

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4672

Appeal PA22-00150

William Osler Health System

June 30, 2025

Summary: An individual asked the hospital for certain reports under the *Freedom of Information and Protection of Privacy Act* related to his family member's death at the hospital. The hospital provided all but one of the reports to the individual. It withheld one report in full on the basis that it constituted information that was provided to a hospital committee to assess the quality of health care for the purpose of improving it and thus exempt from disclosure under section 18(1)(j) of the *Act*.

In this order, the adjudicator finds the withheld report is exempt, and she upholds the hospital's decision to withhold the report under section 18(1)(j). She also finds that there is no compelling public interest in disclosure of the report, and she dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 18(1)(j), and 23.

Orders Considered: Orders P-532, P-568, PO-2626, PO-2472, and PO-2614.

OVERVIEW:

[1] This order considers the application of the discretionary exemption at section 18(1)(j) (evaluation of quality of health care by a hospital committee) of the *Freedom of Information and Protection of Privacy Act* (the *Act*) to an incident report.

[2] The appellant submitted a request to William Osler Health System (the hospital)

under the *Act* for access to records related to his brother's death at the hospital.¹ He sought access to all critical incident reports for the date of his brother's death, and all security reports, including all of his brother's interactions with security staff at the hospital over a two-month period.

[3] The hospital located the responsive records and issued an access decision granting the appellant full access to the security reports. The hospital withheld an incident report under section 18(1)(j) of the *Act*.

[4] After receiving access to the five security reports from the hospital, the appellant sent the hospital a letter challenging its access decision. In his letter, the appellant sought access to certain photographs mentioned in the security reports he had received. He also argued that the hospital was improperly relying on section 18(1)(j) to withhold the incident report. He asserted that there was a compelling public interest in the disclosure of the withheld incident report and that the public interest provision at section 23 of the *Act* should apply and override the hospital's claim of section 18(1)(j). In response, the hospital issued a supplemental decision disclosing to the appellant the requested photographs. The hospital maintained its position to withhold the incident report.

[5] The appellant disagreed with the hospital's decision and appealed it to the Information and Privacy Commissioner of Ontario (the IPC).

[6] The IPC attempted to mediate the appeal. During mediation, the appellant confirmed his position that disclosure of the incident report was in the public interest. As a result, the public interest override provision at section 23 of the *Act* was added as an issue to the appeal.

[7] As the parties did not reach a mediated resolution, the appeal was transferred to the adjudication stage of the appeal process. An IPC adjudicator decided to conduct an inquiry under the *Act*. The adjudicator sought representations from the parties on the issues set out below. The hospital provided representations, and the non-confidential parts of its representations were shared with the appellant. The appellant did not provide representations on the issues below or in response to the hospital's representations. The appeal was then transferred to me to continue the inquiry.

[8] For the reasons that follow, I uphold the hospital's decision to withhold the incident report under section 18(1)(j) and find that there is no compelling public interest in the disclosure of the report. I dismiss the appeal.

¹ The William Osler Health System operates two hospitals and three health centres. The appellant's request named the specific hospital facilities where his brother received care and the corresponding dates. In this order, I refer to these facilities as "the hospital" to protect the privacy of the appellant and his deceased brother.

RECORD:

[9] The incident report that remains at issue is four pages long.

ISSUES:

- A. Does the discretionary exemption at section 18(1)(j) (evaluation of quality of health care by a hospital committee) apply to the incident report?
- B. Is there a compelling public interest in disclosure of the incident report that clearly outweighs the purpose of the section 18(1)(j) exemption?

DISCUSSION:

Issue A: Does the discretionary exemption at section 18(1)(j) (evaluation of quality of health care by a hospital committee) apply to the incident report?

[10] The discretionary exemption at section 18(1)(j) permits an institution to withhold quality of health care information meant for assessment by a hospital committee. Section 18(1)(j) states:

A head may refuse to disclose a record that contains,

(j) information provided in confidence to, or records prepared with the expectation of confidentiality by, a hospital committee to assess or evaluate the quality of health care and directly related programs and services provided by a hospital, if the assessment or evaluation is for the purpose of improving that care and the programs and services.

[11] Thus, section 18(1)(j) sets out three requirements for its application. These requirements are represented in the following three questions, all of which must be answered in the affirmative for section 18(1)(j) to apply:

1. Does the record contain information that was provided in confidence to a hospital committee, or was the record prepared by a hospital committee with the expectation of confidentiality?
2. Was the record provided to or prepared by the hospital committee to enable it to assess or evaluate the quality of health care and directly related programs and services provided by the hospital?
3. Was the hospital committee's assessment or evaluation for the purpose of improving that care and the programs and services.

[12] Since the hospital relies on section 18(1)(j) to withhold the incident report, it bears the burden of establishing that the exemption applies to the report.

