



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

ORDER 54

Appeal 880272

Ministry of Health



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O R D E R

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 to the Information and Privacy Commissioner.

The facts of this case and the procedures employed in making this Order are as follows:

1. On July 6, 1988, the Ministry of Health (the "institution") received the following request:

"1. What is [a certain named physician's] OHIP registration #.

2. How much did [the certain named physician] receive in money from billings from the Min. of Health for the year 1987 to 1988 (fiscal).

3. Is [the certain named physician's] address still [a certain address in Burlington, Ont] or is it [a certain address in Mississauga, Ont]".

2. On August 5, 1988, the institution responded by indicating that "...your request for access to records under the Freedom of Information and Protection of Individual Privacy Act... has been denied under the authority of Section 21 of the Act. The reason this provision applies to the records requested is because disclosure would constitute a violation of [the named physician's] privacy under the Act."
3. On August 30, 1988, the appellant wrote to me appealing the head's decision and I gave notice of the appeal to the institution.
4. After some discussion regarding the form of the request, the Appeals Officer assigned to this case was advised by the institution's Freedom of Information and Privacy Co_ordinator (the "Co_ordinator") that the institution had two records in its possession which contained the information requested by the appellant; namely, the "Physicians' Billing Index" and the "OHIP Roster". The parties agreed to treat the request as a request for that portion of the institution's "Physicians' Billing Index" or "OHIP Roster" relating to the named physician.
5. Attempts to mediate this appeal were not successful, as both parties retained their respective positions.
6. On January 30, 1989, notice that I was conducting an inquiry to review the decision of the head was sent to the institution and the appellant. Enclosed with this letter was a copy of a report prepared by the Appeals Officer, intended to assist the parties in making their

representations concerning the subject matter of the appeal. The Appeals Officer's Report outlines the facts of the appeal and sets out questions which paraphrase those sections of the Act which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. The Appeals Officer's Report indicates that the parties, in making representations to the Commissioner, need not limit themselves to the questions set out in the Report. The Report is sent to all parties affected by the subject matter of the appeal.

7. On February 13, 1989, the parties were advised that I would be conducting the inquiry by way of written representations, and were asked to provide their submissions by February 22, 1989.
8. In its representations, the institution raised a new argument in support of its position. The institution claimed that section 44 of the Health Insurance Act is a confidentiality provision barring the application of the Freedom of Information and Protection of Privacy Act, 1987 pursuant to s.67 of the Act.
9. On March 3, 1989, the appellant was advised of the institution's additional claim and invited to make further representations in response.
10. By letter dated April 26, 1989 the appellant advised that he was withdrawing that part of his request relating to the named physician's address.
11. I have considered all representations in making my Order.

The purposes of the Act as set out in section 1 should be noted at the outset. Subsection 1(a) provides a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counter_balancing privacy protection purpose of the Act. The subsection provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions and should provide individuals with a right of access to their own personal information.

It should also be noted that section 53 of the Act provides that the burden of proof that the record or part of the record falls within one of the specified exemptions of the Act lies upon the head. Where, as here, an institution purports to withhold records or information from disclosure pursuant to a confidentiality provision, the onus is on the institution to prove that the confidentiality provision in question operates to bar the application of the Act.

The issues arising in this appeal are as follows:

- A. Whether subsection 44(1) of the Health Insurance Act is a "confidentiality provision", barring the application of the Freedom of Information and Protection of Privacy Act, 1987.

- B. If Issue A is answered in the affirmative, whether the relevant portions of the requested records fall within the scope of the confidentiality provision relied on.
- C. If either Issue A or B above is answered in the negative, whether the relevant portions of the requested records constitute "personal information" such that disclosure of this information would constitute an unjustified invasion of personal privacy under section 21 of the Act.

Before addressing these issues, I would like to comment on the apparent confusion experienced by the parties and the Appeals Officer in identifying the records at issue in this appeal.

As noted in paragraph one, above, the appellant's original request was made in the form of three questions. While this format is acceptable for requesters seeking access to their own

personal information under subsection 48(1) of the Act, questions are not appropriate when asking for access to general records or information about other persons under subsection 24(1). Subsection 24(1) requires a requester to "...provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record." If a request does not meet the requirements of subsection 24(1), the institution has an obligation to "...offer (the requester) assistance in reformulating the request so as to comply with subsection (1)".

In this case, the Co_ordinator apparently treated the original request as a request for personal information under subsection

48(1), even though the information sought by the requester related to someone other than himself. The Co_ordinator should have identified the request as falling under subsection 24(1) of the Act, and assisted the requester in reformulating the request as required under subsection 24(2) of the Act.

ISSUE A: Whether subsection 44(1) of the Health Insurance Act is a "confidentiality provision", barring the application of the Freedom of Information and Protection of Privacy Act, 1987.

