



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

ORDER 63

Appeal 880337

Ministry of Health



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June 16, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 63
Ministry of Health
Appeal Number 880337

I am writing to you about your appeal of the decision of the Ministry of Health regarding your request for information under the Freedom of Information and Protection of Privacy Act, 1987. Your request was for the following information:

"All records of any complaints against Dr. George Mario (Jamie) Astaphan before the Health Disciplines Board or any other medical review board/committee/agency covered under the Freedom of Information Act."

The Ministry's response was to refuse to confirm or deny the existence of any such record, pursuant to subsection 21(5) of the Act.

As you know, as soon as your appeal was received in my office, an Appeals Officer was assigned to investigate the circumstances of the appeal, and to report on the matter.

Since the Ministry of Health had refused to confirm or deny the existence of the record, mediation was not successful, and settlement was not effected. Accordingly, the Appeals Officer prepared a report which was sent to you and to the institution with my letter of February 13, 1989, requesting representations

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on the matter. I have received and reviewed these representations.

Although the head relied on subsection 21(5) of the Act and refused to confirm or deny the existence of the record requested, a preliminary issue arose as to whether or not the "confidentiality provision" contained in section 65 of the Health Disciplines Act, R.S.O. 1980, c. 196, would apply to a record like the one requested, if it existed.

Section 67 of the Freedom of Information and Protection of Privacy Act, 1987, states that the terms of a confidentiality provision in any other Ontario Act will prevail over it, until January 1, 1990. As a result, the head of an institution is not permitted to disclose information that would fall within the terms of a confidentiality provision contained in another Act until after that date.

Section 65 of the Health Disciplines Act reads as follows:

65(1) Every person employed in the administration of this Part,... shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation under section 64 and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Part and the regulations and by_laws or any proceedings under this Part or the regulations; or
- (b) as may be required for the enforcement of the Health Insurance Act
- (c) to his counsel; or
- (d) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by_laws.

In my view, this provision does constitute a valid "confidentiality provision" as that term is used in section 67 of the Freedom of Information and Protection of Privacy Act, 1987.

With regard to the issue of whether the record in question, if it existed, would fall within the scope of section 65 of the Health Disciplines Act, we must look to section 64 of that Act in order to determine what records are covered by the confidentiality provision in section 65.

Section 65 refers to "the administration of this Part, including any person making an inquiry or investigation under section 64". The "Part" referred to is Part III of the Act, which deals with the regulation of the practice of medicine. Section 64 of the Act provides for the investigation of professional misconduct or incompetence in the practice of medicine.

Since your request was for "all records of any complaints against Dr. Astaphan before the Health Disciplines Board or any other medical review board/committee/agency...", such records, if they existed, would fall under the general prohibition of disclosure in section 65 of the Health Disciplines Act. None of the specified exemptions to the rule of non-disclosure, set out above in subsections 65 (1)(a), (b), (c) or (d) apply to the circumstances of this case.

In conclusion, I find in the circumstances of this appeal that section 65 of the Health Disciplines Act operates as a "confidentiality provision" barring the application of the Freedom of Information and Protection of Privacy Act, 1987 in respect to the information contained in the record requested, and, if it existed, the record would fall within the scope of this "confidentiality provision".

Accordingly, please be advised that I am unable to interfere with the decision of the head.

Yours truly,

Sidney B. Linden
Commissioner

cc: The Honourable Elinor Caplan, Minister of Health
Mr. Andrew Parr, FOI Co_ordinator

