



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

ORDER P-708

Appeal P_9400083

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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant, an accounting firm, has requested copies of records from the Ministry of Health (the Ministry) relating to the calculation of the "utilization discount" that has been applied to the revenue of its client (the Laboratory). The Ministry granted partial access to the records. The Ministry relies on the following exemption in denying access to the remaining records:

- third party information - section 17

The appellant indicated that he was not pursuing information to which section 17 has been applied, but was appealing on the basis that the Ministry's search for records responsive to the request was incomplete. The records to which section 17 has been applied are, therefore, not at issue.

During mediation, the Ministry conducted a further search and located more records, relating to internal audits, which were disclosed to the appellant with severances made pursuant to section 17 of the Act. These severances are also not at issue in this appeal.

The appellant continues to believe that more records should exist specifically relating to an external auditor's report and a list, for each of the years requested, of how much each of the Laboratory's referring physicians referred to the Laboratory and to other laboratories.

A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

In his representations, the appellant indicates that he is seeking information to determine how the Ministry calculated the "utilization discount" which has been applied to reduce the revenue otherwise payable to the Laboratory under the Health Insurance Act.

The appellant's representations provide background on the purpose of the "utilization discount" and how it is arrived at. He further submits that the Health Insurance Act contains a formula for the calculation of the "utilization discount", and that in order to verify the amount being charged as utilization discount, it is necessary to know how much referring physicians refer to a particular laboratory, as well as to other laboratories.

The appellant provides information which indicates that the Laboratory has received a listing of physician referrals for April 1991 to April 1992. The appellant, therefore, submits that this information should exist relating to other years and to other laboratories.

The Act does not require the Ministry to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act,

the Ministry must provide me with sufficient evidence which shows that it has made a **reasonable** effort to identify and locate records responsive to the request (Order M-275).

The representations of the Ministry include the sworn affidavits of the Manager, Policy Implementation and an Acting Analyst, both from the Provider Services Branch of the Ministry, and the Chief Auditor and E.D.P. Audit Manager, both from the Audit Branch of the Ministry. The affidavits indicate which areas of the Ministry were searched and the records which were located. The affidavits further indicate that, as a result of miscommunication between the two branches, records from the Audit Branch were initially not identified as responsive. This situation was corrected, however, during mediation and further audit reports were located and access was provided, in part, to them. The affidavits also confirm that the audit report prepared by an external auditor could not be located in either branch.

The Ministry's representations do not address the portion of the appellant's request relating to physician referrals, and the affidavits refer very generally to most of the request, with specific reference to audit reports.

Based on these representations, I am satisfied that the Ministry's search for additional records relating to audit reports generally, and to the audit report prepared by the external auditor specifically was reasonable in the circumstances.

In my view, however, the representations do not indicate whether or not the Ministry has turned its mind to the specific information requested relating to physician referrals. There is no indication from the Ministry's representations that any search was done for this specific information.

The appellant has provided evidence which indicates that information of the nature he requested has previously been provided. In my view, the Ministry's search for records relating to physician referrals to the Laboratory, as well as to other laboratories was not reasonable under the circumstances.

ORDER:

1. I order the Ministry to conduct a further search for "all figures used to calculate [the Laboratory's] utilization for all years to date, including figures of [Labour Material Supervision (LMS)] referrals to all laboratories by all physicians whose referrals caused the application of a utilization discount to [the Laboratory]." This portion of the request is to be interpreted as a request for a list for each year to date, showing how much each of the Laboratory's referring physicians referred to the Laboratory and to other laboratories.
2. I order the Ministry to notify the appellant in writing as to the results of that search, within (thirty) 30 days of the date of this order.
3. If, as a result of the further search, the Ministry identifies any records responsive to the request, I order the Ministry to provide a decision letter to the appellant regarding access to these records in accordance with sections 26 and 29 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.

4. I order the Ministry to provide me with a copy of the notification referred to in Provision 2 (and, if any records are discovered, a copy of the decision letter referred to in Provision 3) of this order within (thirty-five) 35 days of the date of this order. This notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ June 21, 1994