



Information and Privacy
Commissioner/Ontario

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

FINAL ORDER PO-1766-F

Appeal PA-980245-1

Ministry of Health and Long-Term Care



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BACKGROUND AND NATURE OF THE APPEAL:

The Ministry of Health and Long-Term Care (formerly the Ministry of Health) (the Ministry) received a 15-part request under the Freedom of Information and Protection of Privacy Act (the Act) from two requesters for records in relation to the licensing, certification, registration and regulation of osteopathic practitioners in the Province of Ontario.

The Ministry located 323 responsive records and, upon payment of the requested fee of \$456.71, granted access in full to approximately 65 records and denied access in whole or in part to the remainder. For those records to which access was denied, the Ministry claimed the application of the exemptions in sections 12(1)(b), (c), (d) and (e), 13(1), 18(1)(c), (d), (e) and (g), 19 and 21(1) of the Act. The Ministry also claimed that some of the information contained in the records was not responsive to the request.

The appellants appealed the Ministry's decision.

After sending a Notice of Inquiry, receiving representations from both parties, and reviewing the records, I issued Interim Order PO-1742-I. In that order, I found that some records qualified for exemption while others did not and I ordered the non-exempt records disclosed to the appellants either in whole or in part.

Interim Order PO-1742-I did not address Records C31, D37, D48, D49 and D51. With respect to these records, it appeared that the outcome of this appeal could affect the interests of two individuals identified in the records (the affected persons). The affected persons were not initially made parties to this inquiry and, consequently, were not provided with an opportunity to submit representations on the proper treatment of these records. I decided not to delay my decisions with respect to the other records at issue in this appeal, but deferred consideration of Records C31, D37, D48, D49 and D51 pending notification.

Record D37 is a series of four 1994 letters authored by affected person #1 and addressed to the Ministry. Record D48 is a duplicate of one of these letters, and D51 is a 1995 letter, also from affected person #1 to the Ministry. Record C31 is an undated draft letter from the Ministry to affected person #2, and Record D49 is a 1994 letter from the Ministry to affected person #2.

The Ministry claims that Records D37, D48, D49 and D51 are exempt from disclosure pursuant to section 21(1) of the Act. Because Record C31 contains similar information to that contained in Record D49, and section 21(1) is a mandatory exemption, I decided to also seek representations on the possible application of section 21(1) to this record.

I sent a Supplementary Notice of Inquiry to the two affected persons, providing them with an opportunity to submit representations. Both affected persons consented to disclosure of any of their information contained in the records.

DISCUSSION:

Because both affected persons consented to disclosure of their information to the appellants, the issue of whether these records contain their personal information and whether disclosure would be an unjustified invasion of their privacy is no longer at issue in this appeal.

The identity and certain activities of another individual are described in one of the letters comprising Record 37. I do not have sufficient information to notify this individual. Because section 21(1) is a mandatory exemption claim, and the appellants have provided no evidence to substantiate why disclosure of information concerning this individual would not constitute an unjustified invasion of privacy, I find that section 21(1) applies, and this portion of the letter should not be disclosed.

The Ministry claimed section 19 as another basis for refusing to disclose Records D48 and D49, and sections 13(1) and 18(1)(g) as alternative exemption claims for Record C31. I did not deal with these exemption claims in Interim Order PO-1742-I.

The requirements for these three exemption claims and the representations provided by the Ministry for each of them are outlined in Interim Order PO-1742-I, so I won't repeat them here.

Record D48 is a letter from affected person #1 to the Ministry, and Record D49 is a letter from the Ministry to affected person #2. There is clearly no solicitor-client relationship between the affected persons and the Ministry, nor do these letters contain information that "reflects the conveyance of legal advice from counsel to the program area client" as claimed by the Ministry. I find that Records D48 and D49 do not represent confidential communications between a solicitor and a client for the purposes of seeking, formulating or providing legal advice, and, accordingly, do not qualify for solicitor-client communication privilege under section 19 of the Act.

Record C31 is a draft letter addressed to affected person #2 in response to a letter she had sent to the Ministry in June 1991. It is not clear who authored the draft, and the limited representations submitted by the Ministry provide little assistance in clarifying the context or establishing the requirements of the exemption claim for this record. None of the information contained in the record appears in the form of advice or recommendations, nor has the Ministry provided the required detailed and convincing evidence necessary to establish the requirements of the section 13(1) exemption claim. I find Record C31 does not reveal a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process of government decision-making and policy-making, nor would disclosure of this record permit the drawing of accurate inferences as to the nature of any advice or recommendations. For these reasons, I find that Record C31 does not qualify for exemption under section 13(1) of the Act.

Also, for the same reasons outlined in Interim Order PO-1742-I with respect to the application of section 18(1)(g) to other records, the Ministry has failed to satisfy the requirements of the second part of the test for this exemption, and I find that Record C31 does not qualify for exemption under section 18(1)(g) of the Act.

FINAL ORDER:

1. I order the Ministry to disclose Records C31, D48, D49 and D51 to the appellants in their entirety, and Record D37, subject to the severance of the portion of one letter that contains information about an identified individual. I have attached a highlighted version of this record with the copy of this final order provided to the Ministry's Freedom of Information and Privacy Co-ordinator, which identifies the portion that should not be disclosed. This disclosure should be made by the Ministry by **April 6, 2000**.
2. In order to verify compliance with this final order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellants pursuant to Provision 1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ March 16, 2000