



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2249

Appeal PA-030121-2

Ministry of Health and Long-Term Care



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NATURE OF THE APPEAL:

This is an appeal from a decision of the Ministry of Health and Long-Term Care (the Ministry), made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) sought access to the minutes and agenda for the meetings of Provincial and Territorial Medical Directors from January 1, 2001 to the date of the request. She also asked that the request continue to have effect for two years.

The Ministry located the responsive records and denied access to them in their entirety, relying on the discretionary exemption in section 15 of the *Act* (intergovernmental relations). The appellant appealed from the Ministry's decision.

During the course of mediation, it was determined that the appellant has been granted access to parts of the records as a result of another request. Accordingly, these parts are no longer in issue (see below).

I sent the Notice of Inquiry to the Ministry, initially, inviting it to submit representations on the facts and issues raised by the appeal. As it appeared that the interests of other provinces and territories might be affected by disclosure of the records, I also provided notice to them. I received representations from 10 out of 11 provinces and territories notified of the appeal. All of those responding objected to the release of the information in the records.

I then sent the Notice to the appellant, along with the representations of the Ministry, severed for confidentiality. I also provided the complete representations of the Province of Alberta and indicated that the other governments objected to the release of the records for reasons substantially similar to those expressed by Alberta.

The appellant has chosen not to make representations in this appeal. It should be noted that during the course of my inquiry, another file (Appeal No. PA-030035-2) was closed as it appeared that the record at issue in that file was subsumed within the present appeal. The representations made in that file have been transferred to this appeal.

RECORDS:

The records at issue consist of five documents:

- **Record 1** (114 pages) is the agenda and minutes for the Spring Meeting of Provincial & Territorial Medical Directors of March 16 to 17, 2001. Included with Record 1 are approximately 68 pages of appendices which appear to be in the nature of resource materials.
- **Record 2** (52 pages) is the minutes for the Provincial/Territorial Medical Directors' Meeting of August 9 and 10, 2001.
- **Record 3** (35 pages) is the minutes for the Provincial/Territorial Medical Directors' Meeting of March 1 and 2, 2002.
- **Record 4** (3 pages) is the agenda for the Interprovincial Medical Directors Meeting of September 19 to 20, 2002. Pages 2 and 3 of this record are not at issue.

- **Record 5** (36 pages) is the minutes for the Interprovincial Medical Directors Meeting of September 19 to 20, 2002. Page 13 and part of page 14 are not at issue.

The portions of the records that have been disclosed relate to a prior request made by the appellant for information about the discussion on a specific medical issue (gene testing). In its representations, the Ministry states that section 15(a) applies to exempt all five records from disclosure, and section 15(b) to exempt Records 1, 2, 3 and 5.

DISCUSSION:

RELATIONS WITH OTHER GOVERNMENTS

The relevant parts of section 15 state:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
- (b) reveal information received in confidence from another government or its agencies by an institution; or

and shall not disclose any such record without the prior approval of the Executive Council.

Section 15 recognizes that the Ontario government will create and receive records in the course of its relations with other governments. Section 15(a) recognizes the value of intergovernmental contacts, and its purpose is to protect these working relationships. Similarly, the purpose of sections 15(b) and (c) is to allow the Ontario government to receive information in confidence, thereby building the trust required to conduct affairs of mutual concern [Order PO-1927-I; see also Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

For this exemption to apply, the institution must demonstrate that disclosure of the record “could reasonably be expected to” lead to the specified result. To meet this test, the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

If disclosure of a record would permit the drawing of accurate inferences with respect to information received from another government, it may be said to “reveal” the information received [Order P-1552].

Representations

In the introduction to its representations, the Ministry describes the context within which the records were created. Provincial and Territorial Medical Directors meet twice a year to discuss medical services and payment adjudication related to provincial and territorial health insurance programs. The records at issue in this appeal were created or discussed at Provincial and Territorial Medical Directors' Meetings in 2001 and 2002. They describe and record in detail the proceedings of these meetings, the matters or issues slated for discussion and the statements of the government representatives in attendance at the meetings.

The Ministry submits that the purpose of the meetings is to engage Medical Directors from across Canada in meaningful "off the record" discussions of issues and matters generally impacting on public health policy. The meetings are held in camera and the proceedings are not made available to the public. The Ministry submits that participants engage in these frank and open discussions with an expectation of confidentiality. If participants understood that the meetings would not remain confidential, they would be less inclined to discuss matters candidly or attend at all. The Ministry submits, in general, that disclosing the records would undercut the value of future meetings.

