



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2398**

**Appeal PA-040200-1**

**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* for access to the following records:

Codes 1, 2, 3, and 4 call volumes for emergency ambulance and non-emergency patient transfer services for the Ministry designated area of Southwestern Ontario covered by the Hamilton regional office and Central Ambulance Communications Centres in this region;

The requester also specified that he was seeking this information:

- For the years 2000-2003 inclusive; and
- Organized by Upper Tier Municipalities within this region.

The Ministry indicates that it conducted a search for responsive records and located one document, a table of ambulance call tabulations. The Ministry denied access to the records based on the exemption in section 18(1)(c) of the *Act* (prejudice to economic and other interests of Ontario).

The requester, now the appellant, appealed that decision.

In response to this office's request to provide a copy of the record in question, the Ministry provided a record entitled "Technical Appendix C, Ambulance Call Tabulations". It is an appendix to a document entitled "Study of Non-Emergency Inter-Facility Patient Transfers" prepared for the Land Ambulance Implementation Steering Committee in August 2002 by a consultant. It is a 35-page table of ambulance tabulations that contains, among other information, call volumes for municipalities throughout Ontario for the years 1996 to 2001.

During the mediation process, the appellant explained that the Ministry misinterpreted his request and that the record identified by the Ministry was not what he is seeking. He submitted that there should be additional records responsive to his request.

The Ministry acknowledged that there should be additional responsive records and agreed to conduct an additional search and issue a new decision.

The Ministry issued a new decision stating that the responsive record is the entire Ambulance Response Information System (ARIS), Direct Data Access System (ADDAS) database maintained by the Ministry. The Ministry also decided that the record is denied pursuant to the exemptions in sections 18(1)(c), 17(1)(c) (third party information), and 15(b) (relations with other governments) of the *Act*.

I sent the Ministry a Notice of Inquiry setting out the facts and issues in this appeal and invited it to make representations on the application of the exemptions it relied on. The Ministry's Program Advisor wrote to me withdrawing the Ministry's reliance on sections 15(b) and 17(1)(c) of the *Act*. He stated:

However, we do think that section 18 does apply to the information but that the economic interests of some twenty-one municipalities are more engaged than those of this ministry. Therefore, we are asking that this appeal be put on hold for a period of time in order for the municipalities to be consulted.

Some time later, the Ministry's Program Advisor notified a representative of this office by telephone that the Ministry was now relying on section 22(a) of the *Act* (information published or available), and was no longer relying on section 18(1)(c).

Section 22(a) provides:

A head may refuse to disclose a record where,

the record or the information contained in the record has been published or is currently available to the public;

The Ministry's reliance solely on section 22(a) was confirmed in a letter dated April 25, 2005, as follows:

In March 2005, the Ministry sent a letter to the affected municipalities, seeking their input on whether the release of the call volume information at issue would prejudice their economic or other interests. The Ministry asked the municipalities to describe the prejudice, if any, that would result from the disclosure of this information.

The Ministry received responses from the 17 municipalities whose information is responsive to the Appellant's request. Some municipalities were concerned about the Ministry's disclosure of the information, and were of the view that it could prejudice their economic interests. However, 14 municipalities advised the Ministry that their call volume information is in fact publicly available information, and that the requester could obtain it directly from a municipal source. The Ministry was unaware of this until so advised by the municipalities.

As a result, the Ministry's position is that s. 22(a) of the Act applies to the call volume information of the municipalities who make this information publicly available: Waterloo, Perth, Guelph, Dufferin, Niagara, Norfolk, Brant, Bruce, Elgin, Oxford, Middlesex, Chatham/Kent, Lambton, and Essex.

Section 22(a) provides that a head may refuse to disclose a record where the record or the information in the record "is currently available to the public". Given that the above listed municipalities assert that the information is publicly available directly from municipal sources, the Ministry submits that it is more appropriate for the Appellant to obtain the call volume information directly from the municipality.

Three municipalities did not indicate that their call volume information is publicly available directly from the municipality. *Therefore, the Ministry is prepared to disclose to the Appellant the call volume information that relates to these three municipalities: Hamilton, Grey and Huron.* [Emphasis added].

The Ministry enclosed copies of the letters received from the municipalities, but asked me not to share them with the Appellant.

## **DISCUSSION:**

### **Preliminary issue**

Although the Ministry stated that it is prepared to disclose to the appellant the call volume information that relates to Hamilton, Grey and Huron, to the best of my knowledge this has not been done. Several telephone calls have been made by this office to the Ministry in an attempt to determine whether the Ministry has disclosed this information. I have not received a satisfactory reply from the Ministry. As a result, I will order the Ministry to disclose the responsive information relating to Hamilton, Grey and Huron without further delay.