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

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

In this appeal, the institution has relied on section 44 of the Health Insurance Act, R.S.O. 1980, c.197, which is supplemented by section 7 of the Health Care Accessibility Act, S.O. 1986, c.20, as "confidentiality provisions" which forbid the disclosure of the information requested by the appellant. Those provisions read as follows:

Health Insurance Act:

44.(1) Each member of the Medical Review Committee, every practitioner review committee, the Medical Eligibility Committee and the Appeal Board and each employee thereof, the General Manager and each person engaged in the administration of this Act and the regulations shall preserve secrecy with respect to all matters that come to his knowledge in the course of his employment or duties pertaining to insured persons and any insured services rendered and the payments made therefor, and shall not communicate any such matters to any other person except as otherwise provided in this Act.

(2) A person referred to in subsection (1) may furnish information pertaining to the date or dates on which insured services were provided and for whom, the name and address of the hospital and health facility or person who provided the services, the amounts paid or

payable by the Plan for such services and the hospital, health facility or person to whom the money was paid or is payable, but such information shall be furnished only,

- (a) in connection with the administration of this Act, the Health Disciplines Act, the Public Hospitals Act, the Private Hospitals Act or the Ambulance Act or the Hospital Insurance and Diagnostic Services Act (Canada), the Medical Care Act (Canada) or the Criminal Code (Canada), or regulations made thereunder;
- (b) in proceedings under this Act or the regulations;
- (c) to the person who provided the service, his solicitor or personal representative, the executor, administrator or committee of his estate, his trustee in bankruptcy or other legal representative;
- (d) to the person who received the services, his solicitor, personal representative or guardian, the committee or guardian of his estate or other legal representative of that person; or
- (e) pursuant to a subpoena by a court of competent jurisdiction.

(3) The information referred to in subsection (1) may be published by the Ministry of Health in statistical form if the individual names and identities of persons who received insured services are not thereby revealed.

(4) The General Manager may communicate information of the kind referred to in subsection (2) and any other information pertaining to the nature of the insured services provided and any diagnosis given by the person who provided the services to the statutory body governing the profession or to a professional association of which he is a member.

Health Care Accessibility Act:

7. Despite subsection 44(1) of the Health Insurance Act, the General Manager, the Minister and one other person engaged in the administration of this Act who is designated in writing by the Minister may furnish to,

- (a) a member of the Board;

(b) the person to whom insured services were rendered or where a person other than the person to whom the insured services were rendered was charged for those services, the person who was so charged; and

(c) any other person, with the consent of the person to whom the services were rendered,

information pertaining to the nature of the insured services, the date or dates on which the insured services were provided and for whom, the name and address of the person who provided the services, the amounts paid or payable by the Plan for such services and the person to whom the money was paid or is payable, for the purpose of enforcing this Act.

Since the advent of the Freedom of Information and Protection of Privacy Act, 1987, I have had the opportunity to consider the proper application of subsection 44(1) of the Health Insurance Act on a number of occasions. In my Order 9 (Appeal Number 880016) and Order 18 (Appeal Number 880086), I found that subsection 44(1) of the Health Insurance Act qualifies as a "confidentiality provision" within the meaning of section 67 of the Act. Thus, it only remains for me to determine whether the requested records fall within the scope of subsection 44(1) and, if so, whether any of the statutory exemptions listed in subsection 44(2) or section 7 of the Health Care Accessibility Act operate to allow for the release of the records.

ISSUE B: If Issue A is answered in the affirmative, whether the relevant portions of the requested records fall within the scope of the confidentiality provision relied on.

Having found that subsection 44(1) operates to bar the application of the Freedom of Information and Protection of

Privacy Act, 1987 until January 1, 1990, it is my responsibility to ensure that the information contained in the requested record falls within the scope of the confidentiality provision.

The information sought by the appellant in this case is the OHIP registration number and billings information of a certain named physician.

The institution submits that the portions of the record containing the requested information fall within the scope of general prohibition against disclosure of "all matters" contained in subsection 44(1) of the Health Insurance Act.

The appellant, on the other hand, submits that the information he is seeking is very basic and similar to the kind of information published in the Public Accounts for the Government of Ontario and should be released.

In my view, the appellant's categorization of the requested information is not correct. I find that a physician's OHIP registration number and the amount he or she receives in billings from the institution qualifies as information "...pertaining to ...any insured services rendered and the payments made therefor...", and accordingly falls within the scope of subsection 44(1).

Despite being provided with an opportunity to do so, the appellant has not provided any information in his submissions to indicate how or why any of the exceptions provided by subsection 44(2) of the Health Insurance Act or section 7 of the Health Care Accessibility Act should apply in the circumstances of this appeal.

Therefore, I find that the portions of the requested records at issue in this appeal fall within the scope of the subsection 44(1) confidentiality provision, and I have no basis for interfering with the institution's decision to refuse disclosure.

Because Issues A and B have both been answered in the affirmative, it is not necessary for me to consider Issue C.

Original signed by:
Sidney B. Linden
Commissioner

April 27, 1989
Date