Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-4591

Appeal PA22-00061

Ministry of Health

January 16, 2025

Summary: The appellant asked the Ministry of Health for records of a potential billing concern identified by the Ontario Health Insurance Plan. The ministry denied the appellant access to the responsive records. To do so, the ministry relied on the discretionary exemption to refuse the requester's own personal information in section 49(a), read with the law enforcement exemption in section 14(1) of the *Act.*

In this order, the adjudicator finds that the exemption in section 49(a), read with 14(1)(c), applies to the information at issue. She upholds the ministry's decision and dismisses the appeal.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F 31, as amended, sections 2(1), 14(1)(c) and 49(a).

Orders Considered: Order PO-4471.

OVERVIEW:

[1] This appeal considers the decision of the Ministry of Health (the ministry) to deny access to records relating to an investigation of a physician's Ontario Health Insurance Plan (OHIP) billing.

[2] The ministry received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) seeking access to all documents for a specific 13-month period relating to a potential billing concern identified by OHIP. The access request specified the

name of the physician and was filed on his behalf by his lawyer. It also asked for the date and number of audit verification letters OHIP sent to the physician's patients, and the date and number of replies OHIP received from the patients.

[3] In response to the request, the ministry identified 11 responsive records. It then issued a decision to the appellant denying him access to the records. To deny access, the ministry relied on the discretionary law enforcement exemption in section 14(1)(c) (investigative techniques and procedures) of the *Act*.[1]

[4] The appellant was not satisfied with the ministry's decision and appealed it to the Information and Privacy Commissioner of Ontario (IPC). The IPC attempted to mediate the appeal. During mediation, the ministry advised that there was an ongoing investigation of the physician's OHIP billing and no timeline for its completion. A mediated resolution was not achieved and the appeal moved to adjudication, where an adjudicator may conduct an inquiry.

[5] An IPC adjudicator conducted an inquiry of the issues, including the application of section 49(a) (discretion to refuse requester's own personal information) to the records. The ministry provided representations, which are described below. The appellant did not provide written representations during the inquiry. He submitted five documents with no accompanying explanation of their relevance to the issues. The appeal was then transferred to me to complete the inquiry.

[6] In this order, I find that the discretionary exemption in section 49(a), allowing the ministry to refuse the appellant access to his personal information, read with the law enforcement exemption in section 14(1)(c), applies to the information at issue. I uphold the ministry's decision to withhold the records, and I dismiss the appeal.

RECORDS:

[7] There are 11 records at issue. Seven of the records are Excel spreadsheets, each with multiple tabs of data. The four remaining records are 14 pages of internal ministry meeting notes, next steps and summary documents.

ISSUES:

A. Do the records contain the "personal information" of the appellant?

[1] The ministry also relied on section 14(1)(b) (law enforcement investigation). I do not consider that exemption claim in this order due to my finding that the exemption in section 49(a), read with section 14(1)(c), applies to the records at issue.

B. Does the discretionary exemption at section 49(a), read with the law enforcement exemption at section 14(1)(c), apply to the information at issue?

DISCUSSION:

Issue A: Do the records contain the "personal information" of the appellant?

[8] Section 2(1) of the Act defines "personal information" as "recorded information about an identifiable individual." Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional or business capacity is not considered to be "about" the individual.[2] However, information relating to an individual in a professional or business capacity may still be "personal information" if it reveals something of a personal nature about the individual.[3]

[9] The ministry submits that the records contain the personal information of the appellant because they reveal something personal about him: that he is believed to have submitted unauthorized claims for payment to OHIP and is being investigated for potential fraud. It states that, although the appellant's name appears in records relating to his claims for payment to OHIP submitted in his professional capacity, the information reveals the appellant's conduct, relating to the submitting of claims for unauthorized payments, which is personal.

[10] The appellant does not provide representations on this issue. As noted above, he submits five documents without explaining their relevance to the issues in the appeal. Four of the five documents relate to other proceedings between the appellant and the ministry, while the fifth is a about medical audit practice in Ontario.

[11] I agree with the ministry that the records all contain personal information of the appellant. All the records identify the appellant by name, and they reveal that he is being investigated by the ministry for his billing practices. Although the records relate to the appellant in his professional capacity and the investigation is focussed on his professional OHIP billing information, the fact that he is being investigated by the ministry is personal information about him. I find that the records contain personal information of the appellant within the meaning of paragraph (h) of the definition of personal information in section 2(1) of the *Act*. As a result, I will consider the appellant's right of access to the information at issue under section 49(a) of the *Act*.

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[2] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225. See also sections 2(3) and 2(4).
[3] Orders P-1409, R-980015, PO-2225 and MO-2344.

Issue B: Does the discretionary exemption at section 49(a), read with the law enforcement exemption at section 14(1)(c), apply to the information at issue?

[12] The ministry claims that section 49(a), read with section 14(1)(c), applies to the information at issue, while the appellant provides no representations on this issue. Section 49(a) provides some exemptions from the general right of access that individuals have under section 47(1) of the *Act* to their own personal information held by an institution.

[13] Section 49(a) reads, in part:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > (a) where section . . . 14 . . . would apply to the disclosure of that personal information[.]

[14] The discretionary nature of section 49(a) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.[4] If an institution refuses to give an individual access to their own personal information under section 49(a), the institution must show that it considered whether a record should be released to the requester because the record contains their personal information.

[15] Section 14 contains several exemptions from a requester's right of access, mostly related to the context of law enforcement. Section 14(1)(c), relied on by the ministry, reads:

> A head may refuse to disclose a record if the disclosure could reasonably be expected to,
>
> > (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement[.]

[16] The term "law enforcement" is defined in section 2(1):

> "law enforcement" means,
>
> > (a) policing,
> >
> > (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
> >
> > (c) the conduct of proceedings referred to in clause (b).

