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

ORDER PO-2744

Appeal PA-050113-2

Ministry of Health and Long-Term Care

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BACKGROUND:

In 2005, the requester submitted a request to the Ministry of Health and Long-Term Care (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to "… statistical information on electroshock ("ECT") in Ontario for the years 2002-2004." The request also stated:

> Specifically, I am requesting complete electroshock statistics for all general hospitals, community psychiatric hospitals, private hospitals, and provincial psychiatric hospitals (PPHs) for these two years. I also request that this statistical information be analyzed and listed according to age, gender and hospital, and include total medical costs (e.g. anaesthetists' fee etc). In previous statistical information, the names of the PPHs were listed separately and named, but the names of the general and community psychiatric hospitals were not named. If possible, please include the names of ALL hospitals for which these statistics are available.

The Ministry issued a fee estimate and interim access decision based on computer programming costs and search time. The requester appealed the Ministry's fee to this office and the Ministry reduced its original estimated fee from $5,842.50 to $2,175.00 during mediation. The requester subsequently filed a fee waiver request which was also denied, and he appealed to this office. The fee and fee waiver appeal was addressed in Order PO-2513, in which I ordered the Ministry to provide the appellant with a final access decision and disallowed the estimated fee of $2,175.00. The final access decision the Ministry was ordered to provide to the requester is the subject of the present appeal.

NATURE OF THE APPEAL:

On December 8, 2006, the Ministry wrote to the requester and provided a Data Analysis Document which indicated that the records to be disclosed would be provided to the requester at no charge. The Ministry advised the requester that the production of records would be completed at the end of January 2007. On December 13, 2006, the requester wrote to the Ministry and sought clarification of three codes referenced in the Data Analysis Document. The requester also sought confirmation that electroshock data analyzed by hospital would be included in the records to be forwarded to him by the end of January 2007.

The Ministry responded to the requester's inquiries in a letter dated January 5, 2007. In this letter, the Ministry provided an explanation for the codes and indicated that "…some of the requested information will be severed from the records under the authority of section 21 (Personal Information) of the *Act*. Given the small number of individuals and the nature of the information, there is a reasonable expectation that individuals can be identified."

The requester (now the appellant) appealed the Ministry's decision that section 21 of the *Act* applies to some of the records to this office. The appellant's appeal letter also indicated that he believed that additional records responsive to his request should exist. The current appeal file was created and the file was assigned to a mediator.

At the end of mediation, the appellant confirmed that he continued to seek access to the withheld information and that he believed that additional records exist. The Ministry revised its position and advised the mediator that the withheld information constitutes personal health information as defined in section 4(1) of the *Personal Health Information Protection Act (PHIPA)* and as a result, section 8(1) of *PHIPA* excludes the information at issue from the *Act*. The Ministry also took the position that the appellant does not have a right of access to personal health information of other individuals under section 52(1) of *PHIPA*.

Further mediation was not possible and this appeal was transferred to the adjudication stage of the appeals process. This office sought representations from the Ministry, initially, as to whether the severed portions of the records are excluded from the *Act*. Accordingly, the Ministry was invited to respond to the following questions:

a) Do the severed portions of the records contain "personal health information" as defined in section 4(1) of *PHIPA* and, if so, to whom does it relate?

b) If the severed portions of the records contain "personal health information", do one of the exemptions at section 52(1)(e) of the *PHIPA* apply to the undisclosed information in the records?

c) If the severed portions of the records contain "personal health information" does the *Act* apply to the information at issue?

The Ministry was also invited to provide representations on the application of the mandatory exemption at section 21(1) of the *Act*, should the *Act* be found to apply to the information at issue. Finally, the Ministry was invited to provide representations on whether it conducted a reasonable search for records.

