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

ORDER P-1499

Appeal P_9700188

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 Ontario Abortion Statistics for 1994, under the following eleven categories:

1. Number of Abortions by Hospital or Clinic
2. County of Residence
3. Gestation Period - weeks
4. Marital Status
5. Number of previous abortions - induced
6. Number of previous abortions - spontaneous
7. Age of Patient
8. Complications 1
9. Complications 2
10. Complications 3
11. Initial Procedure

The Ministry granted access in full to information responsive to Items 2-10, but denied access to the one record responsive to Item 1 pursuant to the following exemption claims:

- endanger life or safety - section 14(1)(e)
- endanger security of a building - section 14(1)(i)
- third party information - section 17(1)
- danger to safety or health - section 20
- invasion of privacy - section 21(1)

The appellant appealed the Ministry's decision.

The record is a two-page document titled "NO. OF ABORTIONS BY HOSPITAL AND CLINIC, 1994", and consists of listed information under the headings "HOSPITAL/CLINIC" and "COUNT".

A Notice of Inquiry was provided to the Ministry, the appellant and the 77 hospitals and clinics listed in the record (the affected parties). Representations were received from the Ministry, the appellant and 51 affected parties. Two affected parties consented to disclosure of information about their facilities.

PRELIMINARY MATTER:

Application of the Act

A second affected party, a public hospital, claims that because it is not an "institution", the Act does not apply to its information.

Section 10(1) of the Act provides as follows:

> Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or the part of the record falls within one of the exemptions under sections 12 to 22.

As the Ministry and some of the affected parties point out in their representations, although the information originates from non-institutions, the clinics are required to provide the information to the Ministry as a condition of their licences issued under the Independent Health Facilities Act (the IHFA) and the hospitals' reporting requirements are pursuant to the Public Hospitals Act (the PHA). In my view, the record is clearly "in the custody or under the control" of the Ministry. Therefore, the record falls within the scope of the right of access under section 10(1), despite the fact that the information contained in the records originated with non-institutions.

I find that the record is in the custody and under the control of the Ministry, and subject to the Act.

DISCUSSION:

ENDANGER LIFE OR SAFETY/SECURITY

The Ministry claims that the exemptions contained in sections 14(1)(e) and (i) apply. Several affected parties provided representations in support of this position.

These sections read:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> (e) endanger the life or physical safety of a law enforcement officer or any other person;
>
> (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

These sections stipulate that the Ministry may refuse to disclose a record where doing so **could reasonably be expected to** result in a specified type of harm. This harm must not be fanciful, imaginary or contrived but rather one which is based on reason, and the Ministry must offer sufficient evidence to support the position that disclosure could reasonably be expected to result in the harms contemplated by these sections.

Neither the Ministry nor any of the affected parties focus their representations on the direct impact of disclosing the record to the appellant. However, the Ministry submits that if the record is disclosed, it would be "in the public domain and therefore available to all of the individuals and groups who are involved in the pro life movement, including those who may elect to utilize acts of vandalism and property damage to promote their cause."

The Ministry and several affected parties provide examples of the activities of some of the extreme factions of the pro life movement which use violent and illegal methods to promote their cause. These activities include harassment, death threats, bombings, and life threatening attacks against providers of abortion services. The Ministry does not dispute that all of the clinics and at least some of the hospitals listed on the record are known to provide abortion services, but argues that disclosure of the number of abortions performed at these facilities could escalate the harassment and violence directed against them. The Ministry includes a number of examples it feels support this position.

The Ministry and a number of affected parties also point to specific acts which have occurred over the past several years, some quite recently, involving staff working in these facilities. The Ministry submits that the more information made available, the more likely specific individuals or facilities will be targeted for harassment and violence.

The Ministry and the affected parties point out that abortion clinics are frequently targeted for protest and harassment and that disclosure of the record would place smaller facilities, facilities that have a higher number of abortions, and facilities which appear on the list for the first time at the greatest risk.

Several affected parties also emphasize their concern that disclosing any information which would serve to identify a facility and any individuals involved in providing abortion services, may result in a decline in the number of health professionals prepared to work in this field of medicine.

The appellant submits that reliance by the Ministry on these exemptions is not reasonable. According to the appellant, abortion clinics advertise their services in telephone directories, and it is commonly and publicly known which hospitals perform abortion services. The appellant submits that the mere knowledge of the number of procedures performed does not increase any "risk" that may already exist. The appellant also points out that the organization she represents has never been "linked to any violent action in the abortion debate, and in fact has passed a binding resolution on its members that renounces the use of violence in furtherance of the goals of the organization." The appellant makes the point that up to the time of this most recent request it routinely received comparable information from the Ministry.

Sections 14(1)(e) and (i) were discussed in Orders 169, P-252, P-557 and P-1392, all of which involved requests for access to records concerning animal experiments taking place in registered research facilities. The records in these appeals were statistical reports identifying the numbers and species of animals used by various research facilities. In some instances similar records had previously been provided to the appellants, who argued that there could be no reasonable expectation that harm associated with continued disclosure.

In Order P-557, former Inquiry Officer Asfaw Seife addressed this argument in the context of section 14(1)(i) as follows:

> While I am not able to comment on the factual context of the appellant's claim, in my view, the fact that disclosure of similar records in the past did not materialize in the alleged harm is a relevant consideration but not determinative of the issue in section 14(1)(i).

I agree with this approach, and feel it is equally applicable to section 14(1)(e) and to the circumstances of the present appeal.

Having carefully considered all representations, I find that the Ministry and affected parties have provided sufficient evidence to establish that disclosure of the record could reasonably be expected to endanger the life or physical safety of individuals associated with the abortion facilities. My decision is not based on the identity of the appellant's organization or its activities, but rather on the principle that disclosure of the record must be viewed as disclosure to the public generally. If disclosed, the information in the records would be potentially available to all individuals and groups involved in the pro life movement, including those who may elect to use acts of harassment and violence to promote their cause. Although I acknowledge that similar information has previously been disclosed, I also accept the Ministry's position that the more abortion-related information that is made available, such as the numbers associated with each facility, the more likely specific individuals will be targeted for harassment and violence.

Therefore, I find that the record qualifies for exemption under section 14(1)(e) of the Act and should not be disclosed.

As noted earlier, two affected parties consented to disclosure of information relating to their facilities. Normally when an affected party consents, I would order the Ministry to disclose any relevant records. However, I feel this would not be appropriate in the circumstances of this appeal. Given my findings under section 14(1)(e), in my view, disclosure of information of only two of the 77 facilities would, if anything, increase the potential risk of harm to persons associated with these facilities.

Because of my finding under section 14(1)(e), it is not necessary for me to consider the application of sections 17, 20 and 21 of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: December 8, 1997
Tom Mitchinson
Assistant Commissioner