



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

ORDER P-1360

Appeal P_9600385

Ministry of Health



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NATURE OF THE APPEAL:

The appellant is a newspaper reporter. She submitted a request to the Ministry of Health (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for access to financial information regarding a named health centre (the Centre). In particular, the appellant sought access to the Centre's financial statements, operating plans and budgets from 1985 to 1997, and financial information about the Centre's property holdings and the Centre's Trust Fund over the 1985 - 1996 period.

The Ministry located seven responsive records. Pursuant to section 28 of the Act, the Ministry notified the Centre of the request. The Centre consented to the disclosure of Record 1, but objected to disclosure of the remaining six records on the basis of sections 17(1)(a) and (c).

Subsequently, the Ministry issued a decision to the requester. It granted access to Record 1, but denied access to the remaining records under sections 17(1) (third party information) and 21(1) (invasion of privacy) of the Act.

The appellant appealed the Ministry's decision to deny access under section 17(1). She indicated that she was not seeking the personal information, such as income, of any individual.

This office sent a Notice of Inquiry to the Ministry, the appellant and the Centre. All three parties submitted representations in response to this notice. In her representations, the appellant referred to the public interest in disclosure of the records. In my view, she has raised the application of section 23, the so-called "public interest override".

The first issue to be determined in this appeal is whether section 17(1) applies to exempt Records 2 through 7 from disclosure. If I find that section 17(1) applies to any part of the records, I will go on to determine whether the public interest override in section 23 applies to the exempt information.

The records at issue consist of the following:

- Record 2 letter dated January 31, 1995 from the Centre to the Comprehensive Health Organization Program (the CHOP) of the Ministry (1 page). This record indicates that two schedules are attached, however, these schedules were not included with the copy of the records provided to this office. The Ministry advised that these two schedules are duplicates of the last two pages of Record 5. Since the information is identical, my discussion of Record 5 will include these two attachments, and any discussion of Record 2 will be limited to the letter portion only;
- Record 3 letter dated January 27, 1995 from the Centre to the CHOP with four attachments (11 pages);
- Record 4 letter dated January 20, 1995 from the Centre to the CHOP with three attachments (5 pages);

- Record 5 Financial Statements for the Centre for the year ending March 31, 1994 (10 pages);
- Record 6 Financial Statements for the Centre for the year ending March 31, 1993 (10 pages);
- Record 7 letter dated September 25, 1992 from the Centre to the Community Health Branch of the Ministry with the Centre's Financial Statement for the year ending March 31, 1992 attached (11 pages).

DISCUSSION:

THIRD PARTY INFORMATION

Sections 17(1)(a) and (c) of the Act provide:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

For a record to qualify for exemption under section 17(1)(a) or (c), the Ministry and/or the Centre must satisfy each of the following requirements:

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 institution 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 section 17(1)(a) or (c) will occur.

I will consider each of these requirements in turn.

Type of Information

The Ministry and the Centre both submit that the records contain financial information. The Centre also claims that the records contain commercial information.

I have reviewed the records at issue and I find that Records 5, 6 and the attachment to Record 7 (all of which consist of financial statements) qualify as financial information, and the first requirement has been satisfied with respect to these records. The attachments to Record 3 contain fixed asset schedules, and the attachments to Record 4 consist of analyses of the financial statements for the five fiscal years ending December 31, 1990. I find that the information in these attachments also qualifies as financial information.

Records 2, 3, 4 and 7 (only the letter portion of each record) are covering letters. As such, they refer to the financial documentation which is attached to each letter. I find, however, that the letters do not contain, nor would they, in and of themselves, reveal financial or commercial information. As all three requirements must be satisfied for a record to qualify for exemption under section 17(1), I will not consider the covering letters in Records 2, 3, 4 and 7 further. As no other exemptions have been claimed for this information, it should be disclosed to the appellant.

Supplied in Confidence

In order to meet this requirement, the Ministry and/or the Centre must establish that the information was **supplied** to the Ministry, and further, that it was supplied **in confidence**, either implicitly or explicitly.

It is clear from a review of the records that the attachments to Records 3, 4, and 7 consist of documentation which was attached to correspondence sent to the Ministry by the Centre and, therefore, was "supplied" to the Ministry. The Ministry indicates that all of the records, including the financial statements in Records 5 and 6, were supplied to the Ministry by the Centre as required under the terms of the contract between the Centre and the Ministry. I am satisfied that Records 5 and 6 were also "supplied" to the Ministry.

I must now determine whether this information was supplied to the Ministry in confidence, either implicitly or explicitly.

The Ministry and the Centre both state that the detailed financial information in the records was supplied by the Centre in confidence and that the Centre's expectation that it be maintained in confidence was reasonable. In support of this contention, the Ministry indicates that:

It is the Community Health Branch's long-standing practice to accept and treat this information confidentially, and the [Centre] has a reasonable expectation that their detailed financial information will remain confidential. From the time this financial information is received, the Branch treats this information strictly confidential in accordance with its practice.