The Ministry provided representations in response to the above-referenced issues. In its representations, the Ministry indicated that it had reconsidered its decision, in part, and decided to disclose all of the information that was severed from the tables referring to ECT treatments that were performed at PPHs. The Ministry indicated further that it maintained its position that the remaining information pertaining to public hospitals was exempt from disclosure. Upon review of the Ministry's representations, the adjudicator previously assigned to this file decided to seek further representations from the Ministry explaining its decision to withhold data relating to public hospitals, taking into consideration its decision to release similar data relating to PPHs. The previous adjudicator also requested that the Ministry issue a revised decision letter to the appellant regarding its decision to release the data relating to ECT treatments performed at PPHs.

In response, the Ministry submitted supplementary representations to this office along with a copy of its revised decision letter dated December 20, 2007 addressed to the appellant. In this decision, the Ministry confirmed that it had already disclosed ECT data relating to PPHs, and offered to disclose information relating to ECT treatments performed at public hospitals on condition that the appellant enter into a data sharing agreement with the Ministry.

In a telephone conversation with an Adjudication Review Officer from this office, the appellant confirmed that he is not interested in pursuing access to the information at issue through a data sharing agreement. Accordingly, the previous adjudicator sought the appellant's representations, and attached copies of the Ministry's original and supplementary representations. The appellant submitted a copy of a letter he had previously sent to the Ministry and confirmed that it should be treated as his representations.

The file was subsequently transferred to me to complete the adjudication process.

RECORDS:

The records at issue total six pages and consist of computer generated information related to "Inpatient ECT Statistics on Discharges from Public Hospitals". The Ministry has severed portions of information from these records and has disclosed the rest to the appellant. Only the withheld portions are at issue in this appeal.

Records 1 and 2 (total of four pages):

Records 1 and 2 consist of two two-page charts (one for 2002/2003 and one for 2003/2004) entitled "Inpatient ECT Statistics on Discharges from Public Hospitals".

These two charts list statistics by institution name and number, and include columns of numbers identifying:

1) the total number of female discharges (patients) and number of ECT sessions for them,

2) the total number of male discharges (patients) and number of ECT sessions for them, and

3) the total number of discharges (male and female) and number of ECT sessions.

The cumulative total for all the institutions for these categories is also set out in the tables.

Records 3 and 4 (total of two pages):

Records 3 and 4 consist of two one-page records (one for 2002/2003 and one for 2003/2004) entitled "Ambulatory ECT Statistics on Visits from Public Hospitals".

These two charts list the number of visits made to each hospital, broken down by female visits, male visits and total visits. The cumulative total of the visits is also set out in these charts.

The disclosed record - Record 5 (one page)

Although the Ministry has disclosed all of the information that was severed from the tables referring to ECT treatments that were performed at PPHs, and this record is therefore no longer at issue, I have included a description of the record for the purposes of the discussions below.

Record 5 is one page which consists of two tables identifying PPH ECT statistics. One of the tables relates to 2002-2003, and the other relates to 2003-2004.

These two tables list the number of visits made to each hospital, broken down by gender as well as age group (ranging every 10 years). The statistics include the totals for each hospital, each age group and gender, and the cumulative totals.

DISCUSSION:

APPLICABILITY OF THE *PERSONAL HEALTH INFORMATION PROTECTION ACT, 2004 (PHIPA)*

As stated above, the Ministry originally raised the application of the mandatory exemption in section 21 to deny the appellant access to the withheld information. However, it revised its position during mediation, claiming that the withheld information constitutes personal health information as defined in section 4(1) of *PHIPA* and as a result section 8(1) of *PHIPA* excludes the information at issue from the *Act*. The Ministry also took the position that the appellant does not have a right of access to personal health information of other individuals under section 52(1) of *PHIPA*.

As a result of the Ministry's revised position, I must first determine whether the severed portions of Records 1 through 4 are excluded from the *Act*. In doing so, I must consider the following questions:

a) Do the severed portions of Records 1 through 4 contain "personal health information" as defined in section 4(1) of *PHIPA* and, if so, to whom does it relate?

b) If the severed portions of these records contain "personal health information", do one of the exemptions at section 52(1)(e) of the *PHIPA* apply to the undisclosed information in the records?

c) If the severed portions of Records 1 through 4 contain "personal health information" does the *Act* apply to the information at issue?

