



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

ORDER P-393

Appeal P-920093

Ministry of Health



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ORDER

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act), for records pertaining to the relationship between the Ministry and a named company (the affected person), which operates specimen collection centres in various towns in the province of Ontario. Specifically, the requester sought access to "the agreement between the Ministry and [the affected person] and any amendments to the agreement, the amounts that [the affected person] has billed the Ministry and the amounts that the Ministry has paid [the affected person] since the date of the agreement, ... on an annual basis ..."

The Ministry identified an Agreement between the Ministry and the affected person, an internal memorandum, and a three-page Schedule of Payments, covering the period April 1, 1984 to March 31, 1991, as being responsive to the request. The Ministry notified the affected person of the request pursuant to section 28(1) of the Act. The affected person objected to the disclosure of the records.

The Ministry decided to disclose to the requester the Agreement and the internal memorandum in their entirety, but denied access to the Schedule of Payments, under section 17(1)(a) of the Act.

The requester appealed the Ministry's decision to deny access.

During mediation, both the Ministry and the affected person continued to resist disclosure of the Schedule of Payments to the requester; as a result, this appeal proceeded to the inquiry stage. Notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the Ministry, and the affected person. Written representations were received from all parties.

The sole issue to be determined in this appeal is whether the mandatory exemption provided by section 17(1)(a) of the Act applies to the Schedule of Payments, which is the only record at issue in this appeal.

Section 17(1)(a) of the Act reads as follows:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

For a record to qualify for exemption under section 17(1)(a), the Ministry and/or the affected person must satisfy the requirements of each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure must give rise to a reasonable expectation that one of the types of injuries specified in section 17(1)(a) will occur.

Failure to satisfy the requirements of any part of this test will render the section 17(1)(a) claim invalid. [Order 36]

Part One

I have examined the Schedule of Payments. Pages 1 and 2 contain the amounts paid to the affected person on a monthly and yearly basis, for the period April 1984 to March 1991, as well as the total units of work performed corresponding to each payment. The third page of the Schedule is a bar graph representation of the payment for each fiscal year from 1984 to 1991. In my view, all of the information contained in the record qualifies as commercial and/or financial information.

Part Two

With respect to part two of the test, the parties objecting to the disclosure of the record must meet two requirements. They must prove that the information was **supplied** to the Ministry and that it was supplied **in confidence**, either explicitly or implicitly.

The Ministry states:

The figures were originally provided by [the affected person]. They are from each monthly invoice prepared by the [affected person] and sent to the Ministry of Health Finance and Accounting Branch for payment. [The affected person] actually prepares a summary document each month of service by its different labs and all of the data on each line of the record in question would be taken directly from those [affected person's] documents. The figures are monthly billings by [the affected person]. They are not based on any other figures provided to the Ministry.

The appellant, on the other hand, contends that "it was the statements that were supplied to [the Ministry] and not the schedule of payments."

Having reviewed the records, I am satisfied that the information contained in the records was supplied to the Ministry by the affected person. In my view, to satisfy the "supplied" part of the test, it is not necessary to show that the record itself was supplied to Ministry. The requirements of the test will be satisfied if it can be demonstrated that information contained in the record was originally supplied to the Ministry. In my opinion, the format in which the information is presented is not determinative of the issue of whether it was supplied. In the circumstances of this appeal, the information contained in the Schedule of Payments was originally "supplied" to the Ministry through the invoices submitted to it by the affected person. The fact that this information was subsequently incorporated into a record created by the Ministry does not alter the fact that it was originally supplied to the Ministry by the affected person.

The affected person claims that the record also reveals information not contained in it. It states that "the Schedule of Payments can be analyzed to determine the workload volume at each of [the affected person's] newly licensed Specimen Collection Centres." Information not contained in a record can be found to have been supplied if it is possible to ascertain, based on the contents of the record, the actual information supplied to the Ministry. However, the affected person does not explain how or in what way the information in the record could be used to determine workload volume at individual specimen collection centres. As indicated above, the information contained in the record relates only to the total number of specimens collected each month and the amount of money paid for the service, on a monthly and yearly basis. While information about the number of specimens collected at individual collection centres may have been supplied to the Ministry in the statements/invoices submitted to it by the affected person, the parties resisting disclosure have failed to provide sufficient evidence to persuade me that an accurate inference about it can be made from the information contained in the record.

As to whether the information which I have found was properly supplied, was supplied "in confidence", neither the Ministry nor the affected person have addressed the element of confidentiality in their representations. There was no evidence submitted during the course of this appeal which would indicate that the Ministry offered any explicit undertaking regarding confidentiality.

Based on the evidence before me in this appeal, I find that the Ministry and/or the affected person have failed to establish that the information which I have found was supplied to the Ministry was supplied in confidence. Therefore, I find that the second part of the test for exemption under section 17(1) of the Act has not been established, and the record should be released to the appellant in its entirety.

ORDER:

1. I order the Ministry to disclose to the appellant a copy of the record within 35 days following the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
2. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the record which is disclosed to the appellant, pursuant to Provision 1, upon my request.

Original signed by: _____
Asfaw Seife
Inquiry Officer

January 6, 1993