The Ministry submits that the expectation of confidentiality extends not only to the substance of the discussions as described in the Minutes, but also to the very topics discussed.

In reviewing the specific records at issue, the Ministry notes that the Minutes in Records 1, 2, 3 and 5 are quite detailed, in that they record what each provincial/territorial representative said at the meetings. Taken together, they would reveal how provinces and territories treat particular medical procedures under their health insurance plans. They would also reveal information about negotiations, funding and management issues related to those plans.

The Ministry submits that the Agendas in Records 1 and 4 and the Table of Contents in Record 3 list and/or describe the topics discussed at the meetings. Furthermore, the supporting documentation appended to Record 1 and integrated into Record 2 directly and expressly relates to the topics listed in the Agenda, and discussed and recorded in the actual Minutes. Disclosing the Agendas in Records 1 and 4 and the Table of Contents in Record 3 would reveal the topics discussed at the meetings. Similarly, disclosing the Appendices in Record 1 and the enclosure integrated into Record 2 would allow the appellant to draw an accurate inference about the actual topics discussed at those meetings.

With respect to section 15(b), the Ministry submits that the Minutes in Records 1, 2, 3 and 5 reveal information provided by the representatives of other provinces and territories. Further, other provinces and territories provided the supporting documentation in Records 1 and 2. The Ministry gives specific examples of material provided by other provinces and territories. The Ministry submits that even if some information was provided by the Ontario representative, its disclosure would lead to an accurate inference about the information provided by the other provinces and territories.

Also with respect to section 15(b), the Ministry states that the very sensitivity of the information found in the records is evidence that it was provided with an expectation of confidentiality.

In the course of responding to the Notice of Inquiry in Appeal No. PA030035-2, the Ministry made specific representations on the application of sections 15(a) and (b) to the list of participants present at the meeting of September 19 and 20, 2002. I have reviewed these representations for the purpose of deciding this appeal. The Ministry's concern over the release of the list of participants is that it has already released portions of these minutes of that meeting pertaining to a discussion of a specific medical issue (gene testing). The Ministry states that release of the list of participants will permit the connection of statements made on that issue to particular provincial/territorial representatives. The Ministry submits although the participants are not speaking in a "personal capacity", but rather in a "professional capacity", the fact that this link could be drawn would have a chilling effect on these discussions.

The Province of Alberta submits that the purpose of these meetings is to discuss fee schedules for health services. The meetings serve as a forum for provincial and territorial officials to discuss and exchange information about fees for health services, information which participants then use to advise their respective Ministers regarding the schedule for fees. Attendance at the meetings is voluntary. The Medical Directors meet not to present official positions of their jurisdictions, but rather as professionals conducting discourse in a confidential exchange of information.

Alberta supports the Ministry's representations on the understanding of confidentiality shared by the participants in these meetings. It submits that disclosure of the information could result in the following specific harms to intergovernmental relations:

- The participants may decide to disband their regular meetings. Some may begin to withhold information.
- Since participants do not attend meetings to discuss formal government views, they may share information that is not the official position of the provinces they represent. Disclosure of the information may reveal ongoing negotiations or the political tenor on issues that are sensitive to the public.
- Disclosure about the subjects or deliberation would reveal information about discussions about fee schedules, causing prejudice to analytical and consultative activities.
- Disclosure of confidential information shared among this group would set a precedent that will jeopardize the functioning of other, more formally structured committees and working groups that are of a federal, provincial and territorial nature.

Alberta also submits that disclosing the information in the records would cause harm to its interests if it were disclosed before policy decisions are made. It submits that participation in this group is considered part of the decision-making process that occurs within Alberta Health and Wellness subsequent to the information sharing at the meetings. In Alberta, the information

gathered and exchanged at these forums is considered to form part of the advice and recommendations which are then provided to Ministry officials.

The other provinces and territories support the positions taken by the Ministry and by Alberta. They all express a concern that disclosure will undermine the value of the meetings. It is said that the ability to discuss and resolve issues at these meetings depends on the understanding that these discussions will be kept confidential. Further, it is submitted that the records contain information provided in confidence by the provinces and territories.

Analysis

Section 15(a)

In order for a record to qualify for exemption under section 15(a), the Ministry must establish that:

- the records relate to intergovernmental relations, that is relations between an Ministry and another government or its agencies; and
- disclosure of the records could reasonably be expected to prejudice the conduct of intergovernmental relations.