The hospital's representations

[13] The hospital submits that the incident report is exempt from disclosure under section 18(1)(j) because it satisfies all three of the section 18(1)(j) requirements. It states that the incident report was provided in confidence to a hospital committee to enable the committee to assess or evaluate the quality of health care provided by the hospital, and that the assessment or evaluation was for the purpose of care improvement. The hospital's representations include confidential portions that describe the information in the withheld incident report and how it qualifies for exemption under section 18(1)(j).

[14] The hospital provides an affidavit sworn by its Vice President for Quality, Research and Chief Nursing Executive to support its representations. The affidavit describes the process for quality of care reviews at the hospital. It explains that a corporate quality of care review is initiated in certain circumstances. As part of a corporate quality of care review, a group of health care professionals is convened to conduct the review. The affidavit confirms that this process was followed with respect to the incident relevant to this appeal. The affidavit states that once it was determined that the incident would be subject to a corporate quality of care review, a group of health care professionals was convened to conduct the review. The incident report was shared with the group in confidence for the purpose of its review and with the understanding that it would not be disclosed to others. The affidavit confirms that the group kept the incident report confidential and conducted the review with the expectation of confidentiality. The affidavit further says that the group conducted the quality of care review to identify areas for quality improvement at the hospital.

[15] The hospital submits that the affidavit establishes that all the requirements of section 18(1)(j) are met: the incident report was provided to a group of health care professionals convened to conduct a quality of care review in confidence and the group kept the report confidential; the report was provided to the group solely to enable it to assess or evaluate the quality of health care provided by the hospital; and the purpose of the quality of care review was to improve patient care at the hospital. The hospital also relies on a report that was created as a result of the quality of care review to support its submission. It says that the resulting report articulates in some detail various quality of care recommendations made by the group of health care professionals that conducted the quality of care review. The hospital also relies on its affidavit, which states that the purpose of the quality of care review was "to identify any areas for quality improvement."

[16] The hospital adds that the report that resulted from the quality of care review was disclosed to the appellant outside of the access scheme of the *Act*. The hospital explains that it chose to interpret section 18(1)(j) narrowly and applied it only to the incident report that was provided to the group of health professionals that conducted the quality of care review. The hospital says it did not apply the exemption at section 18(1)(j) to the

report that was created as a result of the review.

[17] The appellant does not provide representations on this issue.

Analysis and findings

[18] Having reviewed the hospital's complete representations, including its confidential representations, and the incident report at issue, I am satisfied that the hospital has established all three requirements of the section 18(1)(j) exemption.

[19] First, I find that the incident report was provided to the type of hospital committee contemplated by section 18(1)(j) in confidence in satisfaction of the first requirement. The hospital's representations, its affidavit evidence, the incident report and the resulting report of the committee all support my finding. Second, I accept the hospital's affidavit evidence that the report was shared with the group of health care professionals convened to conduct the quality of care review to enable the group to assess or evaluate the quality of health care the hospital provided. I find that the second requirement is met. Finally, I accept the hospital's affidavit evidence that the purpose of the review that the group of health care professionals conducted was to improve the care the hospital provides. In addition to the affidavit evidence that confirms that "[t]he purpose of the review was to identify any areas for quality improvement," the contents of the report also confirm that the group's assessment was for the purpose of improving hospital care and services. I find that the third requirement is also met. There is no evidence or suggestion that the requirements of section 18(1)(j) are not met in this appeal.

[20] I find that the incident report qualifies for exemption under section 18(1)(j), subject to my review of the hospital's exercise of discretion, below.

Exercise of discretion

[21] The section 18(1)(j) exemption is discretionary, which means that the hospital can decide to disclose the incident report even if it qualifies for exemption. The hospital must exercise its discretion. On appeal, the IPC may determine whether the hospital failed to do so. The IPC may find that the hospital erred in exercising its discretion where: it does so in bad faith or for an improper purpose; it takes into account irrelevant considerations; or it fails to take into account relevant considerations.

[22] The hospital submits that, in exercising its discretion to withhold the incident report under section 18(1)(j), it considered relevant factors and concluded that the factors weighing against disclosure outweighed those weighing in favour of disclosure. The hospital says it considered the principles of the *Act* that government-held information should be available to the public and exemptions from the right of access must be limited and specific, and the reason the appellant seeks access to the report, which all weigh in favour of disclosure. On the other hand, the hospital says that it considered factors weighing against disclosure, including the purpose of the exemption at section 18(1)(j), the public and policy interest in quality improvement in health care, and its historic

practice not to disclose information exempt under section 18(1)(j). The hospital adds that it granted the appellant access to a significant amount of information and responsive records, and it shared the resulting report with the appellant outside the access scheme of the *Act*.

[23] The appellant makes no representations on this issue.

[24] I find that the hospital properly exercised its discretion. The factors that the hospital took into account are all relevant considerations. The hospital weighed these considerations and reached a conclusion not to disclose the incident report. There is no evidence before me that the hospital took into account irrelevant considerations, failed to take into account relevant considerations, or exercised its discretion in bad faith or for an improper purpose. I uphold the hospital's exercise of discretion in deciding to withhold the incident report under section 18(1)(j) of the *Act*, and I find that section 18(1)(j) applies.

