



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-754

Appeal P-9400227

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/Téléc: 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 has requested copies of records from the Ministry of Health (the Ministry) relating to complaints received by the Psychiatric Patient Advocate Office from current or former patients of the Queen Street Mental Centre which allege physical or sexual abuse by staff. The request indicated that all records from 1983 to the present were to be included.

The Ministry issued an interim decision in which it proposed to grant partial access to the records. The Ministry provided the requester with a representative sample of the records on which it identified the personal information withheld under section 21(1) of the Act. The Ministry also provided the requester with a fee estimate of \$147 for the remainder of the records.

The requester did not dispute the amount of the fees but rather sought a fee waiver from the Ministry. After reviewing the requester's submissions the Ministry declined to waive the fees.

The sole issue in this appeal is whether the Ministry's decision to refuse to waive the fee was made in accordance with section 57(4) of the Act.

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

DISCUSSION:

FEE WAIVER

The appellant indicates that her request for a fee waiver is based on sections 57(4)(b) and (c) of the Act. These provisions state:

A head shall waive the payment of all or any part of an amount required to be paid under this Act where, in the head's opinion, it is fair and equitable to do so after considering,

- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety;

PUBLIC HEALTH OR SAFETY

The Ministry submits that the appellant provided no evidence to indicate how dissemination would be in the public interest. Nor did the appellant indicate how she planned to or whether she had the ability to disseminate the information to the public.

The appellant represents a patients' council whose membership is composed of current and/or former psychiatric patients who have been elected into their positions by their peers.

In her representations, the appellant indicates that current and former psychiatric patients have been active in challenging the conditions existing within the provincial psychiatric hospital system. Attempts to effect change for this group have, however, been hampered by its lack of resources and inability to obtain information to substantiate its claims and bring its concerns to the public's attention.

The appellant asserts that, for real change to occur in the mental health system, hospital administrators and the Ministry must be made more accountable not only to psychiatric patients, but also to the public, with respect to conditions within psychiatric facilities.

The appellant believes that the withholding of this type of statistical information has contributed to the continued abuse of patients in psychiatric institutions. She indicates further that by publicizing the information which she has requested in this appeal, along with other statistics and documentation, the extent of abuse at this particular facility will reveal a serious health and safety concern for current and future patients.

The appellant indicates in her representations that it is the patients' council's intention to publish the information in its own newsletter and to submit it to the newsletters of similar groups across the country.

In Order P-474, Assistant Commissioner Irwin Glasberg identified the following four factors as relevant in determining whether dissemination of a record will benefit public health or safety under section 57(4)(c) of the Act:

1. Whether the subject matter of the record is a matter of public rather than private interest;
2. Whether the subject matter of the record relates directly to a public health or safety issue;
3. Whether the dissemination of the record would yield a public benefit by a) disclosing a public health or safety concern or b) contributing meaningfully to the development of understanding of an important public health or safety issue;
4. The probability that the requester will disseminate the contents of the record.

In reviewing the representations of the parties I am mindful that the Legislature's intention to include a "user pay" principle in the Act is clear from the wording of section 57. As I indicated above, the appellant is

seeking access to records which identify allegations of abuse of institutionalized psychiatric patients by hospital staff.

In my view, institutionalized psychiatric patients are, like many other individuals such as the elderly or developmentally handicapped who have been placed in institutionalized environments, among the most vulnerable individuals in our society. I am also of the view that the care and safety of these vulnerable individuals is a public responsibility and of public concern.

In reviewing the sample records and the Ministry's explanation of how the information contained in them is to be interpreted, it is clear that they identify allegations of abuse and that this information is related directly to a public health and safety issue.

In order to monitor and lobby effectively for change, groups such as the patients' council must be able to substantiate their position with statistical and other documentation. Allegations of abuse are serious and significantly impact on the facility, its staff and its patients. In my view, dissemination of this information would yield a public benefit by disclosing a public health or safety concern.

Finally, based on the representations received from the appellant, I am satisfied that these records, if they are ultimately released, will likely be disseminated to the public.

Therefore, I find that the dissemination of the records will benefit public health or safety in a manner contemplated by section 57(4)(c) of the Act and I do not uphold the decision of the head to deny a waiver of fees.

ORDER:

1. I order the Ministry to waive the fee in this appeal, and to render a final decision on access to the records within thirty (30) days of the issuance of this order.
2. I order the Ministry to provide me with a copy of the final access decision within thirty-five (35) days of the issuance of this order. This should be sent 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

_____ September 12, 1994