



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2429

Appeal PA-040262-1

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*) for a copy of the electronic database containing information about calls answered by the Hamilton Emergency Medical Service (Hamilton EMS) along with a field structure list and information required to decode any fields used in the data. The Ministry denied access in full to the records it found responsive to the request pursuant to section 17(1)(a) of the *Act*.

The requester (now the appellant) appealed the Ministry's decision.

During mediation, the mediator confirmed with the appellant that he is also raising the public interest override at section 23 to support the disclosure of the information.

Also during mediation, the Ministry took the position that the appellant had narrowed the scope of his request to cover a time period from January 1, 2001 through December 31, 2003. The Ministry provided the mediator with a copy of a letter to the appellant dated May 17, 2004, wherein the Ministry indicated that the records responsive to the appellant's request covered a time period from January 1, 2001 to December 31, 2003. However, after discussing this with the mediator, the appellant informed the mediator that he had not agreed to narrow the request to this time period and that he wished to pursue access to the responsive records in their entirety, that is, not limited by any particular timeframe.

Further mediation was not possible and this appeal has been transferred to the adjudication stage.

Initially, I sought representations from the Ministry and the affected party, the Hamilton EMS. I received representations from the Ministry and the Ministry agreed to share its representations in their entirety with the appellant. The affected party chose not to provide me with any representations. I then sent a Notice of Inquiry along with a copy of the Ministry's representations to the appellant and invited the appellant to provide representations. The appellant responded with written representations.

RECORDS:

The records consist of a copy of an electronic database of calls answered by the Hamilton EMS along with a printed copy of a data dictionary describing the fields in that database. The database is called the Ambulance Direct Data Access System (ADDAS) and is maintained by the Ministry.

During the course of this adjudication, the Ministry provided me with a compact disc (CD) containing an extract of the database for the calls answered by the Hamilton EMS between January 1, 2001 and December 31, 2003. In order to adjudicate this appeal, a hardcopy sample of the data contained in the database was printed off. This consists of seven tables, each containing information relating to calls answered by Hamilton EMS.

DISCUSSION:

PRELIMINARY ISSUES

APPLICABILITY OF THE *PERSONAL HEALTH INFORMATION PROTECTION ACT, 2004 (PHIPA)*

The Ministry took the position that the record contains information that falls within the definition of “personal health information” under section 4(1) of the *Personal Health Information Protection Act (PHIPA)* and suggested that the request should be dealt with under that statute rather than the *Act*.

PHIPA came into force on November 1, 2004 and has no retroactive applicability. As a result, it does not apply to the collection, use or disclosure of information prior to November 1, 2004. The request in this appeal is dated April 14, 2004 and the Ministry’s decision letter is dated August 26, 2004. Section 8(5) of *PHIPA* expressly addresses transitional situations of this nature. It states:

This *Act* does not apply to a collection, use or disclosure of personal health information, a request for access or an appeal made under the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* before the day this section comes into force, and the applicable Act continues to apply to the collection, use, request or appeal.

Therefore, *PHIPA* does not apply to the record in the appeal and I will adjudicate this appeal according to the provisions of the *Act*.

SCOPE OF REQUEST

In his original request to the Ministry, the appellant did not limit the scope of the request to any particular timeframe. As noted above, the Ministry has taken the position that the appellant subsequently narrowed the scope of his request to the time period of January 1, 2001 to December 31, 2003. This is based on a letter, dated May 17, 2004, sent to the appellant by the Ministry, where the scope of the request is described as “the time period of January 31, 2001, to December 31, 2003.” During mediation, the appellant denied having narrowed his request in this manner.

I have reviewed the letter sent to the appellant being relied upon by the Ministry. Although it purports to limit the scope of the request, there is no indication in the letter that this was done with the agreement of the appellant. In view of the appellant’s original request letter that does not place a limit on scope of the request and the appellant’s contention that he did not agree to such a limit, I do not accept the Ministry’s position that the May 17, 2004 letter represents an

agreement on the part of the appellant to limit the scope of the request. I therefore find that the appellant's request applies to the Hamilton EMS records with no limits in terms of time.

THIRD PARTY INFORMATION

General Principles

The Ministry has claimed that the records are exempt from disclosure under Sections 17(1)(a) of the *Act*, which reads as follows:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, MO-1706].

For section 17(1)(a) to apply, each part of the following three-part test must be established:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the Ministry in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a) will occur.

In its representations, the Ministry states:

The Ministry respectfully submits that Hamilton, the affected Municipality which is party to this appeal and has received a Notice of Inquiry, is in the best position to address the application of s. 17 to the database at issue. In particular, it can best describe the prejudice it would suffer from the disclosure of this information. The Ministry therefore relies on the municipality's representations in this regard.

Although the City of Hamilton asked for and received an extension of time to submit its representations, and despite attempts to contact the City of Hamilton by this Office, no representations were received from the City of Hamilton. Therefore, the only mention of potential harms submitted to this office was by the Ministry in the background section of its representations:

Consequently, the database contains personal information and personal health information. Furthermore, if analyzed in its entirety, the data about this land ambulance provider can reveal staffing patterns, the number of ambulances used in a given day in the region, response time and which areas are serviced most frequently.

As noted, all three parts of the test must be met for the section 17 exemption to apply. To meet part three, the Ministry or the affected party, as the party resisting disclosure, 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.)].

The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus [Order PO-2020].

