

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4809

Appeals PA24-00645 and PA24-00651

Ministry of Health

March 31, 2026

Summary: The ministry received a request for access to data relating to Ontario Drug Benefit claims and reimbursements made to community pharmacies for certain services during specified time periods. The ministry issued a decision granting full access to the responsive records. Two affected parties appealed the decision, arguing that the records contain third party information exempt from disclosure under section 17(1) of the *Act*.

In this order, the adjudicator finds that section 17(1) does not apply to the ODB funding data at issue. She upholds the ministry's decision and dismisses the appeals.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 17(1).

Orders and Investigation Reports Considered: PO-2142, PO-3209, PO-3438, PO-3617, and PO-4566.

OVERVIEW:

[1] The Ministry of Health (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following:

For every community pharmacy in Ontario that is a member of the Ontario Drug Benefit (ODB) Health Network System, and for every month from 2022/10 to 2023/12, data on the following variables:

- Pharmacy accreditation number - Month
- # of ODB-funded prescriptions reimbursed and total amount reimbursed
- # of ODB-funded MedsChecks reimbursed and total amount reimbursed
- # of ODB-funded flu vaccines shots reimbursed and total amount reimbursed
- # of ODB-funded minor ailment consultations reimbursed and total amount reimbursed

For each pharmacy in above data, ODB's measure of pharmacy rurality (# of pharmacies within x km)

[2] Before issuing its decision, the ministry notified affected parties, under section 28(1) of the *Act*, seeking their views on the disclosure of the responsive records. After considering the affected parties' responses, the ministry notified the affected parties and the requester of its decision to grant access to the responsive records in full. In its decision, the ministry took the position that the information in the records was not information supplied by pharmacies but rather consists of totals of claims and reimbursement amounts generated by the ministry from Health Network System (HNS) data.

[3] Two affected parties, now the third party appellants, appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC). The IPC opened appeals PA24-00645 and PA24-00651 and attempted to mediate them.

[4] As mediation did not resolve the appeals, the matters proceeded to adjudication. An IPC adjudicator conducted a written inquiry into each appeal and received representations from the third party appellants and the ministry, which were shared in accordance with the IPC's *Code of Procedure* and *Practice Direction 7*.

[5] The appeals were then transferred to me to complete the inquiry. I determined that I did not require further representations from the parties.

[6] In this order, I uphold the ministry's decision that the records are not exempt under section 17(1) of the *Act*, and I dismiss the appeals.

RECORDS:

[7] The records remaining at issue are three Excel spreadsheets:

- Record 1 – provides the ODB claims and expenditures by pharmacy by month from October 2022 to December 2023
- Record 2 – indicates the number of claims and amount reimbursed for MedsChecks, flu vaccines, and minor ailments by pharmacy by month from October 2022 to December 2023
- Record 3 – indicates the rurality for each pharmacy

DISCUSSION:

[8] The sole issue in this appeal is whether the mandatory exemption at section 17(1) of the *Act* applies to the records at issue. The purpose of section 17(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,¹ where specific harms can reasonably be expected to result from its disclosure.²

[9] Section 17(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to:

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

(b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied; or

(c) result in undue loss or gain to any person, group, committee or financial institution or agency.

[10] For section 17(1) to apply, the party arguing against disclosure – in this case, the third party appellants – must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information;

¹ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.).

² Orders PO-1805, PO-2018, PO-2184 and MO-1706.

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), or (c) of section 17(1) will occur.

[11] If any part of the test is not met, the section 17(1) exemption does not apply.

Part 1: type of information

[12] The IPC has described commercial and financial information protected under section 17(1) as follows:

Commercial information is information that relates only to the buying, selling or exchange of merchandise or services. This term can apply to commercial or non-profit organizations, large or small.³ The fact that a record might have monetary value now or in future does not necessarily mean that the record itself contains commercial information.⁴

Financial information is information relating to money and its use or distribution. The record must contain or refer to specific data. Some examples include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.⁵

[13] The third party appellants submit that the records contain commercial and financial information regarding pharmacy operations, including the number of claims submitted for prescription drugs and professional pharmacy services, and the amounts reimbursed to each pharmacy. The ministry accepts that the records reveal the commercial or financial information of the affected pharmacies and that part 1 of the section 17(1) test is met.

