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

ORDER P-1475

Appeal P_9700187

Ministry of Community and Social Services

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NATURE OF THE APPEAL:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for the appellant's psychological records at the CPRI (the Children's Psychiatric Research Institute, which is now known as the Child and Parent Resource Institute) in London, Ontario.

The Ministry identified one responsive record and granted partial access to it. Access was denied to the severed portions of the record pursuant to section 21(1) (invasion of privacy) of the Act. The appellant appealed the Ministry's decision.

This office sent a Notice of Inquiry to the appellant and the Ministry. Because of the nature of the responsive record, the Appeals Officer raised the application of section 65(2)(a) to it. In addition, because the record appeared to contain information relating to both the appellant and to other individuals, the Appeals Officer raised the possible application of section 49(b) (invasion of privacy) of the Act. Representations were received from the Ministry only.

RECORD:

The information at issue in this appeal is contained in the severed portions of ten pages, entitled "Clinical Record" dated December 9, 1969, which pertain to the appellant. Pages 1 - 8 of the record contain conference notes dated December 9, 1969 and January 23, 1970. Pages 9 - 10 contain a social evaluation.

DISCUSSION:

PSYCHIATRIC PATIENT RECORDS

Section 65(2)(a) of the Act states as follows:

> This Act does not apply to a record in respect of a patient in a psychiatric facility as defined by section 1 of the Mental Health Act, where the record,
>
> > is a clinical record as defined by subsection 35(1) of the Mental Health Act.

The Ministry indicates that the CPRI was listed as a psychiatric facility under the Mental Health Act (the MHA) from February 27, 1968 to April 1, 1974. On that date, responsibility for the CPRI was transferred from the Ministry of Health to the Ministry of Community and Social Services. The Ministry submits that, as these are "clinical records" created for a patient in a psychiatric facility as defined by section 1 of the MHA, they meet the definition under section 65(2)(a) of the Act. Therefore, they do not fall under the purview of this Act and are outside the jurisdiction of the Information and Privacy Commissioner.

Section 35(1) of the MHA, referred to in section 65(2)(a) of the Act, defines "clinical record" as follows:

> "Clinical record" means the clinical record compiled in a psychiatric facility in respect of a patient, and includes part of a clinical record.

Section 1 of the MHA defines "psychiatric facility" as one designated as such by regulation under that statute. The Ministry has provided a copy of the relevant schedule which outlines the facilities in the Ministry which were at one time psychiatric facilities under the MHA. I am satisfied that the CPRI was so designated at the time the record was created.

Section 35(1) of the MHA defines "patient" as follows:

> "Patient" includes former patient, out-patient, former out-patient and anyone who is or has been detained in a psychiatric facility.

I am satisfied that the appellant was a patient at the CPRI within the meaning of section 35(1) at the time the record was created.

The record itself is entitled "Clinical Record" and is on a form under the letterhead of the Department of Health for Ontario - Mental Health Branch. I am satisfied that this record is a clinical record within the meaning of section 65(2)(a).

Accordingly, I find that because the record is a clinical record, it is excluded from the scope of the Act under section 65(2)(a). Since I do not have jurisdiction to consider records which fall outside the scope of the Act, I am unable to deal further with this record.

ORDER:

This appeal is dismissed.

Original signed by: October 30, 1997
Laurel Cropley
Inquiry Officer

POSTSCRIPT:

In its representations, the Ministry indicates that sections 36(1) through (7) of the MHA itself contain provisions which entitle a patient to access his own clinical records. The Ministry suggests that these access provisions should have been initiated when the appellant's request first arrived at the CPRI. I would encourage the appellant to explore this avenue of access and regret that the appellant was not advised to do so at the time the request was made.