Do the severed portions of the records contain "personal health information" as defined in section 4(1) of *PHIPA* and, if so, to whom does it relate?

In order for *PHIPA* to apply, the records must fall into the definition of "personal health information" as defined under section 4(1), which reads, in part:

> "personal health information"…means identifying information about an individual in oral or recorded form, if the information,
>
> (a) relates to the physical or mental health of the individual, including information that consists of the health history of the individual's family…

Section 4(2) of *PHIPA* defines "identifying information" as:

> information that identifies an individual or for which it is reasonably foreseeable in the circumstances that it could be utilized, either alone or with other information, to identify an individual.

Therefore, the first question I must determine is whether the severed portions of the records contain personal health information which would identify an individual. In this regard, the Ministry states:

> …even though the severed information does not contain data elements that directly identify individuals, it is nonetheless reasonably foreseeable in the circumstances of this request that the severed information could be used, with other information, to identify individuals.
>
> The severed data fields relate to instances where few individuals in a particular gender group (or, in multiple instances, one individual) received ECT at a particular identified facility…Often, the facilities that provide low numbers of ECT treatments (i.e. those facilities for which information has been severed) are located in areas of low population density. In such circumstances, the Ministry respectfully submits that it is reasonably foreseeable that the severed information could be used with other information to identify individuals who have received ECT. In a small or lightly populated community where most residents know (or at least know about) the other residents of the community and observe the behaviour of their neighbours (including travel to and from health care facilities), the severed information could effectively be used to confirm that an individual from the community has been an ECT patient. Where there is speculation in such a community as to whether a particular individual is an ECT patient, the disclosure of the severed information could be used by others in the community to confirm this speculation (sometimes wrongly), by confirming that <u>someone</u> in the community has received ECT treatments.

Furthermore, if disclosed, the severed information could be combined with other aggregate information that could be obtained from other sources, and linked in a manner that allows for the identification of individuals. For example, the requester or any other person that gains access to this information, could also obtain from another source (for example, from the Canadian Institute for Health Information, or directly from facilities that provide ECT) aggregate data that organizes individual ECT recipients by area or postal code of residence and by treating facility. For areas where few residents received ECT, this data could be correlated with the information at issue in this appeal, to give a breakdown of individual ECT recipients by gender, area of residence, and treatment facility. The Ministry submits that together, this information would allow for reasonable inferences to be drawn as to whether particular individuals in particular communities received ECT.

Therefore, the Ministry respectfully submits that, absent a data sharing agreement that would control the manner in which the requester could link and further disclose the information at issue, it remains reasonably foreseeable that the information could be used, together with other information, to identify individuals. As noted above, the Ministry is willing to provide all of the information at issue to the requester under such a data sharing agreement, in the event that the IPC upholds the Ministry's severance of the information.

While the Ministry is not suggesting that the requester will necessarily use the severed information to identify the individuals that this information relates to, the effect of disclosure is that this information could be disclosed by the requester to others, used for any purpose and combined with other information that is available to the public. In MO-1472-F, another appeal dealing with potential indirect identification of individuals, the IPC stated that

> disclosure under the *Act* is effectively disclosure to the world (see M-96), and ...there is nothing in the Act which delineates what a requester can and cannot do with information once access has been granted under the *Act* (see: Order M-1154).

The Ministry respectfully submits that this consideration is relevant in the present appeal. If the information is disclosed to the requester without any mechanism for controlling the future use of the data (such as a data sharing agreement that prohibits further disclosure of the information in raw form, linkages with other data sources or other uses of the information that could lead to individual identification), the data could be combined with other data, or with common knowledge within particular communities, to identify individuals.

The Ministry notes that unlike the public hospitals data at issue in this appeal, the PPH data that the Ministry has decided to disclose to the appellant, "generally contains large numbers in each gender group."

In seeking supplementary representations, the adjudicator previously assigned to this file asked the Ministry to answer the following three questions:

1. Please explain what constitutes the "other information" referred to in your representations [and] whether this information is publicly available.