I have carefully reviewed the record, and considered the Ministry’s very limited representations on this issue. I have also taken into consideration the absence of any representations by the Hamilton EMS as to the harm it would suffer should the record be disclosed. I am not at all persuaded that disclosing this information could reasonably be expected to result in any of the harms outlined in section 17(1) of the *Act*. Neither the records themselves nor the representations provide any basis for concluding that disclosure of information about EMS calls, or information on how to decode the contents of the EMS database, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of the Ministry or the affected party, as required in order to establish the section 17(1)(a) harm.

Having determined that the third part of the test under section 17(1) has not been met, it is unnecessary for me to determine whether the Ministry has met the first two parts of the test. However, I note that neither the Ministry nor the Hamilton EMS has provided any evidence to suggest that the record reveals information that is a trade secret or scientific, technical, commercial, financial or labour relations information, or that this information was supplied in confidence.

Accordingly, I find that the requirements of three part test of sections 17(1) have not been satisfied.

PERSONAL INFORMATION

As noted in the discussion above, the Ministry submitted that the database at the centre of this appeal contains information that falls within the definition of “personal health information” under section 4(1) of *PHIPA*. As a result, that information cannot be subject to an access request under the *Act*. Based on the timing of the appellant’s request to the Ministry and the date of this appeal, I rejected that argument.

However, as noted in the extract from the Ministry’s representations quoted above, the Ministry also suggests that the database contains “personal information” under the *Act*. The Ministry goes on to argue that its disclosure would constitute a presumed unjustified invasion of personal privacy under section 21(3)(a) of the *Act*. The Ministry submits that the personal information would have to be severed prior to the disclosure of the record. The Ministry’s representations do not provide any guidance as to which data elements contain personal information or what sections of the databases should be severed prior to any potential disclosure.

In the appellant’s representations, he states:

There is no question that there (is) information in this database that constitutes personal information under Section 21 of FIPPA. However, it should be possible to sever any identifying information so as to make other personal details anonymous, and therefore, not personal information, which is defined as “recorded information about an identifiable individual.”

For example, I understand that the data contain(s) names and addresses. Clearly the names would need to be severed, as would the street addresses. However, there would be no need to sever street names or the first three characters of postal codes. Previous orders from the information commissioner have found that an address in an apartment building, when it does not include the unit number, does not constitute personal information. The same would go for street addresses once stripped of the street number. The first three characters of a postal code define an area about the size of a neighbourhood in a city and an area of many square miles in a rural area.

The term “personal information is defined in section 2(1), in part, as follows:

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

- (d) the address, telephone number, fingerprints or blood type of the individual,

- (h) the individual's name if 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 Ministry has submitted that some data elements in the record are personal information, but has not identified those elements. The appellant, by submitting that names and precise street addresses would need to be severed, acknowledges that these data elements fall within the definition of "personal information" and indicates, in effect, that access to those elements is not required, thus removing them from the scope of the request.

In the absence of guidance from the Ministry, I have reviewed the extracts of database tables produced from the Ministry's CD. Of the tables produced, I have identified only one that I have interpreted as containing the personal information of individuals involved in calls to Hamilton EMS. This is the table entitled "calls". That table includes data elements representing the phone number of the caller and the first and last name of the caller. I find that these elements meet the definition of "personal information" in section 2 of the *Act*.

The table also includes separate data elements for the street number and the street name of the caller. The Appellant has submitted that once the name of the caller is severed, the removal of the street number is sufficient to render the entire address as non-identifiable. I agree with the appellant on this point. Providing only the name of the street of the caller, in the absence of a name or specific street number, is not sufficient to identify any particular individual.

I am therefore satisfied that the data elements identifying the telephone number, street number, first name and last name in the table entitled "calls" are "personal information" for the purposes of section 2.

PERSONAL PRIVACY

Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. If the disclosure fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21.

Section 21(1) states as follows:

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

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

The Ministry made no representations on the applicability of section 21(1) to the data elements contained in the responsive records. Similarly, the appellant has not specifically addressed this issue in his representations. However, as noted above, the appellant acknowledges that data elements containing personal information, such as names and street numbers, would need to be severed from the record.

As noted above, the appellant has, in effect, limited the scope of this request to permit the severance of personal information. Since section 21 only applies to prevent the disclosure of personal information, it is not strictly necessary for me to address its application.

In any event, having reviewed the record, I am satisfied that none of the exceptions in paragraphs (a) to (f) of section 21(1) applies to the personal information contained in the “calls” table. I therefore find that the disclosure of the personal information contained in the “calls” table would constitute an unjustified invasion of privacy. I will therefore order that information to be severed when the record is disclosed.

PUBLIC INTEREST OVERRIDE

In view of the foregoing analysis, in particular the fact that the section 17(1) exemption does not apply, and the appellant’s willingness to permit the severance of personal information from the record, it is not necessary for me to address the application of the “public interest override” found in section 23 of the *Act*.

ORDER:

1. I order Ministry to disclose to the requester by **December 28, 2005** but not before **December 22, 2005** a copy of the electronic database (ADDAS) of calls answered by the Hamilton EMS along with a printed copy of a data dictionary describing the fields in that database. This disclosure is subject to the severance of the following data elements from table labeled as “calls”: telephone number, street number, first name and last name.
2. In order to verify compliance, I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the appellant pursuant to Provision 1, upon request.

Original signed by: _____
Brian Beamish
Assistant Commissioner

November 22, 2005