## **INFORMATION AVAILABLE TO THE PUBLIC**

### **Does the discretionary exemption at section 22(a) apply to the records?**

As indicated above, the Ministry is refusing to disclose the information relating to fourteen municipalities because “the municipalities assert that the information is publicly available directly from municipal sources”. The Ministry advised a representative of this office by telephone that the Ministry intended to make no representations on the application of section 22(a) beyond the information in its decision letter. Nevertheless, I sent the Ministry a letter on May 3, 2005, describing how section 22(a) has been applied by this office in case the Ministry wanted to address the tests that have been used in our previous orders. I have received no further representations.

As indicated earlier, section 22(a) states:

A head may refuse to disclose a record where,

the record or the information contained in the record has been published or is currently available to the public;

For this section to apply, the institution must establish that the record is available to the public generally, through a regularized system of access, such as a public library or a government publications centre [Orders P-327, P-1387].

To show that a “regularized system of access” exists, the institution must demonstrate that

- a system exists
- the record is available to everyone, and
- there is a pricing structure that is applied to all who wish to obtain the information [Order P-1316]

Examples of the types of records and circumstances that have been found to qualify as a “regularized system of access” include

- unreported court decisions [Order P-159]
- statutes and regulations [Orders P-170, P-1387]
- property assessment rolls [Order P-1316]
- septic records [Order MO-1411]
- property sale data [Order PO-1655]
- police accident reconstruction records [Order MO-1573]

The exemption may apply despite the fact that the alternative source includes a fee system that is different from the fees structure under the *Act* [Orders P-159, PO-1655, MO-1411 and MO-1573]. However, the cost of accessing a record outside the *Act* may be so prohibitive that it amounts to an effective denial of access, in which case the exemption would not apply [Order MO-1573].

This exemption is intended to provide an institution with the option of referring a requester to a publicly available source of information where the balance of convenience favours this method of alternative access [Order M-733]

There is nothing in the letter from the Ministry or the letters from municipalities to the Ministry that indicates that these municipalities maintain a regularized system of access to this information as described in Order P-1316. Nor is there anything in the letter from the Ministry or those sent by the municipalities that persuades me that the balance of convenience favours requiring the appellant to request this information from each of the municipalities. I can speculate from the information I have received that the Ministry believes it is more convenient for the appellant to obtain the information from the municipalities because of possible inaccuracy of the information in its own database. However, the information is equally consistent with the possibility that the appellant would receive inaccurate information from the municipalities. Therefore, this possibility does not support the notion of requiring the appellant to go to each of the municipalities.

In a letter to me dated April 27, 2005, the appellant wrote, “Why am I being required to corral dozens more bureaucrats at the municipal level in order to obtain the information requested,

when the information I requested lies in the data banks of the Ministry in the Emergency Health Services Branch in Hamilton, i.e., in a centralized location”.

The information that I have received from the Ministry provides no answer to this question. I find that the Ministry has not established that at the fourteen municipalities that indicated there are opportunities for public access to the information a system exists under which the information is available to everyone and that the information is either free or there is a pricing structure that is applied to all who wish to obtain the information.

I find, therefore, that the section 22(a) exemption does not apply in this case, and I will therefore order the Ministry to disclose the responsive information in relation to the remaining municipalities.

### **Additional Issue**

In his letter of April 27, 2005, the appellant also asks:

Since my initial request to the Ministry was made on April 8, 2004, and since this request is now more than 12 months old, I wish to amend my original request by asking for 2004 data in addition to the years 2003 to 2003.

I have no jurisdiction to require the Ministry to disclose information that is not within the subject matter of the original request and subsequent appeal. However, if the appellant makes a request for this additional information, I encourage the Ministry to consider it in the context of the facts and findings in this order. If the requester wishes to obtain disclosure of new records as they are created, I note that under section 24(3) and (4), requesters may lodge a continuing or periodically repeating request for records that is effective for up to two years.

### **ORDER:**

1. I order the Ministry to disclose all the records at issue, including those relating to Hamilton, Grey and Huron, to the appellant by sending a copy by **June 22, 2005**.
2. To verify compliance with this order, I reserve the right to require the Ministry to provide to me a copy of the record disclosed to the appellant.

Original signed by: \_\_\_\_\_  
John Swaigen  
Adjudicator

\_\_\_\_\_ June 8, 2005