



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1502**

**Appeal P-9700197**

**Ministry of Health**



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## **NATURE OF THE APPEAL:**

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for a copy of the "Prescribing Physician List" generated by the "Home Oxygen Program" for the 12 month period ending February 28, 1997. The record is a 79 page list consisting of the names, city of practice, province, postal code and the number of initial claims and renewal claims of each physician who prescribed the home oxygen program for patients for claims approved from March 1, 1996 to February 28, 1997.

The Ministry denied access to the record claiming the following exemption:

- invasion of privacy - section 21(1)

The appellant appealed the Ministry's decision.

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

## **DISCUSSION:**

### **PERSONAL INFORMATION/INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual, and includes information relating to financial transactions in which the individual has been involved (paragraph (b)), and the individual's name where the disclosure of the name would reveal other personal information about the individual (paragraph (h)).

The Ministry states that physicians must conduct a patient assessment prior to prescribing or renewing a claim for home oxygen. The amount paid by OHIP for these assessments is included in the Schedule of Benefits, a public document. The Ministry submits that if the number of claims for a particular physician is known, it is possible to use the Schedule of Benefits to calculate the amount paid by OHIP to the physician, and that this information falls within the scope of paragraph (b) of the definition of personal information. The Ministry also submits that disclosing a physician's name reveals that he/she prescribes home oxygen, which is part of a referral pattern, and falls under paragraph (h). Finally, the Ministry points to Order P-778, which found that disclosure of the names of physicians together with the total number of laboratory tests ordered by each physician constituted personal information.

The appellant submits that the information contained in the record relates to the professional activity of each physician, and does not satisfy the requirements of the definition of personal information.

I will first consider whether disclosure of the physicians' names, and other identifying information, together with the corresponding number of claims is properly characterized as relating to a "financial transaction" under paragraph (b).

Compliance Investigation Report I96-119P, reported the results of an investigation into the alleged disclosure of a physician's billing information to a member of the media by a former assistant to the Minister of Health. In that report, former Commissioner Tom Wright found that OHIP billings constitute "financial transactions in which the individual has been involved", which thus met the requirements of paragraph (b) of the definition of "personal information".

In Order P-778, the appellant sought access to a list of the names of all Ontario physicians and the corresponding laboratory tests ordered by each of them. In finding that this record contained the personal information of the physicians, Inquiry Officer Mumtaz Jiwan relied on the fact that there was a direct link between the number of lab tests and the payment received from OHIP.

In the present appeal, the Ministry states that physicians are paid by OHIP on a per-assessment basis, and that the assessment fees are listed in the Schedule of Benefits. While, the Ministry acknowledges that a "claim" (which is the information at issue in this appeal) does not equate to a specific "assessment," I agree with the Ministry that it is possible to determine with a reasonable degree of accuracy the billing history from the information contained in the record. In my view, this linkage is sufficient to characterize this matter as a "financial transaction" as the term is used in paragraph (b).

Therefore, I find that the number of home oxygen program claims submitted by each identified physician over a given period of time satisfies the definition of personal information in section 2(1) of the Act, and that this information relates only to individuals other than the appellant.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits disclosure of this information to any person other than the individual to whom the information relates, except in certain circumstances.

Sections 21(2), (3) and (4) of the Act provide guidance in determining this issue. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way that 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 which are relevant in the circumstances of the case.

The Ministry submits that the presumption in section 21(3)(f) and the factors in sections 21(2)(e), (f) and (i) apply in the circumstances of this appeal.

The appellant submits that, in the event I find that the record contains personal information, disclosure of the record would not constitute an unjustified invasion of personal privacy as sections 21(2)(e), (f) and (i) do not apply. The appellant also submits that the record has been made available for approximately two years through the Ministry's Home Oxygen Program area and that this is the first time that a request for the record has been denied.

I will begin with the presumption in section 21(3)(f), which states:

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

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

The Ministry submits that disclosure of the number of home oxygen claims and renewal claims approved for a physician is tantamount to the disclosure of information describing the finances and financial activities of the physicians.

In his representations, the appellant submits that no information is provided regarding such matters as a physician's income nor the amount billed by the physician with respect to the patient's visit.

In reviewing the record, I find that the presumed unjustified invasion of personal privacy in section 21(3)(f) applies to the personal information contained therein. As I stated above, while there is no direct indication of billing information, it is possible to determine with a reasonable degree of accuracy the billing history of a physician from the information contained in the record. Payment to a physician for services rendered is properly characterized as a "financial transaction." In my view, a financial transaction is a sub-component of "financial activity." As the record presents a listing of these transactions for a period of one year, I find that it describes the financial activities in which the physicians were involved.

Even if I were to accept the appellant's arguments, as I have previously indicated, a factor or combination of factors under section 21(2) cannot rebut a presumption under section 21(3). I also find that neither section 21(4) nor section 23 are applicable to the information at issue.

Accordingly, the record is exempt from disclosure under section 21(1) of the Act.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Ann Cavoukian, Ph.D.  
Commissioner

\_\_\_\_\_ December 15, 1997