



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-644

Appeal P-9300524

Ministry of Health



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the following information:

- (1) all documents and communications, internal or external, regarding the definition of "employee" as referred to in the Health Insurance Division Bulletin No. 4215 as it relates to the treatment of electrolysis, audiometric tests or pulmonary function tests and information regarding the impact of this clarification on otorhinolaryngologists;
- (2) any internal documentation of the Ministry related to the decision to issue this clarification;
- (3) any documents released by the Ministry, internally or externally, regarding the payment of doctors standing in locum tenes, under section 15 of the General Preamble of the Schedule of Benefits: Physician Services under the Health Insurance Act;
- (4) any documents regarding the impact of the Ontario Employers' Health Tax on the decision to release Bulletin No. 4215;
- (5) any internally or externally released documents regarding the decision to remove electrolysis as an insurable benefit, as set out in the attached letter; and
- (6) any documents responding to requests from the Canadian Organization of Professional Electrologists and the Electrologists Association of Ontario to remove the requirement that electrolysis be supervised by a doctor for the purpose of insurance coverage.

The Ministry was unable to locate any records responsive to Items 1 and 2 of the request. It identified 39 records responsive to Items 3-6 and provided partial access to them. Access to the remaining records was denied under sections 12(1)(f), 13(1), 18(1)(g), 19 and 21 of the Act. The requester appealed the denial of access and claimed that records responsive to Items 1 and 2 of the request should exist.

During mediation, the appellant confirmed that she was no longer seeking access to page two of Record 30 withheld under section 12(1)(f) and the names of two individuals appearing in Records 9, 10, 11 and 12, withheld under section 21. The Ministry also granted access to that portion of Record 9 previously withheld under section 13(1) of the Act.

Further mediation was not successful and notice that an inquiry was being conducted to review the decision of the Ministry was sent to the Ministry and the appellant. Representations were received from both parties. In her representations, the appellant indicated that she was limiting the scope of the appeal to those portions of Record 14 to which access was denied pursuant to section 21 of the Act.

Record 14 is a chart indicating the total payments made by the Ministry to physicians for epilation of facial hair services provided by these physicians during the period April 1989 to March 1990. The chart contains four columns: "Speciality", "No. of Physicians", "Total Payments" and "Average per Physician by Speciality". Under the first heading, six medical specialities are listed. The appellant has not been provided with the information listed under the last three columns for the specialities of plastic surgery, internal medicine, obstetrics and gynaecology and paediatrics.

ISSUES:

The issues arising in this appeal are:

- A. Whether the information at issue in Record 14 qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the information at issue in Record 14 is subject to the mandatory exemption provided by section 21 of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information at issue in Record 14 qualifies as "personal information" as defined in section 2(1) of the Act.

Personal information is defined in section 2(1) of the Act, in part, as "recorded information about an **identifiable** individual". [emphasis added]

It is clear that the information at issue does not contain the names of any physicians. However, it must be determined whether any individuals may nonetheless be identifiable given the information contained in the record.

The Ministry submits that:

The severed information is considered to be the personal information of all physicians where the total number of physicians is less than five. This is in keeping with the Ministry of Health's Policy 3-1-21 of the manual of Corporate

Policy Procedures (copy enclosed) regarding **small cell counts** and residual disclosures. This policy states the following:

"When the processing of anonymized personal health information yields tabulations of less than five (5) in which a possibility exists than an individual person could be identified, such information will only be released to the 'agency' head or consultant/researcher and will not be included in the statistical report.

The Ministry goes on to state:

Physicians refer their patients to specialists and the fact that certain specialist [sic] also performed electrolysis was widely known. In addition, this information would be known to patients the specialist has treated. Therefore, these specialists can be identified in the public domain. The fact that there are so few in each speciality performing electrolysis would reveal or infer financial information about the individual specialists and must be severed under section 21 of the Act.

The appellant merely states that the information "... does not relate to an identifiable individual".

In Order P-230, Commissioner Tom Wright stated:

If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

I agree with this approach and adopt it for the purposes of this appeal.

In the circumstances of this appeal, given the small number of individuals and the nature of the information at issue, I am of the view that there is a reasonable expectation that the release of the information would disclose information about **identifiable** individuals. Accordingly, I find that Record 14 contains the personal information of individuals other than the appellant.

ISSUE B: If the answer to Issue A is yes, whether the information at issue in Record 14 is subject to the mandatory exemption provided by section 21 of the Act.

Once it has been determined that a record contains personal information, section 21 of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 21(1)(f) reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Because section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

The only representations I have been provided with on this issue, those of the Ministry, weigh in favour of finding that the section 21(1)(f) exception does not apply. In the absence of any evidence or argument to the contrary, I find that the exception provided by this section is not available, and that the mandatory exemption provided by section 21 of the Act applies.

ORDER:

I uphold the decision of the Ministry.

Original signed by:
Anita Fineberg
Inquiry Officer

March 14, 1994