



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1505

Appeal P-9700207

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 Ontario Health Insurance Plan (OHIP) records showing claims paid by service codes V821A and V822A to a named individual, using the named individual's billing number, from March to September 1995.

The Ministry denied access to the responsive record under the under section 21 of the Act (invasion of privacy). The requester (now the appellant) appealed the Ministry's decision.

During mediation, the appellant narrowed his request to only those OHIP records showing claims paid by service code V821A to the affected person from March 23 to June 15, 1995.

A Notice of Inquiry was sent to the Ministry, the appellant and the named individual (the affected person). Because the records may contain the personal information of the appellant and the affected person, the Appeals Officer raised the possible application of section 49(b) (discretion to refuse the requester's own personal information) in the Notice of Inquiry. Representations were received from the appellant, the Ministry and the affected person.

RECORDS:

The record at issue in this appeal is an OHIP record showing the amount of claims paid by service code V821A to the affected person from March 23 to June 15, 1995.

DISCUSSION:

PERSONAL INFORMATION

The Ministry states that the record represents billings on an OHIP number assigned to the affected person exclusively.

The Ministry submits that the OHIP billings constitute "personal information" of the affected person only, as contemplated by paragraph (b) of the definition of personal information found in section 2(1) of the Act. This definition states: "personal information" means recorded information about an identifiable individual, including information "relating to ... financial transactions in which the individual has been involved."

The Ministry states that its position is in accord with former Commissioner Tom Wright's finding in Investigation Report I96-119P. In that report, Commissioner Wright found that OHIP billings constitute "financial transactions in which the individual has been involved", which thus met the requirements of paragraph (b) of the definition of "personal information".

The appellant did not make representations on the issue of personal information.

Commissioner Ann Cavoukian also considered paragraph (b) of the definition of personal information in Order P-1502 with respect to the number of claims made to OHIP by physicians who prescribed home oxygen programs for patients. In that order, Commissioner Cavoukian

referred to Investigation Report I96-119P and found that because it is possible to determine billing history from the number of claims made by an identified physician, this information could be characterized as a "financial transaction" as the term is used in paragraph (b) of the Act.

I agree with the findings of Commissioner Cavoukian and adopt them for the purposes of this appeal. Therefore, I find that the amount of claims paid by service code V821A to the affected person satisfies the definition of personal information in section 2(1) of the Act and that this information relates to the affected person only.

Because I have found that the record contains the personal information of the affected person only, I need not consider the application of section 49(b) of the Act to this information.

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 except in certain circumstances. One such circumstance is where the individual to whom the information relates consents to the release of the information (section 21(1)(a)). That section states as follows:

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

upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access.

The appellant argues that a contract exists between the affected person and himself, in his personal capacity, and as the sole shareholder of an incorporated company. He states that the contract entitles him to receive the information he is seeking.

Previous orders have dealt with the issue of whether a contract can be found to constitute written consent to disclosure within the meaning of section 21(1)(a) (Orders P-731 and P-1435).

These orders stated that the contract must be reviewed to determine whether any part of it may be interpreted as constituting written consent authorizing third parties such as the Ministry to disclose information to a person other than the individual to whom the information relates.

I have reviewed the contract provided to me by the appellant. The contract appears to be an agreement between the appellant, personally and corporately, and the affected person to conduct their business affairs in a certain manner. However, in my view, no part of it constitutes written consent authorizing third parties, such as the Ministry, to disclose information directly to the appellant personally or as the sole shareholder of the incorporated company.

I also note that, in response to the Notice of Inquiry, the affected person clearly indicated that he does not consent to the disclosure of the information.

In the circumstances of this appeal, I find that the affected person has not consented to disclosure within the meaning of section 21(1)(a).

The only other exception to the exemption in section 21(1) which could apply is contained in section 21(1)(f). That exception applies where disclosure of the requested information 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 result in 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 institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

The Ministry submits that section 21(3)(d) and (f) of the Act apply to all the records at issue. I will first address section 21(3)(f) which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

The Ministry states that the amount received from OHIP over a specific period of time is information that describes the affected person's financial activities.

Commissioner Cavoukian also considered the application of section 21(3)(f) in Order P-1502. She found that information which would disclose a physician's billing history is properly characterized as a "financial transaction" which is sub-component of "financial activity" and that, as such, it describes the physician's financial activities.

I agree with the finding of Commissioner Cavoukian and the representations of the Ministry. Therefore, I find that disclosure of the information at issue would constitute a presumed unjustified invasion of the personal privacy of the affected person under section 21(3)(f) of the Act.

The appellant's reference to the contract between himself and the affected person might also imply the raising of section 21(2)(d). That section provides a factor favouring disclosure in circumstances where the personal information is relevant to a fair determination of rights affecting the person who made the request. However, even if I were to find that section 21(2)(d) was a relevant factor in the circumstances, a presumed unjustified invasion of personal privacy cannot be rebutted by factors listed in section 21(2).

I also find that neither section 21(4) nor section 23 are applicable to the information at issue.

Therefore, I find that disclosure of the information contained in the record would constitute an unjustified invasion of personal privacy and is properly exempt from disclosure under section 21(1) of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Marianne Miller
Inquiry Officer

_____ December 22, 1997