(Reconsideration Order R-970003)

Based on the representations before me, I am satisfied that the records relate to intergovernmental relations. The meetings of the provincial and territorial medical directors that are documented in the records represent working relationships between their governments used as a vehicle to discuss issues of common concern surrounding the payment for medical services.

I am also satisfied that disclosure of much of the information in the records could reasonably be expected to prejudice the conduct of intergovernmental relations. The general purpose of the meetings is the exchange of information about payment for medical services under the different provincial and territorial health insurance plans. I accept the representations of the Ministry and other provinces and territories that during the course of the discussions, government representatives provide information about negotiations, funding and management issues related to their plans. Although much of the information provided is factual, in the sense of reporting on the treatment of particular medical services under the different health insurance plans, participants may also provide information that departs from the official position of the provinces they represent, or that reports on ongoing negotiations or shares initial policy thinking or planning.

I also accept that the participants in these meetings have a shared expectation that their discussions are “in camera”, and this permits them to be frank in providing their views and information on the issues discussed. The minutes are quite detailed in recording the input of the

provincial and territorial representatives on the matters under discussion. I find that disclosure of the information in the records could reasonably be expected to result in less candour at the meetings, less sharing of information and generally less of an inclination to continue with these informal exchanges.

The representations of the provinces and territories establish that these meetings are a valuable means for these governments to share information and make use of informal working relationships to assist in developing their own policies on payment for medical services. Disclosure of the proceedings of the meetings could reasonably be expected to undermine these relationships and, therefore, to prejudice the conduct of intergovernmental relations.

I am therefore satisfied that section 15(a) would apply to exempt disclosure of the agendas, minutes and supporting material found in the records.

I am not convinced, however, that section 15(a) exempts the lists of participants to these meetings from disclosure. Nothing before me suggests that the identity of the medical directors of provincial or territorial governments is in itself confidential information. In general, therefore, I am unable to conclude that the disclosure of the names of the participants at these meetings could reasonably be expected to prejudice the conduct of intergovernmental relations by undermining the future conduct of these meetings.

As I have indicated above, the Ministry's specific concern is rooted in the fact that, in its discretion, it has released some information relating to a discussion about payment for gene testing to the appellant, through a prior request. It did not release the names of the participants at that meeting, and it is concerned that disclosure of these names will allow statements made during that discussion to be connected to individual participants and their governments. The Ministry submits that this will lead to a "chilling effect" in that individual participants will be reluctant to express their views on the matters discussed if they are identified.

I find no basis on which to conclude that the release of these names could reasonably be expected to prejudice the conduct of intergovernmental relations. My finding that the meetings are matters of intergovernmental relations is premised on the fact that they involve representatives of participating provinces and territories. The medical directors attending the meetings are present as representatives of their governments, and not in a private capacity. The information exchanged and views expressed, as recorded in the minutes, are attributable to the governments they represent and not to them personally. In a context where governmental representatives provide information as part of official, albeit in camera, discussions, it is not apparent that the identification of the government representatives providing the information will hamper their willingness to do so in the future. I therefore hesitate to draw the conclusions the Ministry urges without convincing evidence. In this respect, I find that the concerns about a chilling effect are hypothetical and not supported by the material or representations before me. I have also reviewed the information in the minutes disclosed to the appellant, and am unable to find anything particularly sensitive or controversial about them that would support the concerns of a chilling effect.

Section 15(b)

It is unnecessary to consider whether section 15(b) would apply to exempt the agenda, minutes and supporting documentation in the records from disclosure, as I have found this material exempt under section 15(a). I have found that section 15(a) does not apply to exempt the list of participants from disclosure, however, and I will therefore turn a discussion of whether this information is nonetheless exempt under section 15(b).

As set out in the representations of the Ministry, in order for a record to qualify for this exemption, an institution must establish that the records reveal information received from another government, and that the information was received by the institution in confidence.

The material before me does not support a conclusion that the identity of the government representatives attending these meetings was provided by the provinces and territories in confidence. I therefore find that section 15(b) does not apply to exempt this information from disclosure.

ORDER:

1. I order the Ministry to disclose the portions of Records 1 and 5 listing the participants at the meetings. For greater certainty, I have provided the Ministry with a copy of the relevant pages of these records, highlighting the portions to be disclosed.
2. I order disclosure to be made by sending the appellant a copy of the portions of Records 1 and 5 I have ordered disclosed by **April 14, 2004**, but not before **April 7, 2004**.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the appellant.

Original signed by: _____
Sherry Liang
Adjudicator

_____ March 5, 2004