



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

ORDER P-590

Appeals P-9300322 and P-9300388

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 two requests from different requesters pursuant to the Freedom of Information and Protection of Privacy Act (the Act) for access to the "version codes" associated with the health numbers of three named individuals. In each case, the requester provided the Ministry with the name of the individual, the date of birth, the address and his/her health card number. The Ministry denied access to the requested information in both cases pursuant to sections 18(1)(c) and (d) of the Act. Both requesters appealed the decisions of the Ministry.

Neither appeal could be settled by mediation. Notice that an inquiry was being conducted to review the decisions of the Ministry was sent to the Ministry and the appellants. The parties were also asked to comment on the application, if any, of section 21 of the Act to the information at issue in these appeals. Representations were received from the Ministry, and the Ontario Medical Association (the OMA), acting as agent for one of the appellants.

Prior to considering the issues raised by these appeals, I believe it is useful to set out some background information. The following is based on materials provided to me by the Ministry and the OMA in their representations.

As I have indicated, the scope of the appeals is limited to the "version code" of three named individuals. These individuals are patients who were treated by physicians who were unable, for various reasons, to ascertain the patient's version code. Accordingly, the physicians' claims for reimbursement for medical services provided to these patients were rejected by the Ministry.

The information requested is accessed through the Ministry's Registered Persons Database. The record which contains the information requested is the patient's Registrant Detail Inquiry.

The version code itself is a one or two upper case alpha character, for example "A" or "CC". It is located in the lower right hand corner of the health card. A version code is assigned to a health number whenever a replacement health card is issued. Replacement cards are issued when a registered person turns 65, requests a new card to reflect a name change or correction, or reports that their original card has been lost, stolen or damaged. There is no connection between the assignment of a particular version code and the reason for its assignment - version codes are assigned on a completely random computer-generated basis. Essentially, the concept of the version code is simply a method to make any replacement card different from the original.

During the transition of the Ontario health care system from Ontario Health Insurance Plan (OHIP) numbers to individual health card numbers, the Ministry initially paid claims with improper or missing version codes submitted by health care providers (physicians). During this time, providers were notified by the Ministry on their monthly remittance advice every time they submitted a claim with an improper version code. They were informed that, while they were

being paid for the incorrect claim, they should correct their records to ensure that subsequent claims were accurate.

In February 1993, in response to the provincial auditor's criticisms in the public accounts committee, the Ministry decided to enforce the policy of not paying any incorrect claims. The Ministry suggests enforcement commenced in March of 1993. The Ministry advised providers that, commencing with services provided on or after February 1, 1993, the Ministry would pay **only** for claims submitted with a correct version code. Claims submitted with incorrect version codes would be returned to the health care provider for correction and resubmission.

However, in May 1993, health care providers received, from the Ministry, a document entitled "Version Code Report Message". This document provided that:

... as a one-time only initiative, the Ministry of Health has created a version code report. The attached report lists current version codes for health numbers previously displayed on your remittance advice with an "EV" explanatory code, for services rendered between September 1992 and January 31, 1993. The current version code, surname and first name are included with the health number.

This report displays the current version code as of May, 1993. Any recent changes to your patient's health card and/or version code after production of this report will not be reflected.

In the two appeals before me, the version codes at issue were apparently assigned after May 1993 and consequently did not appear on the Version Code Report Messages. Because both of these appeals deal with the same issues, this order will dispose of both of them.

PRELIMINARY ISSUES:

Section 21 of the Act

Counsel for the OMA objects to the application of section 21 of the Act being considered in the circumstances of these appeals. He maintains that because the Ministry did not notify any affected persons pursuant to section 28(1)(b) of the Act, and because the Ministry's decision letter referred solely to section 18, the only decision under appeal pursuant to section 50(1) is that related to the application of section 18 of the Act.

