



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

ORDER P-1257

Appeal P-9600255

Liquor Control Board of Ontario



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/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant is a former employee of the Liquor Control Board of Ontario (the LCBO) who was the subject of an investigation into financial irregularities. He was suspended from his job and subsequently terminated, and also charged under the Criminal Code of Canada. The appellant grieved his suspension and termination, which were ultimately upheld by the Grievance Settlement Board. Criminal charges were dismissed at trial.

The appellant submitted a request under the Freedom of Information and Protection of Privacy Act (the Act) for all records relating to his civil, criminal and arbitration cases. The LCBO identified 85 pages of responsive records, consisting of letters, memoranda, notice of hearing, the transcript of the appellant's criminal trial, and a copy of the decision of the Grievance Settlement Board.

The LCBO denied access to all of the records, claiming that they fall within the parameters of section 65(6) of the Act, and therefore outside the scope of the Act

The appellant appealed the LCBO's decision.

This office sent a Notice of Inquiry to the appellant and the LCBO, seeking representations on the jurisdictional issue raised by sections 65(6) and (7). Representations were received from both parties.

DISCUSSION:

The only issue in this appeal is whether the records fall within the scope of sections 65(6) and (7) of the Act. These provisions read as follows:

- (6) Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
 - 1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
 - 2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
 - 3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.
- (7) This Act applies to the following records:
 - 1. An agreement between an institution and a trade union.

2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

The interpretation of sections 65(6) and (7) is a preliminary issue which goes to the Commissioner's jurisdiction to continue an inquiry.

Section 65(6) is record-specific and fact-specific. If this section applies to a specific record, in the circumstances of a particular appeal, and none of the exceptions listed in 65(7) are present, then the record is excluded from the scope of the Act and not subject to the Commissioner's jurisdiction.

The LCBO has provided documentation to establish that the appellant filed grievances under the collective agreement between the Ontario Liquor Boards Employees Union (OLBEU) and the LCBO and Liquor Licence Board of Ontario. These grievances concerned the appellant's suspension and termination by the LCBO. Article 27 of the collective agreement sets out various grievance procedures available to OLBEU members. Unresolved grievances proceed to a hearing before the Grievance Settlement Board. The appellant's grievances were filed under Article 27.

In Order P-1223, I found that in order for a record to fall within the scope of paragraph 1 of section 65(6), an institution, in this case the LCBO, must establish that:

1. the record was collected, prepared, maintained or used by the LCBO or on its behalf; **and**
2. this collection, preparation, maintenance or usage was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity; **and**
3. these proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the LCBO.

The LCBO submit that:

The Records were either prepared by the LCBO, or maintained by the LCBO but created by the Grievance Settlement Board, its administrative staff, the court (with respect to the criminal charge) or the Grievance Settlement Board panel (the award in the grievance proceedings). Therefore, the records were either prepared or maintained by the LCBO.

Having reviewed the records, I agree with the LCBO's position, and the first requirement of section 65(6)1 has been established.

In previous orders involving section 65(6) (or its equivalent, section 52(3) in the Municipal Freedom of Information and Protection of Privacy Act), I made the following interpretations of some of the terms used in the section:

I am of the view that a dispute or complaint resolution process conducted by a court, tribunal or other entity which has, by law, binding agreement or mutual consent, the power to decide the matters at issue would constitute "proceedings" for the purpose of section 65(6)1. (Order P-1223)

In my view, in order to fall within the definition of [the term anticipated proceedings], there must be a reasonable prospect of such proceedings at the time of the preparation of the record - the proceedings must be more than just a vague or theoretical possibility. (Order P-1223)

What distinguishes these bodies as "tribunals" is that they have a statutory mandate to adjudicate and resolve conflicts between parties and render decisions which affect legal rights or obligations. In my view, this is the appropriate definition for the term "tribunal" as it appears in section 52(3)1. (Order M-815)

In the context of section 65(6), I am of the view that if the preparation (or collection, maintenance or use) of a record was for the purpose of, as a result of, or substantially connected to an activity listed in sections 65(6)1, 2 or 3, it would be "in relation to" that activity. (Order P-1223)

I find that "labour relations" for the purposes of section 65(6)1 is properly defined as the collective relationship between an employer and its employees. (Order P-1223)

Applying the interpretations to the records at issue in this appeal, I find that:

- The Grievance Settlement Board has a statutory mandate to adjudicate and resolve conflicts between the LCBO and members of OLBEU, and to render decisions which affect the legal rights and obligations of these parties. As such, I find that it is properly characterized as a "tribunal" for the purpose of section 65(6).

- Hearings before the Grievance Settlement Board constitute a dispute and complaint resolution process which has, by law, the power to decide grievances and, as such, properly constitute “proceedings”.
- The records in this appeal were all created following the filing of grievances by the appellant under the terms of the collective agreement. I find that at the time the records were prepared and/or maintained there was a reasonable prospect that the grievances would proceed to a hearing before the Grievance Settlement Board, and that this constitutes “anticipated proceedings”.
- The records were prepared and/or maintained for the purpose of responding to the appellant’s grievances. As such, they are sufficiently connected to the grievances to properly be characterized as being “in relation to” it.
- The grievances were filed by the appellant pursuant to the procedures contained in the collective agreement between OLBEU and the LCBO, and therefore relates to “labour relations”.

In summary, I find that the records at issue in this appeal were prepared and/or maintained by the LCBO in relation to proceedings or anticipated proceedings before a tribunal, the Grievance Settlement Board, and that these proceedings or anticipated proceedings relate to labour relations. All of the requirements of section 65(6)1 of the Act have thereby been established by the LCBO. None of the exceptions contained in section 65(7) are present in the circumstances of this appeal, and I find that the records fall within the parameters of section 65(6)1, and therefore are excluded from the scope of the Act.

ORDER:

I uphold the LCBO’s decision.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ September 10, 1996