2. Please explain how this data [the provincial psychiatric hospital data], which ranges from 1 to 4 [individuals in each category], constitutes a "large number" in each gender group.

3. Please explain your decision to withhold the data relating to public hospitals, which ranges from 1 to 21[individuals] and how your decision to withhold this information is different from your decision to release data relating to PPHs, which ranges from 1 to 4 [individuals].

The Ministry responded to the first question as follows:

> The "other information" referred to in the Ministry's original representations includes both common knowledge within the communities that are serviced by the public hospitals listed in the record, and data that would be available from sources other than the Ministry.
>
> Specifically, if the information at issue in this appeal were to be published and made publicly available by the appellant or by another individual, it could be combined with information that is already known by friends, family members, co-workers and neighbours of individuals that receive ECT treatment to identify the frequency of treatments that an individual receives, or the hospital that they receive care at. For example, if an individual's neighbours already knew that the individual was receiving ECT treatment, and a report was published that indicated that one individual received four ECT treatments at the local hospital, the individual's neighbours could make reasonable assumptions as to the frequency of their neighbour's treatment and the provider of those treatments. This information would be "personal health information" as defined in the *Personal Health Information Protection Act*, 2004.
>
> Furthermore, the information at issue could also be combined with data that is, or could be made, publicly available by an entity other than the Ministry. There are several potential sources of other ECT data that the information at issue could be combined with. For example, the Canadian Institute for Health Information (CIHI**)** maintains extensive databases of health information relating to hospital discharges. CIHI provides custom data reports to researchers on a cost recovery basis.' Also, public hospitals themselves would have data relating to the ECT treatments performed within their facilities, and could be potential sources of data that could be combined with the information at issue in this appeal.

With respect to the second question, the Ministry stated:

> The numbers that you refer to in your letter, which range from 1-4, are based on gender and age groupings. The "large numbers" that the Ministry's representations referred to are the total numbers, based on gender groupings alone, which are found in the "Total" column on the far right of the PPH data table.

Finally, the Ministry elaborated on its decision to disclose psychiatric hospital data in this way:

> In some cases, the Ministry severed large numbers (such as the 21 ECT discharges for one gender group at a particular hospital which you refer to above) because the disclosure of this number, together with the disclosure of the total number of ECT discharges at that hospital, would effectively result in the disclosure of the relatively small number of discharges for the other gender group at that hospital (e.g. where there were 25 discharges for males and females together, disclosing the fact that there were 21 females discharged would effectively indicate that there were only 4 males discharged).
>
> In general, the key difference between the PPHs data and the public hospitals data is that PPHs serve much larger populations and geographic areas than community-based public hospitals. For example, the Whitby Mental Health Centre (a facility that is included in the table of PPHs) provides mental health services to an estimated population of 2.8 million people, within a geographical range that extends from the eastern part of the City of Toronto to the York Durham Regions and the City of Kawartha Lakes. Accordingly, the Ministry respectfully submits that the provincial psychiatric hospital data does not present the same risk of residual identification, since it would be far more difficult to connect this data to identifiable individuals within the large population that these hospitals serve.

Having carefully considered the Ministry's submissions on this issue, I am not persuaded that disclosure of the aggregate data in the records at issue would reveal personal health information. In the *Guide to the Ontario Personal Health Information Protection Act*, Perun, et. al. (Toronto: Irwin law Inc., 2005) (*PHIPA* Guide), the authors examine an approach to determining whether information constitutes personal health information, and in particular, in determining whether the information is "identifying information" and whether it is "reasonably foreseeable in the circumstances" that the information could be used to identify an individual. The *PHIPA* Guide states, in part, at pages 76-79 (footnotes omitted):

> …The issue of whether particular information constitutes identifying information is not always black and white. "Data identifiability can be characterized as a continuum or sliding scale, in which the divisions between degrees of 'identifiability' and 'anonymity' are not always clear cut."

…it is probable that it is reasonably foreseeable in the circumstances that information can be used to identify an individual when the recipient of the information is known to have access to other information that, when combined with the information that it received, would identify the individual to whom the information relates…As a result, it is necessary to consider the resources of the recipient of the information.

