



**Information and Privacy
Commissioner/Ontario**

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

ORDER 153

Appeal 890343

Ministry of Health



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

February 28, 1990

VIA PRIORITY POST

The Honourable Elinor Caplan
Minister of Health
10th Floor, Hepburn Block
80 Grosvenor Street
Toronto, Ontario
M7A 2C4

Dear Ms Caplan:

Re: Interim Order 153
Appeal Number 890343
 [Name of Appellant]

This letter constitutes my Interim Order in the appeal of a decision of the Ministry of Health (the "institution"), regarding the appellant's request for records under the Freedom of Information and Protection of Privacy Act, 1987 (the "Act").

In late 1989, the institution received a request from the appellant for the following information:

(1) The total medicare payments given to free standing abortion clinics [The Morgentaler Clinic, Scott Clinic, and the clinic run by Dr. Nicki Colodny in the Donvale Medical Building (formerly called "The Woman's Choice Reproductive Centre)]. This should include a breakdown of the fees for pre-visit checkup, the actual abortion, counselling, post visit (if any), and any other fees covered by OHIP.

[IPC Order 153/February 28, 1990]

(2) The total number of abortions performed in the 3 clinics in 1988 and as much of 1989 as possible broken down on a month by month basis (if possible or calander [sic] year). For the Scott and Morgentaler clinics please specify how many abortions were paid for on Jan. 28/88 to the end of that month.

By letter dated October 18, 1989, the Freedom of Information and Privacy Co-ordinator for the institution (the "Co-ordinator") wrote to the appellatant to advise him as follows:

Part one of your request was for access to total Medicare payments to free standing abortion clinics. This record does not exist, nevertheless, in accordance with the spirit of the Act, we have calculated the total payments for 1988 and 1989 (Jan-Aug) for free standing clinics from the Publics (sic) Accounts of the province of Ontario.

Payments to free standing clinics

1988 total:	\$478,921.00
1989 (Jan-Aug):	\$481,676.00

Part two of your request was for access to the total number of abortions performed in the three clinics in 1988 and 1989. A copy of the record is enclosed.

Some of the material requested has been severed from the record under the authority of one of the exemptions from disclosure provided for in the Act. Where material has been severed, the legal authority is noted in the margin next to the information removed.

The exemptions used are: section 17, third party financial information; section 21(3)(f), personal information; and section 67 as the confidentiality provisions of section 44 of the Health Insurance Act override the Freedom of Information and Protection of Privacy Act, 1987.

On November 17, 1989, the appellatant appealed, among other matters, the denial of access.

On January 1, 1990, the Freedom of Information and Protection of Privacy Amendment Act, 1989 (the "Act") came into force. The amending "Act" changes the law with respect to the application of statutory confidentiality provisions. As a general rule, the Freedom of Information and Protection of Privacy Act, 1987, now overrides most confidentiality provisions. This is true unless a confidentiality provision is specifically noted in the amending "Act" or another piece of legislation specifically provides that a confidentiality provision overrides the Freedom of Information and Protection of Privacy Act, 1987.

A number of appeals in which institutions have relied on a confidentiality provision still remain to be decided by me, of which this appeal is one. While it would be possible for me to simply decide whether the provision at issue in this appeal is a confidentiality provision and whether it operated in a way that prevailed over the Act at the time the head's decision was made, I have decided not to go through such an exercise. Therefore, my interim Order in this appeal is that the appeal will not continue with respect to the application of the confidentiality provision, but rather, the appeal will be dealt with as though the decision on disclosure had been confined to the application of subsections 17(1) (a) and 21(3) (f) of the Act.

On the basis of the foregoing, I have instructed the Appeals Officer to continue with her investigation and attempt to mediate this appeal.

Yours truly,

Sidney B. Linden
Commissioner

cc: Mr. Andrew Parr, FOI Co-ordinator
Appellant