[14] Having reviewed the records, I agree that they contain commercial and financial information within the meaning of section 17(1), as they relate to the business activities of the affected pharmacies and the payments made to them under the ODB program. I find that part 1 of the test is met.

Part 2: Supplied in confidence

[15] Part two of the three-part test itself has two components: the information must have been "supplied" to the institution by the third party, and it must have been supplied "in confidence," either implicitly or explicitly. The requirement that the information have been "supplied" to the institution reflects the purpose in section 17(1) of protecting the

³ Order PO-2010.

⁴ Order P-1621.

⁵ Order PO-2010.

informational assets of third parties.⁶ Information may qualify as “supplied” if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.⁷

[16] The party arguing against disclosure must show that the party supplying the information expected the information to be treated confidentially, and that their expectation is reasonable in the circumstances. This expectation must have an objective basis.⁸

[17] Relevant considerations in deciding whether an expectation of confidentiality is based on reasonable and objective grounds include whether the information:

- was communicated to the institution on the basis that it was confidential and that it was to be kept confidential,
- was treated consistently by the third party in a manner that indicates a concern for confidentiality,
- was not otherwise disclosed or available from sources to which the public has access, and
- was prepared for a purpose that would not entail disclosure.⁹

Third party appellants’ representations

[18] The third party appellants submit that the information at issue was supplied to the ministry through the HNS. They explain that pharmacies participating in the ODB program are required to submit claims electronically through the HNS in order to obtain reimbursement for prescription drugs and professional pharmacy services. They argue that because the underlying claims data must be reported to the ministry pursuant to these statutory reporting requirements, the information reflected in the records should be considered information supplied by the pharmacies, even if the ministry later compiles or aggregates that information. In support of this position, the third party appellants rely on Orders PO-3209 and PO-2142, where information provided to an institution pursuant to a statutory or regulatory reporting scheme was found to have been “supplied” for the purposes of section 17(1).

[19] The third party appellants further argue that the monthly number of claims appearing in records 1 and 2 is information directly supplied by the pharmacies and does not involve any calculation by the ministry. They also submit that the total monthly

⁶ Order MO-1706.

⁷ Orders PO-2020 and PO-2043.

⁸ Order PO-2020.

⁹ Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

expenditures for professional pharmacy services can be derived by applying publicly available fees to the reported claims, and that the prescription reimbursement totals can likewise be determined from the number of claims reported by each pharmacy together with the applicable public statutory formula and rurality information. They submit that, for the pharmacies' submission of their HNS claims data, the ministry would have had no basis on which to generate the records. They further argue that disclosure of the records would reveal, or permit the drawing of accurate inferences about, the underlying claims information supplied by pharmacies through the HNS, including pharmacy claims, revenues, sales, and market share. They submit that because the records report both claim volumes and reimbursement totals for each pharmacy by month, and because the applicable reimbursement rates are publicly available, the underlying claims information could be reverse engineered from the data.¹⁰

Ministry's representations

[20] The ministry submits that the records do not contain information "supplied" by pharmacies in the form in which it appears in the records. Rather, the ministry submits that records 1 and 2 consist of aggregate monthly totals of accepted claims and reimbursement amounts that the ministry calculated and generated in response to the access request using HNS data. The ministry relies principally on Order PO-3617, where the IPC found that aggregate annual physician payment figures were not "supplied" because physicians submitted bills over time, not annual totals, and because the totals were compiled by the ministry using its own calculations. The ministry says the same reasoning applies here.

[21] The ministry also disputes the third party appellants' submission that the monthly number of claims in records 1 and 2 was directly supplied by pharmacies. It explains that pharmacies do not submit monthly totals. Instead, they submit individual claims each time they dispense a benefit or provide a professional service. It further explains that the records do not show the number of claims submitted; they show the "total number of accepted claims" for each month. The ministry says this distinction matters because not every claim submitted by a pharmacy is accepted for payment: a claim may be accepted as transmitted, accepted with price adjustments, rejected, reversed by the pharmacy, or rejected or reversed following ministry inspection. The ministry says that, as a result, the total number of accepted claims in a month may differ from the number of claims actually submitted by the pharmacy.

