



Office of the  
Information  
Commissioner  
of Canada

Commissariat  
à l'information  
du Canada

**PROTECTED A**

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FEB 13 2012

**Our file:** 3211-00465  
**Institution's file:** A-2011-00210/ja

I am writing to report to you the results of our investigation of your complaint, made under the *Access to Information Act* (the Act), against Health Canada (HCan). On May 12, 2011, HCan received your request for:

1. Requesting to view the "tapentadol file", meaning each and every record that was produced, compiled, examined, considered, or had any bearing whatsoever on the Ministry's decision to publish the above notice.
2. Requesting to view each and every record that was produced, compiled, examined, considered or had any bearing whatsoever on the Ministry's decision to employ the novel and unique construction "related analogues", including but not limited to each and every record that pertains to :
  - The meaning of definition of "analogue(s)" or "related analogues" or
  - The rationale behind employing the undefined term "related analogues" instead of the merely ill-defined term "analogue" or
  - The process, if any, by which the Ministry intends to promulgate the meaning of this novel and undefined term.
3. Requesting to view all records received in response to the Ministry's invitation for comments. A record may be severed of information that is protected under the *Privacy Act*. A record that would require consultation with a third party may also be severed if serving to obviate said third party consultation, and only to the extent required for that purpose.

On June 6, 2011, within the legislated timeframe, HCan notified you that, pursuant to paragraph 9(1)(a) of the Act, it would require 90 days beyond the original 30 days to complete the processing of your request extending the due date to September 9, 2011.

On June 28, 2011, outside the initial legislated 30 days, HCan issued a time extension notification pursuant to paragraph 9(1)(c). However, the notification was sent to the wrong address. You were informed of this on July 26, 2011. HCan re-sent the 9(1)(c) notification to you on July 27, 2011.

On that same date, you complained to our office that HCan sent the notification under paragraph 9(1)(c) that contained your personal information to someone else. You also complained that you had specifically requested that "a record that would require consultation with a third party may be severed if severing served to obviate said third party consultation, and only to the extent required for that purpose". You alleged that despite this request, HCan proceeded with third party consultations.

On November 25, 2011, the investigator confirmed with you that your complaint related to third party consultations is limited to the third part of your request. Our investigation revealed that third party consultations were necessary in order to process the first two items of your request. Our investigation found that there was no third party consultation involved for the last item.

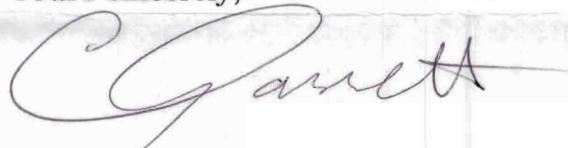
However, as per subsection 9(1) of the Act, a notice of an extension of time under paragraph 9(1)(c) must be given to the person who made the request within thirty days after the request is received. Not only did HCan fail to issue such notice within the legislated timeframe, it sent the notification to the wrong address. As a result, you received the notification at a later time. During the course of our investigation HCan acknowledged that this was a mistake and confirmed that remedial action was taken following this incident in order to prevent future occurrences. For example, HCan will ensure that employees responsible for the mail will verify that the name and address on the envelope matches that on the enclosed letter and that "privacy" training will be incorporated into training for new employees. We understand that you have also complained to the Privacy Commissioner about this incident.

You also raised concerns about HCan sending you copies of the requested documentation contrary to your request to view the records in person. HCan informed us that this was an oversight on the institution's part. HCan simply processed the records and sent them to you, as per their usual practice. While we could find no evidence that there was intent to thwart your right to view the documents on-site, HCan should have more carefully considered your request.

HCan responded to your request on December 22, 2011, outside of the statutory time frame to do so placing itself in a position of deemed refusal per subsection 10(3) of the Act. We will remind HCan of its duty to assist in providing timely access to records in the format requested.

Based on the above, we will record your complaint as well founded, resolved without having made recommendations to the head of the institution.

Yours sincerely,



Carmen Garrett  
Chief of Operations, Early Resolution  
Complaints Resolution and Compliance

c.c.: Access to Information and Privacy Coordinator  
Health Canada