In Order P-257, former Assistant Commissioner Tom Mitchinson discussed the Commissioner's consideration of an exemption not claimed by a government institution:

In my view, ... the Information and Privacy Commissioner has an inherent obligation to ensure the integrity of Ontario's access and privacy scheme. In discharging this responsibility, there may be rare occasions when the

Commissioner decides it is necessary to consider the application of a particular section of the Act not raised by an institution during the course of the appeal. This could occur in a situation where it becomes evident that disclosure of a record would affect the rights of an individual, or where an institution's actions would be clearly inconsistent with a mandatory exemption provided by the Act.

The Act gives all individuals the right to protection of privacy with respect to personal information about themselves held by government institutions. Because of the nature of the requested information, I am of the view that, if I conclude that the requested information constitutes "personal information" as defined in the Act, I have the jurisdiction to consider the application of the mandatory exemption provided by section 21 of the Act. Both the Ministry and the OMA have provided representations on this issue.

Exchange of Representations

In his representations, counsel for the OMA also requested a copy of the Ministry's representations. Counsel acknowledged that section 52(13) of the Act did not entitle him the right to have access to the representations, but maintained that the decision maker had the discretion to order that the representations be provided to him in the circumstances of these appeals.

Counsel referred to Order 164 of the Commissioner's office but noted that the rationale provided in that case for not ordering such an exchange had no application in these appeals. He submitted that, given the requested information, it was highly unlikely that the representations would disclose the information requested.

Given the manner in which I have disposed of these appeals, it is my view that it is not necessary for me to address counsel's request.

ISSUES:

The remaining issues arising in these appeals are as follows:

- A. Whether the requested information qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.
- C. Whether the discretionary exemptions provided by sections 18(1)(c) and/or (d) of the Act apply.

SUBMISSIONS/CONCLUSIONS:

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

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

...

(c) any identifying number, symbol or other particular assigned to the individual,

...

The Ministry submits that the version code is an identifying symbol assigned to an individual as it is applied to an individual's health card number whenever a replacement card is issued.

Counsel for the OMA rejects this contention. He maintains that, while every individual has a unique health card number, a version code does not particularly identify any one individual. Many individuals may have the same version code and, as I have indicated, any one particular version code has no specific meaning. He further submits that the rationale behind the privacy rights accorded to personal information pursuant to section 2(1) of the Act is not present in these appeals. The factual context of these appeals is such that physicians treated patients who would expect that this information would be disclosed to the physicians in order that they be paid for their services.

I agree with counsel for the OMA that the requested information does not constitute "personal information" as defined in section 2(1) of the Act. There is nothing inherent in the version code itself that would allow one to identify any particular individual. In fact, the version codes responsive to the request in Appeal P-9300388 are the same for both individuals. Accordingly, I find that the requested information does not fall within the definition of "personal information" in section 2(1) of the Act.

Because of the manner in which I have disposed of Issue A, it is not necessary for me to consider Issue B.

ISSUE C: Whether the discretionary exemptions provided by sections 18(1)(c) and/or (d) of the Act apply.

Sections 18(1)(c) and (d) of the Act state:

A head may refuse to disclose a record that contains,

- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;

Section 18 of the Act is designed to protect certain economic interests of the Government of Ontario and/or institutions covered by the Act. In order to qualify for exemption under section 18(1)(c) or (d), an institution must provide detailed and convincing evidence that disclosure of the information could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution (section 18(1)(c)), or to be injurious to the financial interests of the Government of Ontario, or its ability to manage the provincial economy (section 18(1)(d)).

The phrase "could reasonably be expected to" is also found in section 14(1) of the Act. The exceptions to access set out in section 14(1) require that there exist a reasonable expectation of probable harm. The mere possibility of harm is not sufficient. At a minimum, the institution must establish a clear and direct linkage between the disclosure of the information and the harm alleged (Order M-202).

I believe this interpretation should also apply to the phrase as it is used in sections 18(1)(c) and (d) of the Act.

