



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

ORDER P-1051

Appeal P-9500327

Ministry of Health



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NATURE OF THE APPEAL:

The Ministry of Health (the Ministry) received a four part request under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the staffing of ambulance services in the Regional Municipality of Haldimand-Norfolk. The requester is a union representative for the employees of the ambulance services. In addition, the requester sought access to records relating to staffing decisions made following an incident which occurred in August 1994 near Hagersville.

The Ministry located 17 records which were responsive to the request, and granted access to all of them in whole or in part. Access was denied to portions of the records pursuant to the following exemptions contained in the Act:

- third party information - section 17(1)
- invasion of privacy - section 21(1)

The requester appealed the decision to deny access. During the mediation stage of the appeal, the Ministry identified a number of additional records which were attached as appendices to the original version of Record 10. These records relate specifically to the Ministry's investigation of the August 1994 incident. The Ministry submits that the appendices, as well as some of the undisclosed portions of Record 10, are not responsive to the request and are, accordingly, outside the scope of this appeal.

A Notice of Inquiry was provided to the appellant, the Ministry and to three individuals whose interests may be affected by the disclosure of the records at issue. Representations were received from the appellant, the Ministry and one of the affected persons. In her representations, the appellant indicated that she was not interested in obtaining access to any personal information which may be contained in the undisclosed portions of the records.

PRELIMINARY ISSUE:

RESPONSIVENESS OF RECORDS

The records which remain at issue are the undisclosed portions of Records 3, 5, 6, 7, 8, 10 (with Appendices), 11, 15, 16 and 17. I find that the parts of Records 3, 5, 6, 7, 8, 11 and 15 which were not released to the appellant contain only the personal information of other individuals, as defined in section 2(1) of the Act. Several of the undisclosed portions of Record 10 contain the personal information of the accident victim and his family. I also find that clause 9(a) on page 4 of Record 16 contains the personal information of individuals other than the appellant. As the appellant has indicated that she is not seeking access to such information, these portions of Records 3, 5, 6, 7, 8, 10, 11, 15 and 16 are outside the scope of this appeal.

In order to determine whether all of the records identified by the Ministry are, in fact, responsive to the request, it is first necessary to examine the scope of the request as originally framed. The first part of the request addressed records relating to "approved staffing patterns and scheduling patterns" for a specified ambulance service. The second part of the request similarly dealt with records relating to staffing patterns for the satellite ambulance service in Simcoe. The third part of the request sought

records relating to changes in staffing patterns at Simcoe and Hagersville as a result of an incident in Hagersville in August 1994. The fourth part of the request seeks records relating to the transfer of "Simcoe's Ambulance Dispatch to the Hamilton Centre".

Records responsive to each of Parts 1, 2 and 4 of the request were identified and made available to the requester, subject to the severance of personal and third party information. In addition, records relating to the investigation of the August 1994 incident itself were originally identified as being responsive and included in the index provided to the requester by the Ministry as part of its decision on Part 3 of the request.

In its representations, however, the Ministry submits that several of the undisclosed portions of Record 10 and its appendices do not address the issues of "staffing levels, catchment area call volumes and the investigator's conclusion summation and recommendations" as outlined in the appellant's request. Rather, the Ministry argues that these parts of Record 10 pertain to the methodology of the investigator, that they contain the personal information of the accident victim and his family and that this information does not fall within the ambit of the appellant's request.

The issue of responsiveness of records was canvassed in detail by Inquiry Officer Anita Fineberg in Order P-880. That order dealt with a re-determination regarding this issue which resulted from the decision of the Divisional Court in Ontario (Attorney-General) v. Fineberg (1994), 19 O.R. (3d) 197.

In the Fineberg case, the Divisional Court characterized the issue of the responsiveness of a record to a request as one of relevance. In her discussion of this issue in Order P-880, Inquiry Officer Fineberg stated as follows:

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

I agree with these conclusions and adopt them for the purposes of this appeal.

In my view, Part 3 of the request does not include records which relate to the incident itself, but rather, only with records created with regard to staffing decisions for certain ambulance locations which were made as a result of the incident. I find that the undisclosed portions of the investigation report and its appendices (Record 10) do not contain information which is reasonably related to the request as they deal with the incident itself and the Ministry's subsequent investigation. The records do not deal with the staffing decisions which were made following the incident, nor do they pertain to the other issues

addressed by the appellant in her request. Accordingly, I find that the undisclosed portions of Record 10 and the appendices to it

are not responsive to the request and I will not address them further in this order.