Issue B: Is there a compelling public interest in disclosure of the incident report that clearly outweighs the purpose of the section 18(1)(j) exemption?

[25] Section 23 of the *Act*, the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[26] For section 23 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the record; and
- this interest must clearly outweigh the purpose of the exemption.

[27] In considering whether there is a public interest in disclosure of a record, the first question the IPC asks is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.² Previous IPC orders have held that to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the public about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.³ Previous IPC orders have also confirmed that a public interest does not exist where the interests being advanced are essentially private in nature.⁴ However, if a private interest raises issues of more general application, a public interest in disclosure

² Orders P-984 and PO-2607.

³ Orders P-984 and PO-2556.

⁴ Orders P-12, P-347 and P-1439.

may be found to apply.⁵

There is no compelling public interest in disclosure of the incident report

[28] The hospital submits that there is no compelling public interest in the disclosure of the incident report that would override the protection afforded by the exemption at section 18(1)(j). It argues that while there is a general public interest in transparency, in the circumstances of this case, the general public interest does not rise to the level of “compelling,” and it does not outweigh the purpose of section 18(1)(j) exemption. The hospital argues that by enacting section 18(1)(j), the Legislature intended to safeguard a hospital’s ability to implement meaningful quality of care processes to maintain and enhance its quality of patient care. The hospital submits that, given the important policy rationale behind section 18(1)(j), there is public interest in not disclosing the report. The hospital argues that quality of care reviews are integral to hospitals’ ability to monitor and enhance patient care, and that confidentiality is integral to such reviews. The hospital notes that courts have consistently held that confidentiality is essential to quality improvement in health care.⁶ It says that without reassurance that the information collected and used for quality of care purposes remains confidential, hospitals will be reluctant to undertake quality of care reviews or will view them as not meaningful or effective. It says this, in turn, will result in the erosion of quality of care processes, which will impact patient care. The hospitals asserts that such an outcome would not be in the public interest.

[29] The hospital also says that its disclosure to the appellant of substantive and extensive information is adequate to address any public interest in transparency.⁷ The hospital notes that the resulting report that it disclosed to the appellant outside the *Act* contains a factual description of the incident that the hospital says is more detailed than the description in the report, including the names of staff who were involved in the incident, and the recommendations made by the group. The hospital says it also provided the appellant with a patient record, which includes information about the incident.

[30] Although the appellant did not provide representations during the inquiry, he provided arguments in his letter to the hospital that the public interest in disclosure of the incident report applies. As noted above, he sent this letter to the hospital after he received the hospital’s decision denying him access to the incident report. To ensure procedural fairness to the appellant, I consider his arguments here. However, I note that my conclusion would have been the same if I had not considered the appellant’s arguments.

[31] The appellant submits that by denying access to the incident report, the hospital is hiding information about its involvement in his brother’s death, which creates public distrust of the hospital and of Ontario hospitals and institutions more generally. He argues

⁵ Order MO-1564.

⁶ The hospital refers to *Algarawi v Berger*, and *Porter v Sutandar*, 2023 ONSC 2339 (CanLII).

⁷ The hospital relies on Orders P-532, P-568, PO-2626, PO-2472, and PO-2614.

that the nature of the incident raises serious concerns about the care that the hospital provided. He asserts that family members deserve to know the circumstances related to these types of incidents and the details of a hospital's involvement in them.

[32] I agree with the hospital that there is no compelling public interest in the disclosure of the incident report because disclosure would not shed light on the hospital's operations considering the substantial, substantive information that the hospital has already disclosed to the appellant.

[33] The appellant's argument is that issues of quality of care and transparency related to the review of the circumstances of his brother's death in the hospital are of general application and concern. I agree that a public interest exists in ensuring that hospitals provide high quality care to their patients and are transparent when incidents occur. The hospital appears to acknowledge in its representations that there may be a public interest in institutional transparency. However, I am not persuaded that this public interest in disclosure applies to the specific record at issue or that any public interest in disclosure rises to the level of "compelling." This is because disclosure of the incident report at issue would not inform or enlighten the public about the activities of the hospital or shed light on its operations. The interests being advanced here are essentially private – the appellant seeks access to the last remaining responsive record the hospital has related to his brother's death.

[34] Having reviewed the incident report and the records that were disclosed to the appellant in response to his access request, I agree with the hospital that the factual description of the incident in the incident report does not add new information to the description of the incident in the records that the appellant already has. The appellant already has a more complete description of the circumstances of the incident and the actions taken by hospital staff than what the incident report at issue contains. The hospital's decision to grant the appellant access to all other records, including its decision to share the resulting report with the appellant outside the *Act*, addresses his concerns about the nature of care provided and transparency. I find that a compelling public interest does not exist in this appeal since the hospital has already disclosed a significant amount of information to the appellant, adequate to address any public interest considerations.⁸

ORDER:

The appeal is dismissed.

Original Signed by: _____

Anna Kalinichenko
Adjudicator

June 30, 2025

⁸ Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