[22] The ministry makes a similar submission about the reimbursement amounts. It explains that pharmacies submit information through individual claims, which are then adjudicated under the ODB program rules to determine what amount, if any, is payable. It states that, in the case of drug claims, the amount ultimately paid may differ from the

¹⁰ The balance of the third party appellants' representations describes the harms they say could reasonably be expected to arise from disclosure. I have not summarized those representations in this order because, having found that part two of the three-part test for exemption under section 17(1) has not been met, I do not need to address the third part of the test (harms).

amount submitted because claims are adjudicated against program rules, including rules respecting drug cost, mark-up, dispensing fee, compounding charges, co-payments, deductibles, and other variables. The ministry also submits that professional service payments are not uniform: MedsChecks include different service types with different fees, minor ailment payments vary depending on whether the service was virtual or in person, and influenza vaccine payments vary depending on whether an injectable or nasal spray vaccine was used. On this basis, the ministry argues that the totals in records 1 and 2 are ministry-generated payment figures, not information supplied by pharmacies, and that disclosure would not permit accurate inferences to be drawn about the specific information actually contained in the underlying claims.

[23] The ministry submits that record 3 was created in response to the access request and reflects the ODB program's measure of pharmacy rurality. It explains that this measure is determined using the pharmacy's postal code and the applicable dispensing fee rules under the ODB program. The ministry also submits that the information can be derived from a pharmacy's publicly available postal code together with section 13(4) of Ontario Regulation 201/96.

Third party appellants' reply representations

[24] In reply, the third party appellants submit that the ministry's interpretation of the "supplied" requirement is inconsistent with the purpose of section 17(1), which is to protect the confidential informational assets of businesses that provide information to government institutions. They argue that the ministry's position would allow institutions to circumvent section 17(1) simply by compiling or aggregating information originally supplied by third parties, creating a loophole that would allow requesters to obtain confidential third party information through strategically framed requests for compiled or summarized data. The third party appellants maintain that the claims information underlying the records was supplied by pharmacies through the HNS and that the ministry's aggregation of that information does not alter its character as information supplied by the pharmacies. They rely on Orders PO-3438 and PO-4566, which they say support the view that aggregated information derived from third party data may still qualify as "supplied."

[25] The third party appellants also argue that Order PO-3617 is distinguishable from the present appeals. They submit that the information at issue here is significantly more detailed than the information considered in that order. They assert that in PO-3617, the data disclosed only total annual payments to physicians; by contrast, the records in these appeals disclose monthly totals, numbers of claims, and reimbursements for specific services on a pharmacy-by-pharmacy basis. In their view, this level of detail, particularly when combined with publicly available reimbursement formulas and fee information, would permit competitors to "reverse engineer" the claims information supplied by pharmacies through the HNS. They argue that the parties in that appeal did not present a detailed section 17(1) analysis or evidence about how the information was supplied to the ministry, and that the adjudicator therefore did not have the opportunity to consider

arguments such as those raised in these appeals regarding mandatory reporting requirements and the HNS framework.

[26] The third party appellants further submit that the distinction drawn by the ministry between claims “submitted” and claims “accepted” is not material. They argue that the underlying claims data originates with pharmacies and that the accepted-claim totals disclosed in the records, when paired with monthly reimbursement figures and publicly available fee information, continue to reflect pharmacy-supplied information and permit meaningful inferences to be drawn about pharmacy claims activity and revenues.

Analysis and findings

[27] Based on my review of the records and the parties’ representations, I am not satisfied that the information in the records was “supplied” to the ministry within the meaning of section 17(1). The records were created by the ministry in response to the access request and contain aggregate monthly totals of accepted claims and reimbursement amounts by pharmacy. Pharmacies do not submit claims information to the ministry in that form. Rather, they submit individual claims through the HNS when they dispense a benefit or provide a professional service. The totals appearing in records 1 and 2 therefore reflect the ministry’s aggregation of those claims following adjudication, rather than information directly supplied by the pharmacies themselves.

[28] I am not persuaded by the third party appellants’ submission that the monthly totals of claims and reimbursements appearing in the records constitute information directly supplied by pharmacies. Although pharmacies submit individual claims through the HNS, the records do not contain those claims. Instead, they contain totals generated by the ministry after the claims have been processed and adjudicated under the applicable program rules. As the ministry explains, not all claims submitted by pharmacies are accepted for payment and the amounts ultimately paid may differ from the information contained in the submitted claims due to adjustments and program requirements. In these circumstances, the totals appearing in the records cannot be said to represent information supplied by pharmacies in the form in which it appears in the records.

