



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1423

Appeal P_9700069

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 records relating to the requester's young son. In particular, the request was for access to certain OHIP information concerning the son. The requester (the father) provided the Ministry with a copy of a court order (dated October 21, 1996) which states that he has access rights to his son.

The Ministry located records responsive to the request and, following notification of the mother pursuant to section 28(1) of the Act, decided to grant access to them. This decision was made on the basis that as an access parent, the father is entitled to the information by virtue of section 20(5) of the Children's Law Reform Act (the CLRA) and section 21(1)(d) of the Act. Section 21(1)(d) of the Act is an exception to the section 21 exemption (invasion of privacy).

The mother appealed the Ministry's decision to disclose the records.

This office sent a Notice of Inquiry to the father, the mother and the Ministry. Representations were received from the Ministry and the mother.

The records consist of the son's OHIP Claims Reference File (CREF), for the period of November 1994 to the date of the request. The CREF is a record of all claims paid on the son's behalf for OHIP insured services. The records also include the fee schedule and diagnostic codes recorded in connection with these claims.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" means 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 son.

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. The Ministry submits 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.

In this regard, the Ministry submits that by virtue of section 20(5) of the CLRA, the disclosure of records relating to the health of the son is expressly authorized because the father 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 P-1246, Inquiry Officer Donald Hale dealt with a similar request. In referring to several orders of this office regarding section 21(1)(d), he stated:

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.

I agree fully with the views expressed in the above excerpt. 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.

In her representations, the mother indicates that the court order provided by the father is invalid and unenforceable in that this order was made without her knowledge. The mother indicates that the father has not returned the matter to court, as suggested by her. She has provided copies of previous court orders as well as material describing this former couple’s disputes regarding their son.

From the totality of the information provided to me, I am satisfied that the court order dated October 21, 1996 is the most recent in a line of court orders. There is no indication that this order has been suspended or is no longer in force. Based on the evidence before me, I am satisfied that the father has access rights to the son pursuant to the court order dated October 21, 1996. Accordingly, I find that the exception provided by section 21(1)(d) applies and the information contained in the records should be disclosed to the father.

ORDER:

1. I uphold the Ministry's decision to disclose the records to the father.
2. I order the Ministry to disclose the records to the father by providing him with a copy by **August 20, 1997** but not earlier than **August 15, 1997**.
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 father pursuant to Provision 2.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ July 16, 1997