…The collection of certain data elements may increase the likelihood of a patient being identified. These data elements include the following:

- geographic location (e.g., location of residence, location of health event, especially where the location is not heavily populated);
- names of health care facilities and providers;
- rare characteristics of the patient (e.g. unusual health condition); or
- highly visible characteristics of the patient (e.g., ethnicity in certain locales).

In the context of (the *Act*), the Office of the Information and Privacy Commissioner has supported a conclusion that the "identifiable" threshold may be met where the information to be disclosed would lead one to identify a group of fewer than five individuals to whom the information may relate…[and] has also had the opportunity to consider the impact of one data element, the postal code, on the identifiability of an individual…

…

A variety of terms are used in the health care sector to describe the form in which health information is presented. "Aggregate health information," "anonymized health information," and "summary health information" are a few examples of such terms. However, these terms do not make it clear whether information is "personal health information." Health information can be compiled in aggregate form and yet still be identifying information. Similarly, information may remain identifying information even if the name of the patient to whom the health information relates is disassociated from the health information. Only when health information is stripped of its identifying potential to the extent that it is no longer "identifying information" is it therefore no longer personal health information.

> …*PHIPA* defines the term "de-identify", in relation to personal health information of an individual, to mean the removal of any information that identifies the individual or that it is reasonably foreseeable in the circumstances could be utilized, either alone or with other information, to identify the individual.

The information at issue is clearly aggregate data that has been stripped of any personal identifiers. The information in the records reveals the names of the institutions, primarily hospitals, the gender and number of ECT sessions received for discharges from each institution for a one-year period. The Ministry suggests that this information, combined with other information relating to ECT aggregate data, could provide sufficient information to identify an individual, but does not indicate the method by which this other information would be disclosed or the likelihood that the appellant or anyone else who might review the information in the records would have access to it. As the *PHIPA* Guide notes, the disclosure of postal codes, has been considered in previous decisions of this office. It has been recognized that each decision must be based on its own unique facts, but the disclosure of such information would be carefully scrutinized before a decision to disclose could be made. This office has reached different conclusions regarding the issue of postal codes, for example, based on the unique facts of each case (see, for example, Orders PO-2518 and PO-2726). Accordingly, I am not persuaded that the information in the records at issue could be combined with other ECT aggregate data in such a way as to provide sufficient information to identify an individual.

The Ministry also refers to local gossip, rumour and speculation within a community regarding whether a particular individual in that community might be receiving ECT treatments and suggests that disclosure of the information at issue could confirm this speculation. In my view, the Ministry is now moving into the realm of speculation and remote possibilities, which do not support its contention that disclosure of personal health information is reasonably foreseeable in the circumstances.

The Ministry is also concerned that in the event that someone already knows that an individual in a given community was receiving ECT treatment, the disclosure of the records would reveal how many treatments this individual received. I am similarly not persuaded that the disclosure of personal health information is reasonably foreseeable in these circumstances. In these instances, other people would already have to know (and not merely speculate) that an individual was receiving ECT treatments during a certain period of time, and at the identified hospital. In my view, the possibility of disclosure revealing personal health information in the circumstances is too remote.

Additionally, I have considered the Ministry's rationale for disclosing the aggregate data for PPHs in Record 5. The Ministry suggests that the catchment area for PPHs is considerably greater than that for those institutions identified in the other records. In contrast, the Ministry indicates that, "often, the facilities that provide low numbers of ECT treatments (i.e. those facilities for which information has been severed) are located in areas of low population density." Looking at random centres and their catchment areas identified in the records for which severances have been made, I do not agree with the Ministry that these areas have such a

low population density as to render the information in the records identifiable. Although serving far fewer people than large urban centres, the catchment areas are large and generally comprise numerous municipalities.