[29] I am also not satisfied that disclosure of the records would permit accurate inferences to be drawn about the specific information contained in individual claims submitted by pharmacies. The totals appearing in the records reflect only claims that were accepted for payment following adjudication by the ministry, and the amounts paid may differ from the amounts included in the claims themselves. Given the variables affecting both the acceptance of claims and the calculation of reimbursement amounts under the ODB program rules, I am not persuaded that disclosure of these aggregate figures would reveal, or permit the drawing of accurate inferences about, the underlying information supplied by pharmacies through the HNS.

[30] The third party appellants rely on Orders PO-3209 and PO-2142 in support of their position that, because pharmacies are required to submit claims data through the HNS to

obtain reimbursement under the ODB program, the information reflected in the records must be considered information supplied by the pharmacies. However, it does not follow that information subject to mandatory reporting is automatically "supplied" within the meaning of section 17(1). The relevant question remains whether the information appearing in the record itself was supplied by the third party or would reveal information that was supplied. For the reasons set out above, I find that it was not supplied within the meaning of section 17(1).

[31] I find that Order PO-3617 is the more persuasive authority on the facts before me, and I adopt its reasoning here. In that order, the IPC found that aggregate payment figures compiled by the ministry from underlying billing data were not "supplied" for the purposes of section 17(1) because the third parties submitted individual billings over time, not the aggregate totals themselves. The same is true in the present appeals: pharmacies submitted individual claims through the HNS but did not themselves submit the aggregate figures appearing in the records. This approach is consistent with prior IPC orders holding that aggregate or summary figures generated by an institution from underlying third party data do not meet the "supplied" requirement.¹¹

[32] I am not persuaded by the third party appellants' submission that PO-3617 is distinguishable because the information at issue here is more granular. While the records in these appeals contain more detailed figures, they remain aggregate totals generated by the ministry from underlying claims data rather than information supplied by pharmacies in that form. Nor do I accept the submission that PO-3617 should carry little weight because the parties in that appeal did not advance a full argument under section 17, as the adjudicator nevertheless applied the established three-part test in reaching his conclusion.

[33] I also do not accept the third party appellants' submission that the totals appearing in the records involve no meaningful calculation by the ministry. The ministry's evidence is that the records reflect the number of accepted claims, not the number of claims submitted through the HNS, and that reimbursement amounts are determined only after those claims are adjudicated under the applicable ODB program rules. Because claims may be rejected, adjusted, or reversed, and payment amounts may vary depending on program requirements, the totals appearing in the records reflect the ministry's processing of the underlying claims rather than information supplied by the pharmacies in that form.

[34] The third party appellants also rely on Orders PO-3438 and PO-4566, in which the IPC found that certain aggregated information was "supplied" for the purposes of section 17(1). However, in those cases the aggregated information remained a direct reflection of data reported by the affected third parties themselves. Here, by contrast, pharmacies submitted individual claims through the HNS but did not submit the monthly totals, accepted-claim counts, or reimbursement figures that appear in the records. Those

¹¹ See, for example, Orders PO-3120 and PO-3275.

figures were generated by the ministry from underlying claims data and reflect its own processing and adjudication of those claims. I therefore do not accept that Orders PO-3438 and PO-4566 support a finding that the information at issue was “supplied.”

[35] The analysis is even clearer with respect to record 3. That record contains the ODB program’s measure of pharmacy rurality for each pharmacy. The evidence before me indicates that this measure is determined by the ministry based on the pharmacy’s postal code and the applicable ODB dispensing fee rules. In these circumstances, I find that record 3 reflects information generated by the ministry rather than information supplied by the third party appellants and therefore does not meet the “supplied” requirement in section 17(1).

[36] Because the “supplied” requirement in part two of the test is not established, it is not necessary for me to consider the “in confidence” component of part two or the harms test in part three. In these circumstances, there is also no basis under the *Act* to require disclosure of the records in a modified form, as proposed by the third party appellants.

[37] For these reasons, I find that the information in the records at issue is not exempt from disclosure under section 17(1) of the *Act*. I therefore uphold the ministry’s decision to disclose the records in full, and I dismiss the appeals.

ORDER:

1. I uphold the ministry’s decision and dismiss the appeals.
2. I order the ministry to disclose the records to the requester in full by **May 5, 2026**, but not before **April 30, 2026**.
3. To verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the requester upon request.

Original Signed by: _____

Elana May
Adjudicator

March 31, 2026