Having carefully considered the representations on this issue and the records themselves, I find that the Centre supplied the financial information in the attachments to Records 3, 4 and 7 and in Records 5 and 6 to the Ministry with an implicit expectation of confidentiality. Moreover, in my

view, this expectation of confidentiality had a reasonable basis. Therefore, I find that the second requirement for exemption has been satisfied.

Harms

The appellant submits that the Centre is a publicly-funded organization and currently has no competitors. The appellant argues that it is not a private clinic and is, therefore, not competing in the marketplace for consumers. As a result, the appellant states that it is difficult to see how either of the harms in 17(1)(a) or (c) could reasonably be expected to result from disclosure of the information.

The Centre indicates that it is composed of a private not-for-profit corporation (the Association) which is contracted to a partnership of duly licensed medical practitioners (the Medical Group). The Centre states that the Association was incorporated, in part, for the purpose of arranging for the provision of medical services on a non-profit prepayment basis. The Centre indicates that it has been in operation for over 30 years and is unique in the Province of Ontario.

The Centre submits that disclosure of the financial information in the records could seriously interfere with or prejudice on-going negotiations between the Association and its labour unions or vendors of equipment. Further, the Centre states that disclosure of the financial information would permit estimation of the income of the physicians who have contracted their services to the Association, and this could reasonably be expected to interfere with the contractual negotiations between the Association and the Medical Group.

Having reviewed the representations which have been provided to me and the records at issue, I accept the submissions of the Centre that disclosure could reasonably be expected to prejudice significantly its competitive position or interfere significantly with its contractual or other negotiations, as mentioned in section 17(1)(a). Therefore, I find that the third requirement for exemption has been met. Because all three requirements for exemption are satisfied, I find that the attachments to Records 3, 4 and 7 and Records 5 and 6 are exempt under section 17(1)(a).

PUBLIC INTEREST IN DISCLOSURE

The appellant argues that there exists a public interest in the disclosure of the information at issue under section 23 of the Act, which states:

An exemption from disclosure of a record under sections 13, 15, **17**, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

The appellant submits that full financial details of a health organization that provides services to a significant number of members of the community should be in the public realm. In this regard, she submits that the taxpayers should know how public money is spent, “particularly when public services are being administered by a public organization that hides behind closed doors”.

She refers to an article in the Toronto Star (January 19, 1997) regarding the Centre which held the Centre out as a model of the future of health care in the province. She states that all board

meetings of the Centre are closed to the public and there is no financial information available to the public to show that this system is more cost effective than other models. The appellant reiterates that there must be public accountability by publicly funded organizations.

In Order P-1121, Inquiry Officer Holly Big Canoe made the following observations about the application of the “public interest override” contained in section 23. In that case, records had been exempted under section 21 of the Act, however, in my view, the reasoning is equally applicable to any exemption under the Act. She stated:

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called “public interest override”: there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

“Compelling” is defined in the Oxford dictionary as “rousing strong interest or attention”. In order to find that there is a compelling public interest in disclosure, the information at issue must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has available to effectively express opinion or to make political choices.

If a compelling public interest is established, it must then be balanced against the purpose of the exemption which has been found to apply. In my view, this balancing involves weighing the relationship of the information against the Act's central purposes of shedding light on the operations of government and protecting the privacy of personal information held by government. Section 23 recognizes that each of the exemptions listed in the section, while serving to protect valid interests, must yield on occasion to the public interest in access to information held by government. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.

I adopt the approach expressed in Order P-1121 for the purposes of this appeal. In the current appeal, the balancing involves weighing the relationship of the information against the Act's central purposes of shedding light on the operations of government and protecting the competitive position or contractual negotiations of third parties with respect to financial information held by government.

I note that Record 1, which was disclosed to the appellant, provides a summary of the payments which had been made to the Centre by the Ministry for the years 1988 - 1996. The appellant has not raised any concerns about the use/misuse of public funds. I am not persuaded that disclosure of the financial information pertaining to the Centre would serve the purpose of informing the citizenry about the activities of their government, or that it would add in some way to the information the public has available to effectively express opinion or to make political choices.

In the circumstances of this appeal, therefore, I am not persuaded that there exists a compelling public interest in the disclosure of the information at issue that clearly outweighs the purpose of the exemption in section 17(1). Accordingly, I find that section 23 of the Act does not apply in

the circumstances of this appeal. The result is that the attachments to Records 3, 4 and 7 and Records 5 and 6 are properly exempt from disclosure under section 17(1) of the Act.

ORDER:

1. I order the Ministry to disclose the letter portions of Records 2, 3, 4 and 7 by sending a copy of these portions to the appellant by **April 10, 1997** but not earlier than **April 7, 1997**.
2. I uphold the Ministry's decision to withhold the remaining information.
3. In order to verify compliance with the provisions 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 appellant pursuant to Provision 1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ March 6, 1997