



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

ORDER P-1078

Appeal P-9500281

Ministry of Health



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NATURE OF THE APPEAL:

After repeatedly being denied health insurance coverage which he believes he is entitled to, the requester asked the Ministry of Health (the Ministry) for access to “any and every, each and all, document(s), investigation(s), transcript(s) of interviews, media clipping(s), complaint(s), information, which the Ministry of Health possesses” in this regard.

The Ministry located 12 records which were responsive to the request. Nine of these records (Records 1-9) were located in the Investigation Unit, and three (Records A1-A3) were located in the Registration and Claims Branch. The Ministry denied access to Records 1-9 in their entirety and to the computer operator identification code in Records A1-A3 under the following exemptions found in the Freedom of Information and Protection of Privacy Act (the Act):

- law enforcement - sections 14(1)(a), (b), (c) and (i)

The requester appealed the Ministry’s decision to deny access to the records, and indicated that he believes additional records should exist. A Notice of Inquiry was sent to the Ministry and the appellant, in which the Appeals Officer indicated that the application of section 49(a) was also an issue.

Following the issuance of the Notice of Inquiry, the Ministry disclosed Records 5, 6, 7 and 8 to the appellant in their entirety, and part of Record 9. Again, only the computer operator identification code was withheld from Record 9.

DISCUSSION:

REASONABLENESS OF SEARCH

The appellant contends that additional responsive records exist. This raises the question of whether the Ministry conducted a reasonable search for responsive records as required by the Act. In a letter to the appellant dated November 20, 1995, the Ministry indicates that it has conducted a further search and located additional responsive records in respect of which it has issued an access decision.

In my view, for the purposes of this appeal, this resolves the issue of whether additional responsive records exist. If, after reviewing the decision, the appellant is still of the view that additional responsive records exist, he will be permitted to file a new appeal regarding the adequacy of the Ministry’s searches.

DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records and, in my view, all of the records contain the personal information of the appellant.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a) of the Act, the Ministry has the right to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. Section 49(a) states as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, **14**, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information. [emphasis added]

In order to determine whether the exemption provided by section 49(a) applies in this case, I will begin by considering the Ministry's claim that particular records qualify for exemption under section 14, which is referred to in section 49(a).

SECURITY

The Ministry submits that section 14(1)(i) of the Act applies to the computer operator identification codes. These codes are the only information which has been severed from Records A1-A3, and have also been severed from page 2 of Record 2 and page 5 of Record 9. Section 14(1)(i) reads:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required.

The computer operator identification codes relate to the Ministry's Registered Persons Database, which is the database containing information on all persons who are registered for the purposes of Ontario health insurance coverage and the Ontario Drug Benefit Program. The Ministry submits that the operator identification codes are an access tool or key to the database, the disclosure of which would provide the opportunity for a breach of the database security system and unauthorized access and use of the personal information contained in it and other related databases.

In my view, the Ministry has provided sufficient evidence to support a reasonable expectation that disclosure of the operator identification codes could endanger the security of a system established to protect items for which protection is reasonably required. These items consist of the data stored within the Ministry's on-line information systems. The data consists of personal information pertaining to members of the public and requires protection, since much of it is sensitive. The Ministry has established a system for the protection of this data, one of the keys to which is the operator identification code. Accordingly, I find that this information qualifies for exemption under section 14(1)(i) of the Act and, accordingly, it is exempt under section 49(a).

LAW ENFORCEMENT

The Ministry claims that the remaining information from the Investigation Unit file which has not been disclosed to the appellant is exempt under sections 14(1)(a), (b) and (c) of the Act.

In order for a record to qualify for exemption under section 14(1)(a) or (b), the matter to which the record relates must first satisfy the definition of the term “law enforcement” found in section 2(1) of the Act.

The Ministry’s Investigation Unit’s mandate is to investigate allegations of fraud and other criminal offenses involving the Ontario health care system. Its investigators are appointed as Special Constables by the Commissioner of the Ontario Provincial Police under the Police Services Act and conduct investigations and lay charges of fraud and other offenses under the Criminal Code. Persons convicted of fraud can be subject to a fine or to a term of imprisonment of up to ten years. I am satisfied that these records relate to an investigation conducted by these investigators pursuant to this mandate, and I find that the matter satisfies the definition of the term “law enforcement” found in section 2(1) of the Act.

The purpose of sections 14(1)(a) and (b) is to provide the institution with the discretion to preclude access to records in circumstances where disclosure would interfere with an **ongoing** law enforcement matter or investigation. Based on the representations and my review of the records, I am satisfied that the Ministry’s investigation is ongoing, and that disclosure of the records could reasonably be expected to interfere with it. Accordingly, I find that the records qualify for exemption under section 14(1)(b) of the Act, and are exempt under section 49(a).

ORDER:

I uphold the Ministry’s decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

December 8, 1995