[4] Order M-352.

[17] For section 14(1)(c) to apply, the ministry must show that disclosing the investigative technique or procedure to the public could reasonably be expected to interfere with its effective use. The exemption normally will not apply where the technique or procedure is generally known to the public.[5]

The ministry's post-payment review process qualifies as "law enforcement"

[18] The ministry explains the health insurance coverage for Ontario residents provided through OHIP, pursuant to the *Health Insurance Act* (HIA). It states that physicians verify patient eligibility for health care services using a patient's OHIP health card and submit corresponding claims for insured services to the ministry for payment. This submission uses fee codes set out in the HIA and its regulations to identify insured services.

[19] The ministry further explains that claims submitted by physicians providing health services in Ontario are paid by the ministry using an honour system and computerized checks from machine generated controls. The HIA authorizes the ministry's Provider Audit Unit to conduct post-payment reviews, of physician's claims payments, as a way of providing accountability for the use of OHIP funds. The ministry reviews unauthori zed billing and payment concerns, reported externally or identified internally, on a post-payment review basis to determine if payment of the physician's claims is in accordance with the HIA.

[20] The ministry lists the possible actions that can result from its post-payment reviews, including: the recovery of funds through a negotiated settlement with a physician; a referral to the Health Services Appeal and Review Board (HSARB) for an order to recover funds from a physician; and a referral to the ministry's Payment Accountability and Fraud Control Unit, if there are concerns that a physician is intentionally not submitting claims in accordance with the HIA, which can lead to a referral to the Ontario Provincial Police (OPP).

[21] The ministry's position is that its post-payment review process constitutes "law enforcement" within the meaning of the definition of that term in section 2(1) of the *Act*. In particular, the ministry submits that the post-payment review process is an investigation or inspection that leads or could lead to proceedings in a court or tribunal where a penalty or sanction could be imposed. The ministry states that a referral to HSARB is a hearing process that can result in an order for billing suspension or an order requiring a physician to cease submitting OHIP claims. The ministry adds that its post-payment review process can also result in referrals to the OPP for proceedings under the *Provincial Offences Act* (for contravention of the HIA) or under the *Criminal Code* (for fraud and other related offences).

[22] The ministry's representations in this appeal are almost identical to its representations in Appeal PA21-00101, which involved the same parties and OHIP

[5] Orders P-170, MO-2347-I and PO-2751.

investigation, but different records (for an earlier period in the investigation process). Appeal PA22-00101 was resolved by Order PO-4471, in which the IPC accepted the ministry's submission that the post-payment review process constitutes "law enforcement" as defined in section 2(1) of the *Act*. I also accept this submission. I am satisfied that ministry's post-payment review, authorized by the HIA to provide accountability for the use of OHIP funds, is an investigative process that can ultimately lead to proceedings in a court or tribunal where sanctions or penalties are imposed.

Disclosure of the records could reasonably be expected to reveal investigative techniques and procedures currently in use or likely to be used in law enforcement

[23] The ministry submits that the information at issue, if disclosed, would reasonably be expected to reveal investigative techniques and procedures currently in use or likely to be used in law enforcement. It states that it uses these investigative techniques and procedures when assessing potentially unauthorized billings to OHIP.

[24] The ministry asserts that the investigative procedures and techniques revealed or described in the records are not publicly known. It adds that, to protect the integrity of the audit process, it does not and has never published this specific information. It submits that it relies on these internal investigative processes and methodologies to detect and prevent the payment of improper claims to OHIP; if these investigative techniques and procedures are disclosed, their effective use, in this audit and in all future audits, would be compromised, significantly undermining the integrity of the ministry's audit process.

[25] The ministry notes that releasing the records to the appellant is deemed to be disclosure to the world; such disclosure could increase the risk that the investigative techniques in the records would be used by physicians to avoid detection of fraudulent billing practices. Specifically, the ministry argues that physicians could use the information in the records to identify the specific methodologies the ministry uses to detect fraudulent billing practices (such as billing combinations or service volume levels that attract scrutiny from the ministry) and could alter their practices to thwart the ministry's investigations.

[26] The ministry's representations establish that disclosure of the information at issue could reasonably be expected to reveal investigative techniques and procedures in use in law enforcement. Specifically, I am satisfied that disclosure of the information at issue could reasonably be expected to reveal the methodologies used by the ministry to assess indicators of inappropriate billing practices – methodologies that are not generally known to the public.

[27] I accept the ministry's submission that disclosing its methodologies could reasonably be expected to cause harm to the effectiveness of its post-payment review process and the proceedings to which the post-payment review can ultimately lead. I also accept that the information at issue could be used to identify how the ministry assesses inappropriate billing, and this would allow physicians to avoid detection of inappropriate

billing. I accept that this could reasonably be expected to thwart the ministry's ability to identify instances of misuse of the OHIP payment system; this is the type of harm to law enforcement that is contemplated by section 14(1)(c). Accordingly, I find that the information at issue is exempt from disclosure under section 49(a), read with 14(1)(c).

[28] Further, I am satisfied that the ministry exercised its discretion under section 49(a) properly taking into account relevant considerations. It considered the nature of the information in the withheld records, the wording of the law enforcement exemption and the interests it seeks to protect, and its historic practice not to disclose information of its ongoing investigations. The appellant makes no representations on this issue, and there is no suggestion that the ministry exercised its discretion improperly. For the foregoing reasons, I uphold the ministry's exercise of discretion under section 49(a) of the *Act.*

ORDER:

I uphold the ministry's decision to withhold the records, and I dismiss the appeal.

Original Signed by: January 16, 2025
Stella Ball
Adjudicator