



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

ORDER P-1246

Appeal P-9600268

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 medical information concerning the requester's two children, aged three and four. The requester is not the custodial parent of the children but has been granted access rights to them by court order. Under section 28 of the Act, the Ministry notified the children's mother, seeking her views on the disclosure of the information to the requester. The mother objected to the release of the information to the requester.

The Ministry then decided to disclose the responsive records, which consist of an OHIP Claims Payment History (CREP) for each of the two children and the fee schedule and diagnostic codes recorded in connection with the claims. The basis for the Ministry's decision is that section 20(5) of the Children's Law Reform Act (the CLRA) grants an access parent, such as the requester, the right to "be given information as to the health, education and welfare of the child". The Ministry decided that this right to information affords the requester an exception under section 21(1)(d) to the privacy protection provisions of section 21 of the Act.

The children's mother, now the appellant, appealed the Ministry's decision to disclose this information to the requester on the basis that disclosure would constitute an unjustified invasion of the personal privacy of her children. A Notice of Inquiry was provided to the appellant, the Ministry and to the requester. Representations were received from all of the parties.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual. I have reviewed the records at issue and I find that they contain only the personal information of the appellant's children.

INVASION OF PRIVACY

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 the section applies. Both the Ministry and the requester submit that the exception contained in section 21(1)(d) applies in the circumstances of this appeal. Section 21(1)(d) provides:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

under an Act of Ontario or Canada that expressly authorizes the disclosure;

The Ministry and the requester argue that by virtue of section 20(5) of the CLRA, the disclosure of records relating to the health of the requester's children is expressly authorized because the requester is a parent with access rights. Accordingly, the exception to the general rule in section 21 against disclosure applies and the information should be disclosed to him.

In Order M-292, Inquiry Officer Anita Fineberg stated that the interpretation of the phrase "expressly authorizes" as it is found in section 21(1)(d) should mirror that of the same phrase found in section 38(2) of the Act. In Compliance Investigation Report I90-29P, the following comments were made about this section:

The phrase "expressly authorized by statute" in subsection 38(2) of the Act requires either that the specific types of personal information collected be expressly described in the statute or a general reference to the activity be set out in the statute, together with a specific reference to the personal information to be collected in a regulation made under the statute, i.e., in the form or in the text of the regulation.

I agree with the interpretation of Inquiry Officer Fineberg, and consider it the appropriate test to apply in this case. In Order M-787, Inquiry Officer Holly Big Canoe found that reference in section 16(5) of the Divorce Act to the provision of information "as to the health, education and welfare of the child" to an individual who is granted access rights was sufficiently specific to bring that provision within the ambit of section 21(1)(d).

Section 20(5) of the CLRA also grants an access parent the right to be given information "as to the health, education and welfare of the child". As this provision is identical to that contained in section 16(5) of the Divorce Act, I find that the right to information which is contained in section 20(5) of the CLRA is also sufficiently specific to bring it within the exception contained in section 21(1)(d) of the Act.

Accordingly, I find that the disclosure to an access parent of information which pertains to the health of his or her child is expressly authorized by section 20(5) of the CLRA. Therefore, the exception provided by section 21(1)(d) applies and the information contained in the records should be disclosed to the requester.

ORDER:

1. I uphold the Ministry's decision to disclose the records to the requester.
2. I order the Ministry to disclose the records to the requester by providing him with a copy by **September 25, 1996** not earlier than **September 20, 1996**.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 2.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ August 21, 1996