



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

ORDER P-1385

Appeal P_9700035

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The appellant sought access to information relating to the Ministry's Enhanced Relocation Plan (the Plan) for the period November 1992 to the date of the request. This is a program through which senior Ontario Government civil servants who are forced to relocate when transferring between positions are compensated for certain expenses which they may incur. The appellant also sought access to copies of all correspondence between the Regional Director of the Ministry's Southern Region and the Superintendent of the Metropolitan Toronto West Detention Centre regarding staffing of a specific management position during the same time period.

The Ministry created a one-page document containing information which was responsive to the first part of the request. It also identified a further 21 pages of records which it considered to be responsive to the second part of the request. The Ministry denied access to all of the records, claiming that, under section 65(6)3, they fall outside the scope of the Act. The appellant appealed the Ministry's decision.

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties.

DISCUSSION:

JURISDICTION

The Ministry claims that section 65(6)3 applies to exclude the records from the scope of the Act. This section states:

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:

Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

Section 65(7), which lists exceptions to the section 65(6) exclusions, states:

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 section 65(7) are present, then the record is excluded from the scope of the Act and not subject to the Commissioner's jurisdiction.

In my view, it is clear that section 65(7) does not apply to exclude the records from the operation of section 65(6).

To substantiate a claim under section 65(6)3, the Ministry must establish that:

1. The record was collected, prepared, maintained or used by the Ministry or on its behalf; **and**
2. This collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; **and**
3. These meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the Ministry has an interest.

(Orders P-1223 and P-1359)

Requirements 1 and 2

The Ministry submits that the information responsive to the first part of the request on page one of the records was collected, prepared, maintained and used by the Ministry. It also submits that the information will be communicated internally within the Ministry for audit and program planning purposes and will be communicated externally to Management Board Secretariat (MBS) in the Ministry's annual report on its application of the Plan.

I find that the information contained in page one of the records was prepared and maintained by the Ministry in relation to communications within the Ministry itself and with MBS. Accordingly, requirements 1 and 2 have been satisfied with respect to this information.

With respect to the records responsive to the second part of the appellant's request, the Ministry submits that they were also collected, prepared, maintained and used by the Ministry in relation to communications about staffing, recruitment and position classification for the position of Senior Assistant Superintendent, Female Unit, Metro Toronto West Detention Centre between November 1992 and October 1996.

Similarly, I find that requirements 1 and 2 have been met with respect to the information contained in Pages 2-22 as these documents were collected, prepared and used by the Ministry in relation to communications within the Ministry.

Requirement 3

The Ministry argues that the information on page one of the records concerning the application of the Plan reflects an employment-related matter in which the Ministry has an interest. The Ministry submits that its interest is a legal one, arising from statute, including the Public Service Act (the PSA), from the collective agreements it has negotiated with unions representing its employees and from Management Board of Cabinet directives. It also argues that employee complaints or disputes with respect to the Plan may result in a grievance being brought by an employee pursuant to a collective agreement, a civil lawsuit being instituted or a complaint filed under the Ontario Human Rights Code (the OHRC).

It also submits that the issues documented in Pages 2-22 of the records are employment-related matters in which the Ministry has a legal interest. Again, the Ministry submits that its legal interest in these records arises from its statutory rights and obligations under the PSA, the OHRC and the common law with respect to employee and employer relations.

In my view, the communications which are reflected in all of the records are about employment-related matters in which the Ministry has an interest. The staffing of positions within the Ministry and the use made by its employees of the Plan are clearly employment-related matters which are of concern to the Ministry. I also find that these matters have the capacity to affect the legal rights and obligations of the Ministry. Accordingly, they qualify as matters in which the Ministry "has an interest" for the purposes of section 65(6)3 [Orders P-1242 and P-1359].

In my view, as each of the elements of section 65(6)3 have been made out by the Ministry, the records are outside the scope of the Act.

RESPONSIVENESS OF RECORDS

The Ministry submits that Pages 9, 17, 18, 20, 21 and 22 of the records are not, in fact, responsive to the second part of the request as they are not correspondence between the individuals who were identified by the appellant in his request. Pages 9 and 18 are memoranda to all of the staff at a Ministry facility from its Superintendent, Page 17 is a memorandum from the Superintendent to a Deputy Superintendent at another facility, while Pages 20, 21 and 22 are correspondence between the Superintendent and individuals holding positions other than the one identified in the appellant's request.

In light of the findings I have made above, it is not necessary for me to address the question of whether the records are responsive to the appellant's request. Regardless of whether they are reasonably related and therefore responsive to the request, they fall outside the ambit of the Act under section 65(6)3.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ April 28, 1997