



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

ORDER PO-2956

Appeal PA11-29

Ministry of Health and Long-Term Care



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NATURE OF THE APPEAL:

On February 10, 2010, a request was made to the Ministry of Health and Long-Term Care (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the Act) for access to the following records:

Please provide from April 25, 2008 to present (February 2010) the payment summaries for each drug manufacturer the ministry has invoiced for payments to the Ministry by invoice date, amount paid, payment date or other comments under Bill 102 (the Transparent Drug System for Patients Act 2006) under the pricing/listing agreements. Note that this is the same kind of material received under a previous FOI A-2008-57 and under order PO-2865.

The requester stipulated that his request should also include, “2009, 2010 impact lines or briefing notes on [these] invoice costs to date”.

On September 23, 2010, the Ministry issued an access decision advising the requester that partial access to the records would be granted pending a 30 day period in which affected parties could appeal the decision to the Office of the Information and Privacy Commissioner/Ontario (IPC). The Ministry indicated that after this appeal period has expired, and the parties have not appealed, it would provide a letter to the requester outlining the costs for processing the request. Upon the requester’s acceptance of the costs, the Ministry would be required to release the records where an appeal was not submitted to the IPC. The Ministry’s file reference for the appellant’s request is A-2010-00014/db.

On January 24, 2011, the IPC received a letter from the requester, now the appellant, dated December 24, 2010 indicating the Ministry has not disclosed any records or a statement of the costs to him with respect to request A-2010-00014/db. The appellant advised that approximately 50 companies are affected by his request, and that the IPC has notified him it has received only 17 appeals. The appellant indicated the appeal period has expired and the records relating to companies that have not appealed the Ministry’s decision to the IPC should be disclosed to him.

On February 2, 2011, appeal file PA11-29 was opened and a Notice of Inquiry was sent to the Ministry and the appellant indicating the Ministry failed to disclose records even though it issued a decision indicating it would do so in part. The Notice of Inquiry also indicated that if the records are not disclosed to the appellant on or before February 16, 2011, I would be in a position to issue an order requiring the Ministry to do.

After several contacts with the Ministry, I have not been advised when it will release the records it said it would to the appellant. The Ministry did indicate a 60 day time extension was issued, however, this time has expired. The Ministry further indicated that it does not plan to charge the appellant a fee for the records.

DISCUSSION:

HAS THE MINISTRY COMPLIED WITH ITS OBLIGATIONS UNDER THE ACT TO DISCLOSE THE RECORDS WHERE NO APPEAL HAS BEEN RECEIVED BY THE IPC?

When an institution makes a decision to disclose records, or parts of records, in response to a request made under the *Act*, section 26 sets out the time frames within which this disclosure is to take place. This section reads:

Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the institution to which it is forwarded or transferred, shall, subject to sections 27, 28 and 57, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part of it will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part, and where necessary for the purpose cause the record to be produced.

Section 26 of the *Act* requires the Ministry to issue a decision and to disclose those records for which access is to be given within 30 days of receipt of the request, but this requirement is subject to section 28 (notice to affected person), which requires notice to third parties. Section 28 allows additional time for an access decision if that procedure is followed, as it was in this appeal.

Section 28 states, in part:

- (1) Before a head grants a request for access to a record,
 - (a) that the head has reason to believe might contain information referred to in subsection 17 (1) that affects the interest of a person other than the person requesting information; ...
...the head shall give written notice in accordance with subsection (2) to the person to whom the information relates.
- (2) The notice shall contain,
 - (a) a statement that the head intends to release a record or part thereof that may affect the interests of the person;

(b) a description of the contents of the record or part thereof that relate to the person; and

(c) a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part thereof should not be disclosed.

(3) The notice referred to in subsection (1) shall be given within thirty days after the request for access is received or, where there has been an extension of a time limit under subsection 27 (1), within that extended time limit.

...

(5) Where a notice is given under subsection (1), the person to whom the information relates may, within twenty days after the notice is given, make representations to the head as to why the record or the part thereof should not be disclosed.

...

(7) The head shall, within thirty days after the notice under subsection (1) is given, but not before the earlier of,

(a) the day the response to the notice from the person to whom the information relates is received; or

(b) twenty-one days after the notice is given,

decide whether or not to disclose the record or the part thereof and give written notice of the decision to the person to whom the information relates and the person who made the request.

(8) Where a head decides to disclose a record or part thereof under subsection (7), the head shall state in the notice that,

(a) the person to whom the information relates may appeal the decision to the Commissioner within thirty days after the notice is given; and

(b) the person who made the request will be given access to the record or to a part thereof, unless an appeal of the decision is commenced within thirty days after the notice is given.

(9) *Where, under subsection (7), the head decides to disclose the record or a part thereof, the head shall give the person who made the request access to the record or part thereof within thirty days after notice is given under subsection (7), unless*

the person to whom the information relates asks the Commissioner to review the decision. [Emphasis added.]

...

In its letter to the appellant on September 23, 2010, the Ministry advised that after having considered the representations of the responding affected parties, a decision was made “to grant access in part to the records requested”. The Ministry further advised that upon payment of fees the records would be released after 30 days to allow the affected parties to appeal to the IPC. This was in accordance with section 28.

The appeal period for the affected parties has expired. The records relating to the affected parties that have not appealed the Ministry’s decision to the IPC, and where partial access has been granted, have not been disclosed to the appellant nor has the Ministry provided any indication of when it intends to do so.

The issue before me is whether the Ministry has failed to disclose the records to the appellant that it said it would grant partial access to in its decision letter of September 23, 2010 for the affected parties that have not submitted appeals to the IPC.

I find the Ministry’s obligation to disclose the records to the appellant under section 28(9) of the *Act* was suspended for the affected parties that had submitted appeals to the IPC. However, the records relating to the remaining affected parties who did not submit an appeal of the Ministry’s decision to the IPC within the 30 day appeal period should have been released. I therefore conclude that the Ministry has failed to disclose the records it indicated it would release to the appellant for the affected parties that have not appealed to the IPC.

As the ministry has now advised me that it does not intend to charge the appellant any fees, I will order the Ministry to disclose the records it has granted partial access to in its decision letter of September 23, 2010 to the appellant without further delay and without any fees.

ORDER:

1. I order the Ministry to disclose, to the appellant, the records where partial access is granted and where no appeal has been received by the IPC.
2. I also order the Ministry to disclose the records in provision 1 of this order to the appellant **no later than March 9, 2011** and without charging any fees.
3. To verify compliance with the terms of order provision 1, I reserve the right to require the Ministry to provide me with a copy of the material which it disclosed to the appellant.

Original signed by: _____
Joseph Sommer
Analyst

_____ March 2, 2011