$42.85. Some of the review it did was not necessary to respond to the access request. Some of the clinic's staff time was included in the photocopy charges. Some of its estimated cost was to cover extra staff because it chose to send the receptionist away from the busy front desk to use a photocopier located out of the office. I agree with Adjudicator Boies Parker in Order P08-02 that a minimal fee will not always cover *all* of the costs associated with responding to an access request.

[39] I find that in all the circumstances the \$25.00 fee charged to each complainant in addition to the photocopy charges was not reasonable and that an appropriate fee would have been \$25.00 in total charged to each of them. Given the amounts they have already paid, I will order partial refunds.

³³ Clinic initial submission, p.3.

³⁴ I note that the rate the clinic charged for photocopies was slightly higher than the Association's Fee for Service Guideline of \$1.00 per page and much higher than the \$0.25 per page that public bodies may charge under the B.C. Reg. 323/93, s. 7 and Schedule 1.

4.0 CONCLUSION

[40] For the reasons set out above, I consider the circumstances are appropriate to order a partial refund. Under PIPA s. 52(3)(c), I order the clinic to refund \$16.80 to the complainant who paid \$41.80 and to refund \$17.85 to the complainant who paid \$42.85.

[41] I require the clinic to give the complainants the refunds ordered within 30 days of the date of this order, as PIPA defines "day", that is, on or before January 21, 2009 and, concurrently, to copy me on its cover letter to the complainants.

December 5, 2008

ORIGINAL SIGNED BY

Gale L. Prestash
Adjudicator

OIPC File No. P07-31136