

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3442

Appeal PA13-213

The Ottawa Hospital

December 29, 2014

Summary: The requester sought access to statistical information about the number of abortions performed in the hospital between 2008 and 2012. The adjudicator finds that this information is not covered by the *Freedom of Information and Protection of Privacy Act*, because of the exclusion in section 65(5.7) of records relating to the provision of abortion services.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 65(5.7).

Orders and Investigation Reports Considered: Order PO-3222.

Cases Considered: *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991 (Div. Ct).

BACKGROUND:

[1] This appeal arises from the following request made to The Ottawa Hospital (the hospital) under the *Freedom of Information and Protection of Privacy Act*:

Please send me statistics regarding the number of abortions (deliberate interventions and surgery to end the life of the developing fetus) performed in the Ottawa Hospital Civic campus from January 2008 until Dec. 2012. If these statistics are included in the statistics for abortion for

the other campuses of the Ottawa Hospital, then I would like to have those totals too.

[2] The hospital issued a decision denying access to the records. The hospital indicated that the records are excluded from the *Act* pursuant to section 65(5.7), which states:

This *Act* does not apply to records relating to the provision of abortion services.

[3] The hospital explained its decision by stating that the reason for refusing access is that the requester is asking for statistics on abortion, which relate to the provision of abortion services. It stated that the *Act* does not apply to records relating to the provision of abortion services, even if the records do not contain identifiable personal information.

[4] The requester (now the appellant) appealed the hospital's decision to this office. In her letter of appeal, the appellant stated that she did not want any identifying information of the women who had the abortions, any identifying information of the doctors who performed them, any information on the sex of those aborted and any information on the age of the fetuses. She reiterated her request, and stated that "[s]ince abortions are not illegal in Canada and they are paid for from public (taxpayers') money, I have a right to know the number of abortions performed since it does not impinge on anyone's right to privacy."

[5] This appeal was streamed directly to adjudication and I was assigned to it. I sent the appellant a Notice of Inquiry inviting her to make written representations on the appeal. The appellant provided me with her representations. Following this, I alerted the appellant and the hospital to Order PO-3222, which dealt with similar issues to those in this appeal, and I provided the parties with a copy of the order. I then placed this appeal on hold pending the resolution of a judicial review application arising from Order PO-3222.

[6] The judicial review application was resolved without a court decision and I therefore re-activated this appeal. I provided the appellant with an opportunity to make further submissions, enclosing another copy of Order PO-3222 for her reference. She did not make further submissions but conveyed, by voice message, her wish that this appeal proceed.

[7] For the reasons below, I uphold the hospital's decision. Any records responsive to the request are excluded from the *Act* pursuant to section 65(5.7).

DISCUSSION:

[8] As set out above, section 65(5.7) of the *Act* provides that the *Act* does not apply to “records relating to the provision of abortion services.”

[9] In the Notice of Inquiry I sent to the appellant, I made reference to the court decision in *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner (Toronto Star)*.¹ In that decision, the Divisional Court interpreted the phrase “relating to” as used in section 65(5.2) to require only “some connection” between the matters referred to. Based on that decision, I indicated that for records to be considered as “relating to” the provision of abortion services, it must be reasonable to conclude that there is “some connection” between them. I invited the appellant to provide submissions on whether the records she seeks “relate to the provision of abortion services”, and whether they are excluded from the *Act*.

[10] In her representations, the appellant did not address section 65(5.7). She submits that the records should be released because:

- There are no criminal laws regulating abortion in Canada and there is no fear of criminal reprisals for providing or procuring abortions or disseminating information regarding abortions.
- The hospital is not averse to giving out statistical data. The appellant refers to statistics in the hospital’s 2011-12 Annual Report on surgical cases and babies delivered, as well as statistics reported in a local newspaper in 1986 on the number of abortions performed at the hospital.
- As a taxpayer, the appellant has a right to know the number of abortions her taxes support.
- Since the request is solely for statistical information about the number of abortions performed with no identifying information, there is no legitimate reason to refuse.

[11] As indicated above, I also provided the appellant with the opportunity to address Order PO-3222, in which I dealt with similar issues to this appeal. Beyond asserting that there is very little overlap between the requests in both appeals, the appellant made no additional submissions.

¹ 2010 ONSC 991 (Div. Ct.).

Analysis

[12] As I discussed in Order PO-3222, and as set out in the Notice of Inquiry, the decision in *Toronto Star*² established the meaning of the words "relating to" in section 65 of the *Act*:

Section 65(5.2) contains the phrases "relating to" and "in respect of." The Supreme Court of Canada has interpreted these phrases: *Canada (Information Commissioner) v. Canada (Commissioner, RCMP)*, 2003 SCC 8 (CanLII), 2003 SCC 8, [2003] 1 S.C.R. 66, at para. 25; *Markevich v. Canada*, 2008 SCC 9 (CanLII), 2008 SCC 9, [2003] 1 S.C.R. 94. In *Markevich*, the Court held the following, at para. 26:

The appellant's submission turns on whether these proceedings are undertaken "in respect of a cause of action". The words "in respect of" have been held by this Court to be words of the broadest scope that convey some link between two subject matters. See *Nowegijick v. The Queen*, 1983 CanLII 18 (SCC), [1983] 1 S.C.R. 29, at p. 39, per Dickson J. (as he then was):

The words "in respect of" are, in my opinion, words of the widest possible scope. They import such meanings as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.

In the context of s. 32, the words "in respect of" require only that the relevant proceedings have some connection to a cause of action.

Accordingly, the words "relating to" in s. 65(5.2) require some connection between "a record" and "a prosecution." The words "in respect of" require some connection between "a proceeding" and "a prosecution."

....

The meaning of the statutory words "relating to" [in section 65 of the *Act*] is clear when the words are read in their grammatical and ordinary sense. There is no need to incorporate complex requirements for its application,

² See above.

which are inconsistent with the plain, unambiguous meaning of the words in the statute.

[13] The above decision dealt with section 65(5.2), which excludes records "relating to" ongoing prosecutions from the *Act*. Section 65(5.7), which is at issue here, also uses the phrase "relating to", stating that the *Act* does not apply to records "relating to" the provision of abortion services. Applying the principles in *Toronto Star*, the exclusion applies, therefore, where there is "some connection" between the records at issue and the provision of abortion services.

[14] Here, the appellant seeks information about the number of abortions performed at the hospital. I find there is at least some connection between the information sought and the "provision of abortion services". By its very terms, the request is for information about the provision of abortion services at the hospital.

[15] The fact that the information sought is statistical and does not identify any individual patient, doctor or other details of the service does not alter my conclusion. The issue is not whether disclosure of the information would be an invasion of privacy. Rather, the issue is whether section 65(5.7) applies. I see no ambiguity in the words of this exclusion, as applied to this appeal. In their grammatical and ordinary sense, they cover the records sought by this appellant.

[16] The appellant relies on a general taxpayer's "right to know" the use that is made of tax revenues by public institutions. Whether or not there is any strength to her claim, it is not within my authority to depart from the clear words of the *Act*.

[17] In sum, I conclude that the records are excluded from the *Act* under section 65(5.7) and the appeal is accordingly dismissed.

Original Signed by: _____
Sherry Liang
Senior Adjudicator

December 29, 2014 _____