For example, the websites for three of the identified institutions provide the following information regarding their catchment areas and estimated number of patient consults:

- Alexandra Marine and General Hospital serves a local community of 7500 people, and has a catchment area of 25,000 people throughout Huron County;

- The Grey-Bruce-Owen Sound Hospital is the regional referral centre for two counties and estimates that it serves over 4,500 patients a year;

- The Thunder Bay Regional Health Sciences Centre serves Thunder Bay and Northwestern Ontario. In 2007, the hospital had over 4,600 consults and serves 24 first nation communities and 20 other Northwest Ontario sites.

Moreover, I find that the Ministry's decision to disclose similar information in Record 5 is inconsistent with its argument for withholding the information in the other records. In my view, the premise for withholding 'small cell counts" should be the same for all of the records, especially those of the PPHs, as those records contain more detail that could possibly be used to identify a patient. In this regard, I note that the information about ECT use in Record 5 is broken down by gender and age group. Whether 25,000 or 2.8 million people are served by a particular centre, applying the Ministry's reasoning, if one person knows that another went to the centre for ECT treatment, disclosure of the record would reveal the number of shocks that person received in situations where only one of a particular age group/gender received it.

In the circumstances of this appeal, I am not persuaded that it is reasonably foreseeable that disclosure of the records at issue would reveal the identity of any individual or that it would disclose personal health information. Accordingly, I find that *PHIPA* does not apply to the information contained in Records 1 through 4, and I will consider whether the *Act* applies to them.

PERSONAL INFORMATION

General principles

In order to determine whether disclosure of the information at issue in the records would constitute an unjustified invasion of personal privacy under section 21(1) of the *Act*, it is necessary to decide whether the records contains "personal information" and, if so, to whom it relates. That term, as defined in section 2(1), means recorded information about an identifiable individual, and includes a list of the types of information that would qualify as "personal information" in paragraphs (a) to (h). However, that list is not exhaustive. Therefore,

information that does not fall under paragraphs (a) to (h) of the definition of personal information in section 2(1) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

Moreover, to qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The Ministry states:

> For the reasons set out above under section A (Personal Health information), the Ministry respectfully submits that the information could be used to identify the individuals that information relates to (i.e. the individual recipients of ECT) if the information were disclosed. Accordingly, the Ministry submits that the information is "personal information" as defined in FIPPA.

Based on my analysis of the issue discussed above, and for the same reasons, I find that the information at issue in Records 1 through 4 does not qualify as personal information, as its disclosure could not be used to identify the individuals to whom it relates. The information is contained as aggregate data and even though it represents small numbers, that is, a "small cell count", in the circumstances, the possibility of identifiability is too remote given the small amount of information in the records and the size of the catchment areas for the institutions identified in the records.

Accordingly, the mandatory exemption at section 21(1) cannot apply to this information. As a result of this finding, the Ministry will be required to disclose the records to the appellant in their entirety.

SEARCH FOR RESPONSIVE RECORDS

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624]. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request (see Order M-909).

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

In his letter of appeal, the appellant noted that the Ministry provided statistics for only three PPHs and identified four other psychiatric facilities or mental health centres that administer electroshock. The appellant questions why these other facilities were not included in the records.

With respect to other records the appellant received in response to his request, some of which were not at issue in this appeal, the appellant indicated that they do not contain the information that he specifically requested, such as, "names of all hospitals". He states:

> Re ECT statistics for the other hospitals, no names or types of hospitals were indicated, despite the fact I specifically requested 'names of all hospitals' in my original letter…I am unable to determine to which hospitals the statistics apply. Further, it is unclear which of the 6 pages of statistics with headings "Total Physicians", "Anesthetists" and "GPs& Specialists" are most accurate and relevant in calculating ECT use in general and other hospitals.

