



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

ORDER P-1029

Appeal P-9500155

Ministry of Health



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NATURE OF THE APPEAL:

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 contents of the Medical Review Committee file pertaining to the requester. In particular, the requester sought access to an anonymous letter of complaint filed against him by an individual (the complainant). The requester, represented by counsel, is a physician whose billing practices are being reviewed by the Medical Review Committee (the Committee) as a result of the complaint.

The Ministry identified eight records as being responsive to the request. The Ministry granted complete access to six of the records and partial access to Records 5 and 7. The requester appealed the decision to deny access.

The Ministry relies on the following exemptions to deny access to the records:

- law enforcement - section 14(1)(d)
- invasion of privacy - sections 21(1) and 49(b)

The records which remain at issue consist of the two-page complaint (Record 5) and the severed portions of two letters (Record 7).

Because it appeared that the records contain the personal information of the requester, the Commissioner's office raised the application of section 49(a) of the Act in the Notice of Inquiry provided to the requester and the Ministry. Representations were received from both parties.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual or where the disclosure of the name would reveal other personal information about the individual.

Record 5 contains the two-page complaint. Record 7 consists of two letters from the Ministry to the College of Physicians and Surgeons of Ontario. The withheld portions of Record 7 contain the names of patients, their Ontario Health Insurance Plan (OHIP) numbers and the dates on which service was provided to them by the appellant. The type of service rendered and the amount billed for each service has been disclosed to the appellant.

I have reviewed the records to determine whether they contain personal information and, if so, to whom the personal information relates.

I find that both the records contain personal information which relates to the appellant. In addition, I find that Record 7 contains personal information which relates to the individuals named therein. With respect to Record 5, I find that while the complainant is not identified by name, there is sufficient information in the

record to enable knowledgeable individuals to link the information to the complainant. For this reason, I am of the view that this information also constitutes the personal information of the complainant. Therefore, I find that the records contain the personal information of both the appellant and other identifiable individuals.

Section 47(1) of the Act gives individuals a general right of access to their own personal information in the custody or under the control of a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(b) of the Act, where a record contains the personal information of **both the appellant and other individuals**, and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information. I have found that the records contain the appellant's personal information as well as personal information pertaining to other individuals. I will therefore first consider the application of section 49(b) of the Act to the records.

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. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) together with all other considerations that are relevant in the circumstances of the case.

The Ministry submits that all of the information in the records was compiled as part of an investigation into a possible violation of law under section 18 of the Health Insurance Act (the HIA). The Ministry explains that upon investigation, the case is referred to the Committee. The Committee makes recommendations to reduce the amount billed, or to recover all of the monies paid which can run into the tens of thousands and more. The recommendations of the Committee are mandatory but can be appealed in a hearing before the Health Services Appeal Board and further to Divisional Court. The Ministry submits that the presumption in section 21(3)(b) applies to the records.

The Ministry also states that given the information that has already been disclosed to the appellant, disclosure of the remaining information in Record 7 would reveal the medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation of the patients named therein. The Ministry submits that, therefore, the presumption in section 21(3)(a) also applies to Record 7.

The appellant submits that he is entitled to know the identity of the complainant for the purposes of defending himself before the Committee (section 21(2)(d) - fair determination of rights). With respect to the application of section 21(3)(b), the appellant states that the complaint letter could not be "compiled ... as part of an investigation" as the investigation was commenced by the Ministry subsequent to the receipt of the record.

The appellant also states that he is aware of the information in Record 7 since it pertains to his own patients who have voluntarily disclosed their names and OHIP numbers to him. Therefore, the appellant submits that disclosure of this information to him cannot constitute an unjustified invasion of personal privacy of the individuals to whom the information relates.

I have carefully reviewed the information in the records together with the representations of the parties. I accept the submissions of the Ministry and I find that an investigation under the HIA is an investigation into a possible violation of law.

Previous orders of the Commissioner's office have adopted the ordinary grammatical meaning of the word "compiled" which is to gather or collect. I agree with this interpretation and adopt it for the purposes of this appeal. The records at issue were either created or collected and are an integral part of the investigation. I find that they were compiled and are identifiable, as part of an investigation into a possible violation of law (the HIA). Accordingly, the requirements of a presumed unjustified invasion of personal privacy under section 21(3)(b) have been satisfied. With respect to the appellant's submissions, I am of the view that the fact that he may be aware of the information in Record 7 does not preclude the application of section 21(3). Further, as I have indicated previously, the submissions under section 21(2)(d) cannot rebut the presumption in section 21(3)(b) (Order M-170).

The appellant has not argued that sections 21(4) or 23 apply in this case. Accordingly, I find that the disclosure of any of the records at issue would be a presumed unjustified invasion of personal privacy of individuals other than the appellant and is properly exempt under section 49(b) of the Act. Therefore, I do not need to address the application of section 14(1)(d) of the Act to the records.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ October 20, 1995