The Ministry's submissions address both sections 18(1)(c) and (d) together. The Ministry states:

The version code is used for managing and controlling the OHIP system by identifying which card is valid at the time of the service. Claims are not paid unless the proper health card is presented to the health care provider and the proper version code is recorded. This prevents the Ministry from paying claims for services provided to holders of a health card that is inactive (e.g. stolen, lost, cancelled cards). The attachment of the version code to an individual's health number/card is one of the most effective mechanisms that the Ministry has to prevent fraud of this type at this time.

If a person posing as the proper health card holder (the "imposter") requests services from the provider, it would defeat the purpose of the version code if the Ministry were to disclose the code to the provider. In this example, the provider would be able to bill OHIP for services he or she renders to the imposter. Release of the version code would result in the Plan being billed for services that a person

[IPC Order P-590/November 30, 1993]

is not entitled to receive. Therefore, the release of the version code would defeat the purpose of the version code, namely, to prevent inappropriate billings from being submitted and would prejudice the Ministry's economic interests.

The Ministry has provided me with some statistical information on the financial impact of erroneous version codes billed to the Ministry. The charts indicate for the months of March to September 1993, the number of items rejected, the percentage of the total, the number of dollars rejected and the percentage of the total. The Ministry notes, however, that 90% of the number of rejects is paid out in the next billing cycle to providers who re-submit claims with the correct version code. The Ministry does indicate that it retains between 2-9% "which is still an appreciable amount of money". However, it has not provided me with any information as to what portion of the outstanding 2-9% represents claims for **inactive** cards.

Counsel for the OMA makes two basic arguments. First, he questions how "there can be economic harm" to the Ministry upon disclosure of the requested information, given the Ministry's past and current position on payment for certain types of services. For example, counsel refers to the former J-8 rules, or "good faith policy", which applies to claims submitted within the same billing cycle for services to currently insured persons, who subsequently become uninsured persons. The Ministry will continue to pay for these claims. Claims for patients receiving services in hospitals and who have a health card with an incorrect version code will also be paid under the former J-8 rules within the same billing cycle. Moreover, counsel has referred to the Version Code Report Message which I have previously described, as indicating that the Ministry's conduct in paying for such claims appears to be inconsistent with its present claim of "economic harm" pursuant to sections 18(1)(c) and (d) of the Act.

Counsel's second argument relates to the Ministry's claim that non-disclosure of the version codes is a method to prevent fraudulent use of the health care system. He submits that, in most cases where a health care provider has made a claim for service on a health number with no version code, the individual who has been treated is an insured person who is entitled to receive the service and the provider is consequently entitled to payment. Accordingly, he maintains that the Ministry has made only a theoretical argument in suggesting that the harms described in sections 18(1)(c) and (d) of the Act could reasonably be expected to result upon disclosure of the requested information.

In my view, the basis of the Ministry's position is that, upon disclosure of the version codes, the OHIP system would be compensating providers for services rendered to uninsured or ineligible individuals. The Ministry has provided me with no evidence to establish a clear and direct linkage between the disclosure of the requested version codes in these appeals and the suggested harm, i.e. the payment of fraudulent claims.

Moreover, it appears to me that, if as some Ministry personnel have suggested before the Legislative Assembly, the vast majority of improper version code claims are not due to fraud but to out-of-date records, then there is no economic harm to the Ministry resulting from disclosure of the version codes. Rather, the Ministry will receive a financial benefit for non-payment of legitimate claims and the health care providers will assume the costs in situations in which, for various reasons, they cannot ascertain the version code of patients whom they have treated.

[IPC Order P-590/November 30, 1993]

Accordingly, it is my view that the discretionary exemptions provided by sections 18(1)(c) and/or (d) of the Act do not apply to the requested information.

ORDER:

1. I order the Ministry to disclose the requested information in each of the Appeal Numbers P-9300322 and P-9300388 to the respective appellants within 15 days of the date of this order.
2. In order to verify compliance with the provisions of this order, I order the Ministry to provide me with a copy of the information which is disclosed to the appellants pursuant to Provision 1, **only** upon request.

Original signed by: _____

Anita Fineberg
Inquiry Officer

_____ November 30, 1993