



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

# **ORDER PO-2275**

**Appeal PA-030354-1**

**Ministry of Health and Long-Term Care**



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## **NATURE OF THE APPEAL:**

The Ministry of Health and Long Term Care (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act (the Act)*. The request, made on behalf of the surviving spouse of a deceased person, was for access to:

. . . a **decoded** summary list of all insured services provided to [the deceased person], from as far back as possible to 2001, including:

1. the date of service, name of physician and amount paid, etc.;
2. the dates of hospital care, name of hospital and amount paid; and
3. the dates of physiotherapy treatments, name of clinic and amounts paid.

The Ministry located the responsive records and denied access to them, claiming the application of the mandatory exemption in section 21(1) of the *Act* (invasion of privacy). In addition, the Ministry considered the application of section 66(a) of the *Act*. This section grants to the personal representative of a deceased person certain rights to access information about the deceased person under the *Act* so long as the exercise of these rights “relates to the administration of the individual’s estate”. The Ministry concluded that the disclosure of the information requested was not related to the administration of the deceased person’s estate and, therefore, did not grant access to the information sought.

The requester, now the appellant, appealed the Ministry’s decision.

During the mediation of the appeal, the appellant agreed that records covering the period March 1, 1996 to the date of death of the deceased person would be sufficient to satisfy her request. Further mediation was not possible and the appeal was moved to the adjudication stage of the process. I decided to seek the representations of the appellant, initially and provided her with a Notice of Inquiry setting out the facts and issues in the appeal. I did not receive any response to the Notice. I decided it was not necessary for me to seek the representations of the Ministry.

## **RECORDS:**

The sole record at issue is an OHIP billing summary with a list of diagnostic codes for the period March 1, 1996 to July 22, 2001, the date of death of the appellant’s spouse.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The personal privacy exemption in section 21(1) of the *Act* applies only to information that qualifies as “personal information”. That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

The record consists of the list of billing codes for various medical care provided to the deceased person by health care practitioners for the period March 1, 1996 to July 22, 2001, the date of his death. I find that the information contained in the record falls within the ambit of the definition of “personal information” set forth in sections 2(1)(b) (information relating to the medical history of an individual) and (c) (any identifying number assigned to the individual - in this case

the deceased's OHIP number) and that the records contain only the personal information of the deceased person.

### **RIGHT OF ACCESS UNDER SECTION 66(a)**

Section 66(a) of the *Act* states:

Any right or power conferred on an individual by this *Act* may be exercised,

where the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate.

Under section 66(a), the appellant would be able to exercise the deceased's right to request access to his own personal information if she is able to demonstrate that:

1. she is the "personal representative" of the deceased; and
2. her request for access relates to the administration of the deceased's estate.

The term "personal representative" used in section 66(a) is not defined in the *Act*. However, section 66(a) relates to the administration of an individual's estate and the meaning of the term must be derived from this context.

In Order M-919, former Adjudicator Anita Fineberg reviewed the law with respect to section 54(a), the provision in the municipal *Act* which is the equivalent to section 66(a), and came to the following conclusion:

... I am of the view that a person, in this case the appellant, would qualify as a "personal representative" under section 54(a) of the *Act* if he or she is "an executor, an administrator, or an administrator with the will annexed with the power and authority to administer the deceased's estate".

The rights of a personal representative under section 66(a) are narrower than the rights of the deceased person. That is, the deceased person retains the right to personal privacy except insofar as the administration of his or her estate is concerned.

In Order M-1075, it was established that in order to give effect to the rights established by section 54(a), the phrase "relates to the administration of the individual's estate" should be interpreted narrowly to include only records which the personal representative requires in order to wind up the estate. Therefore, the appellant in this case must establish not only that she is the deceased's personal representative for the purposes of section 66(a), but also that she requires access to the record for the purposes of exercising her duties as a personal representative. To do this, the appellant must first provide evidence of her authority to deal with the estate of the

deceased. As set out in the Notice of Inquiry provided to her, the production by the appellant of letters probate, certificate of appointment of estate trustee, letters of administration or ancillary letters probate under the seal of the proper court would be necessary to establish that she has the requisite authority.

As noted above, the appellant did not respond to the Notice of Inquiry. Absent any evidence that the appellant is the “personal representative” of the deceased person, I find that she is unable to rely on the right of access section 66(a).

### **INVASION OF PRIVACY**

Where a record contains only the personal information of an individual other than the requester, section 21(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions set out in section 21(1) apply. In my view, the only exception which could have any application is that in section 21(1)(f), which reads:

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

if the disclosure does not constitute an unjustified invasion of personal privacy

Sections 21(2), (3) and (4) of the *Act* provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found 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 where 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 [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.)].

If none of the presumptions contained in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the *Act*, as well as all other considerations that are relevant in the circumstances of the case.

In the present appeal, I find that the information clearly falls within the ambit of the presumption in section 21(3)(a), which reads:

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

relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

The record sets out in detail all of the medical treatment provided to the deceased person by OHIP-funded health care practitioners for the period from March 1, 1996 until the date of his death. I find that this information falls entirely within the scope of the presumption in section 21(3)(a). The disclosure of the information in the record is, therefore, presumed to constitute an unjustified invasion of the personal privacy of the individual to whom it relates. The appellant did not raise the possible application of section 23 and none of the exceptions in section 21(4) apply to this information. As a result, I find that the record qualifies for exemption under section 21(1).

**ORDER:**

I uphold the Ministry's decision and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ May 3, 2004