



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

ORDER 21

Appeal 880028

Ontario Labour Relations Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

Appeal Number 880028

O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987, (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal any decision of a head under the Act to me.

The facts of the case are as follows:

1. On January 14, 1988, the Ontario Labour Relations Board received an access request from the appellant for the documents contained in File No. 0398_86_U.
2. On March 1, 1988, the institution granted access to all the documents contained in File No. 0398_86_U except the following:
 - a) Labour Relations Officers Report
 - b) Report of Labour Relations Officer Investigation of Complaints.

The institution claimed an exemption under subsection 111(6) of the Labour Relations Act, R.S.O. 1980, C.228 as amended.

3. On March 9, 1988, I received a letter from the requester appealing the decision of the institution to deny access to the Labour Relations Officer's Report and the Report of the Labour Relations Officer Investigation of Complaint contained in File No. 0398_86_U.
4. By letters dated March 11, 1988, receipt of the requester's appeal was acknowledged and notification was given to the institution that an appeal had been received.
5. On March 16, 1988 the Appeals Officer requested that the Board forward a copy of the documents not being disclosed to my office for examination.
6. By letter dated March 21, 1988, the Chair of the Labour Relations Board, expressed the view that subsection 111(6) of the Labour Relations Act operates as a "confidentiality provision" in such a manner as to bar the application of the Act.

The Chair claimed that she could not release the Reports to me as she would be in breach of the "confidentiality provision" in so doing.

7. By letter dated April 25, 1988, I sent a notice to the Chair stating that I was conducting an inquiry pursuant to section 52 of the Act and that pursuant to subsection 52(4) of the Act, I was requiring production of the records at issue.
8. By letter dated July 4, 1988, I gave notice to the appellant that I was conducting an inquiry.

Representations were received from the institution and the appellant on the following issues:

- A. Whether the legislative provision relied on by the institution is a "confidentiality provision" barring the application of the Act.

- B. If the answer to Issue A is in the affirmative, whether the records in question fall within the scope of the "confidentiality provision" relied on.

ISSUE A: Whether the legislative provision relied on by the institution is a "confidentiality provision" barring the application of the Act.

As Information and Privacy Commissioner, I am charged with the responsibility of ensuring that the rights and obligations set out in the Act are respected and complied with. Where, as in this case, an institution purports to remove itself from the ambit of the Act through the use of a "confidentiality provision" in another act, it is my responsibility to scrutinize the provision of that other act to ensure that both the subject matter and the person who would be releasing the requested information under that act (i.e. the head of the institution) are covered by the "confidentiality provision" relied on.

Section 67 of the Freedom of Information and Protection of Privacy Act, 1987 reads as follows:

67._(1) The Standing Committee on the Legislative Assembly shall undertake a comprehensive review of all confidentiality provisions contained in Acts in existence on the day this Act comes into force and

shall make recommendations to the Legislative Assembly regarding,

(a) the repeal of unnecessary or inconsistent provisions; and

(b) the amendment of provisions that are inconsistent with this Act.

(2) This Act prevails over a confidentiality provision in any other Act unless the other Act specifically provides otherwise.

(3) Subsection (2) shall not have effect until two years after this section comes into force.

As I have stated in previous Orders, (see Appeal Nos. 880010, 880016 and 880086) section 67 does not contain an exemption to the Act's disclosure obligations. Rather, subsection 67(2) provides that the Act overrides "confidentiality provisions" in other legislation, unless the other legislation specifically provides otherwise. However, because subsection 67(3) delays the application of subsection 67(2) until January 1, 1990, a head may be bound not to disclose information pursuant to a "confidentiality provision" contained in another piece of legislation until that date.

In this appeal, the institution has relied on subsection 111(6) of the Labour Relations Act, as a "confidentiality provision" which forbids the disclosure of the information requested by the appellant. This provision reads as follows:

111. (6) No information or material furnished to or received by a labour relations officer under this Act and no report of a labour relations officer shall be disclosed except to the Board or as authorized by the Board, and no member of the Board and no labour relations officer is a competent or compellable witness in proceedings before court, the Board, or

other tribunal respecting any such information, material or report. (emphasis mine)

In my opinion, this provision qualifies as a "confidentiality provision" as the term is used in section 67 of the Freedom of Information and Protection of Privacy Act, 1987.

Although, as I stated in an earlier Order (see Appeal No. 880016) I do not purport to offer a definitive outline of all types of provisions contemplated by section 67, it is clear in this case that subsection 111(6) of the Labour Relations Act employs mandatory language that "no information shall be disclosed". A discretionary power has been accorded to the Board to authorize disclosure, however, the Chair of the Labour Relations Board has no such authority under the "confidentiality provision". Accordingly, I am satisfied that this provision

does operate to forbid the head from disclosing information or material furnished to or received by a labour relations officer under the Labour Relations Act as well as a report of a labour relations officer.

Therefore, my response to Issue A is in the affirmative.

Before I move to a consideration of Issue B, I would like to address the unique nature of the "confidentiality provision" contained in subsection 111(6) of the Labour Relations Act. Although subsection 111(6) prohibits disclosure, it also contains a discretionary power that has been accorded to the Board which authorizes the Board to disclose information obtained by a labour relations officer as well as the report of a labour relations officer.

Subsection 111(6) is not an absolute prohibition against disclosure of information and, in fact, provides a means whereby information that would otherwise be subject to the "confidentiality provision" can be disclosed. This particular "confidentiality provision" contains a recognition that disclosure of information that would otherwise be prohibited can take place, at the discretion of the Board.

As this particular "confidentiality provision" will bar the application of the Freedom of Information and Protection of Privacy Act, 1987 until January 1, 1990, I encourage the institution to suggest to Boards, when they are involved in a particular case, to consider the release of information such as a Labour Relations Officers Report to those involved in the case.

ISSUE B: If the answer to Issue A is in the affirmative, whether the records in question fall within the scope of the "confidentiality provision" relied on.

Subsection 111(6) of the Labour Relations Act states that no information received by a labour relations officer and no report of a labour relations officer shall be disclosed except to the Board or as authorized by the Board. Thus, subsection 111(6) contains exceptions permitting the release of the information and the report exclusively to the Board, or to others to whom the Board authorizes disclosure.

Are the labour relations officer's report and the report of the labour relations officer investigation of complaint properly defined as coming within "information or material furnished to or received by a labour relations officer ... and a report of a

labour relations officer"? In my view they are, and therefore, my response to Issue B is also in the affirmative.

In conclusion, I find in the circumstances of this appeal that subsection 111(6) of the Labour Relations Act operates as a "confidentiality provision" barring the application of the Freedom of Information and Protection of Privacy Act, 1987, in respect of the information requested. Accordingly, the decision of the head is upheld and the appeal is dismissed.

Original signed by: _____
Sidney B. Linden
Commissioner

_____ October 13, 1988
Date