DISCUSSION:

THIRD PARTY INFORMATION

The Ministry submits that portions of Records 16 and 17 are exempt from disclosure under section 17(1)(a) and (c) of the Act.

For a record to qualify for exemption under section 17(1)(a), (b) or (c) the Ministry and/or the affected party resisting disclosure must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the Ministry in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 17(1) will occur.

Record 16 is an agreement between the Ministry of Health and a corporation (the affected party) which is the operator of an ambulance service in the Regional Municipality of Haldimand-Norfolk dated April 6, 1993. The undisclosed portion of Record 16 consists of paragraph (b) of clause 9 and clause 10 on page 4 of the record. Record 17 is a memorandum dated June 2, 1992 from the Acting Regional Manager of the Ministry's Region 2 Emergency Health Services Branch to the Assistant Director of the Branch. The undisclosed information in Record 17 is located on Page 2 of this record.

Part One of the Test

I have reviewed the undisclosed portions of Records 16 and 17 and find that they contain information which qualifies as commercial or financial information of the affected party within the meaning of section 17(1). Accordingly, the first part of the test has been met.

Part Two of the Test

Clause 9(b) on Page 4 of Record 16 describes one of the consequences of the termination of the operation of the Simcoe interim ambulance service. I have not been provided with any evidence that the contents of this clause were "supplied" by the affected party to the Ministry or that this provision was not arrived at in the normal course of the negotiation of the agreement. Accordingly, I find that as Part 2

of the section 17(1) test has not been met with regard to this information, it does not qualify for exemption under section 17(1) and should be disclosed to the appellant.

Clause 10 on Page 4 of Record 16 describes certain financial arrangements entered into between the affected party and the Ministry. These arrangements are also reflected in the undisclosed information contained in Record 17. The Ministry submits that this information was originally provided to it by the affected party. The memorandum which forms Record 17 substantiates this submission as it describes the position taken by the affected party which is identical to that which was later incorporated into the agreement. I find, therefore, that the undisclosed information contained in Clause 10 on Page 4 of Record 16 and on Page 2 of Record 17 was supplied by the affected party to the Ministry within the meaning of section 17(1).

With respect to confidentiality, the Ministry submits that it is a long-standing policy of the Emergency Health Services Branch to treat information of the type reflected in these records as confidential. It submits that the information in these records has since been treated in a confidential manner and that ambulance service operators expect that information of this sort will be treated confidentially. I find that it is reasonable that operators, including the affected party, would expect this type of information to be treated in a confidential manner by the Ministry. Accordingly, I find that the second part of the section 17(1) test has been satisfied insofar as these portions of Records 16 and 17 are concerned.

Part Three of the Test

Both the affected party and the Ministry submit that significant prejudice to the competitive position of the affected party would result from the disclosure of the information contained in Records 16 and 17. The Ministry also submits that significant interference with the affected party's contractual relationship with the bargaining agent for its employees would result should the undisclosed information contained in these records be revealed to the appellant.

I have reviewed the submissions of the parties and the information at issue and find that the disclosure of this information could reasonably be expected to interfere significantly with the affected party's contractual relationship with the bargaining agent for its employees. Accordingly, the third part of the test has been met and the information qualifies for exemption under section 17(1).

REASONABLENESS OF SEARCH

The Ministry has outlined in great detail the nature and extent of the searches which it undertook to locate records responsive to the appellant's request. Two searches were undertaken in the Ministry's record holdings for records "regarding staff patterns", including records regarding the "number of full-time and part-time positions which are available to be filled". The Ministry indicates that the ambulance service to which the request relates is privately-owned and that it is not required to submit to the Ministry documents outlining the number of full and part-time positions which it intends to fill. The Ministry argues that all records relating to staffing which it has received from the affected party have been provided to the appellant.

The appellant has not provided any evidence as to why she believes additional records should exist other than a copy of the minutes of the September 20, 1994 meeting of the Employee Relations Committee which refer to certain Ministry approved staffing arrangements.

Based on my review of the records disclosed to the appellant and the submissions of the Ministry, I am satisfied that the search for records responsive to the appellant's request was reasonable.

ORDER:

1. I order the Ministry to disclose to the appellant the information contained in clause 9(b) on page 4 of Record 16 within thirty-five (35) days of the date of this order, but not earlier than the thirtieth (30th) day following the date of this order.
2. I uphold the Ministry's decision to deny access to the remaining information.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ November 16, 1995