In its representations on this issue, the Ministry states:

> The Notice of Inquiry for this appeal reproduces a portion of a letter from the requester that summarizes the requester's position that more responsive records should exist within the Ministry. The requester's letter specifically refers to four facilities, which the requester characterizes as "provincial psychiatric facilities or mental health centres", for which the Ministry did not provide data.
>
> At the time that the request was received, three of these facilities had been divested from the Ministry, meaning that the Ministry was no longer responsible for operating these facilities. Instead, these facilities are now (and were, at the time of the request) operated by corporations that are independent of the Ministry. (As of October 2007, the only psychiatric facility that is still operated by the Ministry is the Mental Health Centre -Penetanguishene.) Accordingly, data relating to these facilities was not included in the table that contains provincial psychiatric facility data, which was provided to the requester (and which contains data that was obtained directly from the facilities that the Ministry still operated at the time of the request) (Note that Homewood Health Centre was not previously operated by the Ministry.)

> However, data relating to ECT procedures performed at the four facilities noted in the requester's letter was included in the table that contained data relating to other public hospitals. The Ministry respectfully submits that confusion about the status of these facilities is responsible for the perceived inadequacy of the data that the requester identified in its letter.
>
> The Ministry has, however, provided affidavits from the individuals that carried out the Knowledge Management Branch's search for responsive records from public hospitals, in order to explain the Ministry's search methodology.
>
> The Ministry is not aware of any other specific issue that the requester has raised in regard to the adequacy of the Ministry's search for responsive records, other than the perceived lack of data for former provincial psychiatric hospitals. In the event that the other issues regarding the adequacy of the Ministry's search are relevant in this appeal, the Ministry respectfully requests the opportunity to specifically address those issues through reply representations.

The affidavits provided by the Ministry, prepared by the Co-ordinator and a Retrieval Analyst, Retrieval and Registry Services of the Health Data and Decision Support Unit, describe the steps each of them took to locate responsive records.

The appellant did not address this issue in his representations.

Based on the Ministry's representations, I am satisfied that all responsive records relating to PPHs have been located. With one exception, I am also satisfied that the Ministry has conducted a reasonable search for records responsive to the request. On reviewing the appellant's request, it is very clear that he was seeking records that would relate the information about ECTs to particular hospitals. The records at issue and discussed above have been disclosed to the appellant, in part, and the disclosed portions clearly indicate the hospitals to which the statistics relate. Accordingly, I am satisfied that the Ministry has fully responded to this portion of his request.

However, regarding the records that were disclosed to the appellant in full, the Ministry's representations and the affidavits submitted to support them do not address the issue of why the records do not identify to which hospital the statistics apply. Looking at these records, it is apparent that the statistics refer to global numbers regarding "Physicians", "Anesthetists" and "GPs& Specialists", rather than as related to particular hospitals. It appears, therefore, that these records are not fully responsive to the appellant's request, and the Ministry has provided no explanation for the omission of hospital information from them.

As noted in Order PO-2513, the information requested by the appellant was to be "accessed and manipulated through the Ministry's OHIP databases in electronic form." In the circumstances, I will order the Ministry to provide the appellant with a decision letter in response to this request as it relates to particular hospitals. It appears likely that the Ministry will be able to retrieve the

requested information from its database and provide it to the appellant. In the event that the Ministry is unable to do so, its decision letter must provide the appellant with an explanation.

ORDER:

1. I order the Ministry to disclose Records 1 through 4, in their entirety, by providing the appellant with a copy of them by **January 8, 2009**.

2. I order the Ministry to determine whether it is able to retrieve information from its OHIP database that links the information contained in the records disclosed to the appellant on January 28, 2007 relating to services and payments for ECT as it pertains to Physicians", "Anesthetists" and "GPs& Specialists" with the hospitals to which they are connected.

3. In the event that records are identified, I order the Ministry to make an access decision concerning these records.

4. In the event that the Ministry is unable to produce the requested information, I order the Ministry to provide the appellant with a decision that explains its inability to produce the requested information.

5. In retrieving the responsive information pursuant to Provision 2, I order the Ministry to treat the date of this order as the date of the request, and to comply with all relevant provisions of the *Act*.

6. The search for the remaining records was reasonable and that portion of the appeal is dismissed.

7. In order to verify compliance with Order Provision 1, I reserve the right to require the Ministry to provide me with evidence that a copy of the records has been disclosed to the appellant.

Original signed by: December 16, 2008
Laurel Cropley
Adjudicator