



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

ORDER P-669

Appeal P-9300595

Ministry of Health



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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 concerning the Drug Quality and Therapeutics Committee (DQTC):

1. A list of individuals who are currently being used by the DQTC to review drug products, including their business addresses, telephone and fax numbers, where available.
2. A list of all current DQTC members including their business addresses, telephone and fax numbers.

For each part of the request, the requester indicated that, if a list was not available, the request should be interpreted to provide a document which provides the same information for each individual.

The Ministry denied access in total to the names of the consultants responsive to part one of the request pursuant to sections 18(1)(c) and 21 of the Act. It identified a document entitled "Drug Quality and Therapeutics Committee" as being responsive to part two of the request and granted partial access to this record. The home addresses and telephone numbers of some of the DQTC members were not disclosed on the basis of the mandatory exemption in section 21 of the Act. The requester appealed.

During mediation the appellant indicated that he was not pursuing access to those portions of the record responsive to part two of the request which were not disclosed to him.

Further mediation was not possible and notice that an inquiry was being conducted to review the decision of the Ministry was given to the Ministry and the appellant. Representations were received from both parties.

The record at issue is a three-page document entitled "List of Consultants". The portions responsive to the request which have not been disclosed to the appellant are the names and affiliations of the individuals on the list. The Ministry has used both the terms "consultants" and "reviewers" to refer to these individuals.

ISSUES:

- A. Whether the information contained in the record 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 exemption provided by section 18(1)(c) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

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

Section 2(1)(h) of the Act states, that:

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

the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

In Order P-235, Commissioner Tom Wright decided that the name and/or address, title, position or signature of two individuals who had reviewed submissions for the listing of drug products on the Drug Benefit Formulary maintained by the Ministry constituted the personal information of the two individuals. He reached this conclusion on the basis that disclosure of the names of the reviewers would disclose other personal information relating to these individuals, namely that they reviewed a particular drug product. This decision was followed in Orders P-284 and P_291.

As I have indicated, in the present appeal, the names and affiliations appear on a general list of consultants. Each name is not associated with a particular drug product or a review of a particular product. For this reason the appellant maintains that the information at issue is not "personal information" as defined in section 2(1) of the Act.

However, both the appellant and the Ministry agree that the external consultants who are retained by the Ministry to do drug product reviews are requested to do so in relation to their own specific expertise. That is, these individuals conduct reviews with respect to their particular expertise in the area of pharmacology relevant to the drug product at issue.

This situation may be contrasted to that of the reviews conducted by the DQTC committee members who are required to review submissions for products that fall both within and outside their areas of expertise. With respect to the committee member reviews, it is difficult for one to "guess" which DQTC reviewer will evaluate a particular drug product based only on information which is available to the public, i.e. the name, business address, speciality, educational degrees and the fact that an individual is a committee member. However, if one were to know the names and affiliation of the external consultants, one could look in the Canadian Medical Directory, a publicly available document, and determine the speciality of the consultants. Because there are so few external consultants of any one speciality, one could then link an individual or a very small group of individual consultants with a particular drug product review.

Accordingly, the information at issue in this appeal can be said to be analogous to that in the appeals that resulted in Orders P-235, P-284 and P-291. On this basis, I conclude that the names

and professional affiliation of the DQTC reviewers/consultants constitute the personal information of these individuals under section 2(1)(h) of the Act.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.

Once it has been determined that a record contains personal information, section 21 of the Act provides a general rule of non-disclosure for such information to any person other than the individual to whom the personal information relates. Section 21(1) provides some exceptions to this general rule of non-disclosure, one of which is section 21(1)(f) which states:

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.

In order for section 21(1)(f) to apply, I must find that the release of the personal information at issue would **not** constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. In my view, none of the personal information at issue falls within the ambit of sections 21(3) or (4).

In its representations, the Ministry claims that sections 21(2)(f) and (h) are relevant considerations which weigh in favour of non-disclosure of the personal information. The appellant does not refer to any factors in section 21(2) favouring disclosure but disputes the application of sections 21(2)(f) and (h). These sections state:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

I will first consider the application of section 21(2)(f). In order for the personal information to be considered "highly sensitive", the Ministry must establish that release of the information would cause excessive personal distress to the reviewers/consultants (Order P-434).

The Ministry submits that the information is highly sensitive due to the competitive nature of the drug industry. It states:

... Disclosure of the reviewers' names and their affiliations would enable the drug manufacturers to link these names and subsequent opinions to particular drug products. This would result in lobbying by the manufacturers which would cause distress to the reviewer as they would be harassed. This in turn would be detrimental to the unbiased process of drug selection, and may jeopardize the drug review process as experts would be unwilling to provide services to the Ministry of Health.

The Ministry also notes that the livelihoods of the reviewers could be jeopardized should such lobbying occur.

The appellant submits that the information is merely an association of the name of a reviewer and his/her affiliation with the fact that this individual acts as a consultant for the Government. He therefore maintains that this information may not be considered sensitive. However, as I have found that disclosure of the information at issue would reveal other personal information about the consultants, namely that they will likely review a particular drug product, I must determine if the fact of reviewing a particular product is highly sensitive.

In Orders P-235, P-284 and P-291, it was concluded that disclosure of the names and addresses of drug reviewers would be an unjustified invasion of personal privacy. This conclusion was reached partly on the basis of the Ministry's concerns to preserve the integrity of the drug review process and avoid harassment and lobbying on the part of drug manufacturers. These factors were found to outweigh the arguments of the appellant that the identity of the individual reviewers was necessary to assess the quality of their reports.

I similarly find that the Ministry's concerns that the information is highly sensitive is a relevant factor, weighing in favour of protecting the personal privacy of the reviewers, in this appeal. I do not accept the appellant's submission that disclosure of similar information in other jurisdictions supports the characterization of the personal information in this appeal as being "non-sensitive". The circumstances of each case must be examined separately.

The appellant has not suggested any other factors in section 21(2) of the Act, or any other considerations, which weigh in favour of disclosure.

To summarize, I find there exists one consideration raised under section 21(2) (highly sensitive personal information) which weighs in favour of protecting the privacy interests of the reviewers, and none which predispose towards releasing the names and affiliations of these individuals. On this basis, I find that the disclosure of the personal information in question would constitute an unjustified invasion of the personal privacy of the reviewers and the mandatory exemption provided by section 21 of the Act applies.

I therefore need not consider the application of section 21(2)(h) of the Act or Issue C.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ May 2, 1994