



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER 18

Appeal 880086

Ministry of Health



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Appeal Number 880086

ORDER

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987, (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal any decision of a head under the Act to me.

The facts of this case are as follows:

1. By way of several separate requests for information directed to the Ministry of Health (the "institution") in February, 1988, the appellant requested information on the particulars of the operations of Bill 94 [Health Care Accessibility Act], since its mid_1986 implementation. In particular, the appellant requested "the periodic reports that show (monthly, quarterly ...) the number of signed/unsigned declarations seeking reimbursement for additional charges by physicians, and those approved by the Ministry of Health (ie. further breakdown of charts provided on February 10/88)".
2. In response to this request, the Freedom of Information Coordinator with the Ministry of Health wrote to the appellant on March 22, 1988 advising that disclosure of the requested records was granted. However, the physicians' names, OHIP registration numbers and the dates on which they opted in or out of OHIP were severed from the records released to the appellant. The Ministry indicated that the severances were made pursuant to section 67 of the Freedom of Information and Protection of Privacy Act, 1987.
3. On March 31, 1988, the appellant wrote to me appealing the decision of the institution and I gave notice of the appeal to the institution.
4. Attempts were made by the Appeals Officer and the parties to settle this and another appeal involving identical issues, however, settlement was not effected.

5. By letters dated August 10, 1988, I sent notice to the appellant and the institution that I was conducting an inquiry to review the decision of the head. I advised that the institution had raised the application of section 67 of the Act as a preliminary issue and invited the parties to make representations pertaining to this issue. An Appeals Officer's report was enclosed with the letter.
6. Written submissions were received from both parties.

The relevant issues arising in this appeal are as follows:

- A. Whether the legislative provisions relied on by the institution are "confidentiality provisions" barring the application of the Act?
- B. If the answer to issue A is in the affirmative, whether the severances in question fall within the scope of the "confidentiality provisions" relied on by the institution?

Section 67 of the Freedom of Information and Protection of Privacy Act, 1987 reads as follows:

67.(1) The Standing Committee on the Legislative Assembly shall undertake a comprehensive review of all confidentiality provisions contained in Acts in existence on the day this Act comes into force and shall make recommendations to the Legislative Assembly regarding,

(a) the repeal of unnecessary or inconsistent provisions; and

(b) the amendment of provisions that are inconsistent with this Act.

(2) This Act prevails over a confidentiality provision in any other Act unless the other Act specifically provides otherwise.

(3) Subsection (2) shall not have effect until two years after this section comes into force.

Section 67 does not contain an exemption to the Act's disclosure obligations. Rather, subsection 67(2) provides that the Act overrides "confidentiality provisions" in other legislation, unless the other legislation specifically provides otherwise. However, because subsection 67(3) delays the application of subsection 67(2) until January 1, 1990, a head may be bound not to disclose

information pursuant to a "confidentiality provision" contained in another piece of legislation until that date.

As noted above, the issues arising in this appeal are identical to those which I considered previously in my order in Appeal No. 880016 released July 28, 1988. In that case I determined that section 44 of the Health Insurance Act, R.S.O. 1980, c.197 and section 7 of the Health Care Accessibility Act, S.O. 1986, c.20, in the circumstances of the appeal did qualify as "confidentiality provisions" as that term is used in section 67 of the Freedom of Information and Protection of Privacy Act, 1987.

Further, I concluded that the names of doctors who provided health care services, their billing numbers and the dates on which they opted in or out of the Ontario Health Insurance Plan was information falling within the scope of the "confidentiality provisions" noted above.

Although I have carefully reviewed the representations which I received from the parties to this appeal, I have not altered my findings as made in Appeal No. 880016.

Before concluding, I would like to stress that in making these determinations I have not engaged in a balancing of access and privacy interests. Indeed, where an institution relies upon a valid "confidentiality provision" so as to remove itself from the ambit of the Act, I do not engage in such a balancing act. My responsibility in these cases is still heavy, because as I stated in Order No. 880016, I do not intend to accept the institution's assertion that a clause is a "confidentiality provision" on the basis of the institution's claim alone. I intend to subject each such claim to my independent analysis and scrutiny. As I said at page 10 of my Order in Appeal No. 880016:

"While the head of an institution must determine at first instance whether a particular statutory provision is a "confidentiality provision" precluding access to the requester, I, too, must be assured of the relevance and application of the provision upon receipt of an appeal".

In conclusion, I find that section 44 of the Health Insurance Act and section 7 of the Health Care Accessibility Act operate to bar the application of the Freedom of Information and Protection of Privacy Act, 1987 in respect to the information requested by the appellant. Accordingly, I cannot interfere with the decision of the head.

Original signed by:
Sidney B. Linden
Commissioner

October 6, 1988
Date