



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

ORDER P-1189

Appeal P-9600102

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 OHIP records relating to the requester's children, both of whom are under the age of sixteen. The Ministry identified the responsive records and, pursuant to section 28(1) of the Act, notified an individual whose rights may be affected by the disclosure of the requested information. After receiving the submissions of this individual, the Ministry denied access to the records in their entirety, based on the privacy protection exemption contained in section 21(1) of the Act.

The requester (now the appellant) appealed the Ministry's decision. A Notice of Inquiry was provided to the appellant, the Ministry and the individual who was notified by the Ministry (the affected person). In addition, notification was also provided to counsel appointed by the Office of the Children's Lawyer pursuant to a court order requiring separate legal representation for the appellant's children in a matrimonial proceeding involving the appellant and his former wife. Representations were received from the appellant, the Ministry and the affected person.

The responsive records in this appeal consist of copies of the OHIP Claims Reference Files relating to the appellant's children along with accompanying lists which explain the meaning of the numerical codes in the records.

PRELIMINARY ISSUE:

IS THE APPELLANT A CUSTODIAL PARENT FOR THE PURPOSES OF SECTION 66(C) OF THE ACT?

Section 66(c) of the Act provides that the right of access under the Act may be exercised, where an individual is under the age of sixteen years, by a person who has lawful custody of the individual. The appellant's children, on whose behalf the appellant seeks to exercise a right of access, are, pursuant to a court order, in the custody of their mother. The appellant is not, therefore, entitled to exercise a right of access under the Act on behalf of his children in the capacity of a "custodial parent".

The Ministry submits that when the appellant submitted his request for information on behalf of his children, he advised the Ministry that, under section 20(5) of the Children's Law Reform Act (the CLRA), he has rights as an "access parent" to obtain information about his children. The Ministry subsequently discovered that the appellant is not, in fact, an "access parent" as his rights in that regard were suspended by court order. The appellant's right of access to his children has been suspended by a court order which was issued after the date of the request which gave rise to this appeal.

I find that the appellant no longer has the right to visit or be visited by his children following the court's suspension of his right of access to them. Therefore, the appellant is no longer an "access parent" within the meaning of section 20(5) of the CLRA with the rights of access to information about the children which flow from that status.

To summarize, the appellant is not a “custodial parent” within the meaning of section 66(c) of the Act as he does not have custody of the children. Neither does the appellant have rights under section 20(5) of the CLRA to information about the children as he is not an “access parent”.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, “personal information” is defined to mean recorded information about an identifiable individual. The Ministry submits that the records contain information pertaining to the appellant’s children only and that this information qualifies as their personal information within the meaning of section 2(1). I agree that the information contained in the record constitutes the personal information of the children within the meaning of section 2(1) of the Act.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in this section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it “does not constitute an unjustified invasion of personal privacy”.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions 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 if 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 in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other relevant circumstances in the case.

The Ministry submits that the disclosure of the personal information contained in the records would result in a presumed unjustified invasion of the personal privacy of the children pursuant to section 21(3)(a) of the Act as the records relate to the children’s medical history. In addition, the Ministry argues that the consideration listed in section 21(2)(f) (that the information is highly sensitive) applies to the information contained in the records.

The appellant submits that the disclosure of the dates and OHIP billing numbers of health care providers would not constitute an unjustified invasion of the privacy of his children.

The appellant also argues that the most recent Order made by the Ontario Court (General Division) in the matrimonial proceeding involving the requester and his former wife requires that the former wife:

Forthwith notify in writing the Respondent/husband (the appellant) of the names and addresses of all current health care providers to the children and of any changes in relation to such health care providers.

The appellant argues that this order provision grants him a right of access to information about the medical services being provided to the children. I find that the court order does not grant to the appellant a right of access under the Act to the type of information which he seeks in this request and appeal. I further find that any remedies which may accrue to the appellant pursuant to a breach of the court order must be enforced through the courts, rather than under the Act.

I find that the information contained in the records relates directly to the medical history, diagnosis, condition, treatment and evaluation of the appellant's children. As such, its disclosure would constitute a presumed unjustified invasion of the personal privacy of the children. In addition, I find that section 21(4) has no application in the present appeal and the appellant has not raised the application of section 23. Accordingly, I find that the responsive records are exempt from disclosure under section 21(1).

ORDER:

I uphold the Ministry's decision to deny access.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ May 24, 1996