



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

# **ORDER P-1382**

**Appeal P\_9700016**

**Ministry of Health**



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## **NATURE OF THE APPEAL:**

The appellant is the widow of a deceased individual. She submitted a request to the Ministry of Health (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for access to records containing the quantum of hospital medical expenses incurred in the treatment of her husband before his death.

The Ministry located one responsive record, namely the OHIP Claims Reference File (CREF) relating to the appellant's husband. The CREF is a record of all claims for OHIP-insured services. The Ministry issued a preliminary decision in which it indicated that the requested record contained the personal information of the deceased husband and was subject to exemption pursuant to section 21 of the Act.

In this decision letter, the Ministry advised the appellant of the provisions of section 66(a) of the Act. This section permits the personal representative of a deceased person to exercise a right or power of the deceased under the Act if the exercise of the right or power relates to the administration of the deceased's estate. The Ministry invited her to submit appropriate documentation which it would take into consideration in determining whether section 66(a) was applicable in the circumstances. The appellant provided the Ministry with a copy of her husband's will appointing her executrix of his estate.

The Ministry issued a final decision and indicated that, in its view, the appellant could not avail herself of the provisions of section 66(a) of the Act. Accordingly, access to the CREF was denied under the "invasion of privacy" exemption in section 21(1) of the Act.

The appellant appealed the decision of the Ministry. A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Section 2(1) of the Act defines "personal information", in part, to include recorded information about an identifiable individual. Section 2(1) lists some specific examples of items which constitute an individual's personal information. One such example is found in item (b) under the definition, which indicates that "information relating to the ... medical ... history of the individual" is personal information.

I have reviewed the record, which, as previously noted, consists of the appellant's husband's OHIP claims record. This record includes the dates on which medical services were provided, the amounts paid, and codes which denote the services provided. I find that the record consists, in its entirety, of personal information relating to the appellant's husband.

Section 2(2) provides that personal information does not include information about an individual who has been dead for more than 30 years. Since the deceased died in 1995, section 2(2) does not apply in the circumstances of this case.

### **RIGHT OF ACCESS OF A PERSONAL REPRESENTATIVE**

As noted above, section 66(a) may permit a deceased individual's personal representative to exercise a power or right of the deceased individual under the Act. This section states:

Any right or power conferred on an individual by this Act may be exercised,

where the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate.

Since individuals may have a greater right to receive records containing their own personal information than other individuals would have to that information, and since the record contains the personal information of the appellant's husband, the appellant's ability to obtain this information could be enhanced by section 66(a), if it applies.

Under section 66(a), the appellant would be able to exercise the deceased's right to request and be granted access to the deceased's personal information if she is able to:

1. demonstrate that she is the "personal representative" of the deceased; and
2. demonstrate that her request for access "relates to the administration of the deceased's estate".

As I indicated above, the appellant has provided a copy of her husband's will which appoints her the executrix of his estate and I am satisfied that she meets the first requirement under section 66(a). Having said this, however, I find that section 66(a) does not apply. This is because, under the second criterion under section 66(a), I have not been provided with any information to indicate that the appellant requires the requested information "to make an informed decision about matters which relate to the estate". In her request, the appellant indicated that she wants the requested information "so I will be aware of the cost to the system and make contributions in his name, to the various hospitals involved in his treatment". In my view, this relates to the appellant's personal affairs, not to matters concerning her husband's estate.

Therefore, although I sympathize with the appellant's position, I find that she has not satisfied the criteria in section 66(a), and this provision is not applicable in the circumstances.

### **INVASION OF PRIVACY**

I have determined above that the records at issue contain the personal information of the deceased husband only.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. In my view, section 21(1)(f) sets out the only circumstance which may be applicable in this case:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

The Ministry submits that all of the personal information contained in the records falls within the presumption in section 21(3)(a) of the Act. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

In Order P-867, Inquiry Officer Anita Fineberg considered whether the contents of a CREF constituted an individual's medical history. In this regard, she stated that:

[p]art of the contents of these files, as described by the Ministry, is "an insured's medical service history" which, in my view, constitutes at least a portion of that individual's medical history.

I agree. In my view, the substantive part of the CREF does constitute part of the medical history of the appellant's husband. For this reason, I find that the record "relates to" his medical history within the meaning of section 21(3)(a), and the presumption applies.

As noted above, once a presumption is found to apply, it can only be rebutted if section 21(4) or section 23 applies. I have not been provided with any information to support the application of either of these sections. Therefore, the presumption in section 21(3)(a) has not been rebutted, and disclosure would constitute an unjustified invasion of personal privacy.

Accordingly, the record is exempt under section 21(1).

**ORDER:**

I uphold the Ministry's decision to deny access to the record.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ April 24, 1997