



Information and Privacy
Commissioner/Ontario

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

ORDER P-1481

Appeal P_9700204

Ministry of the Solicitor General and Correctional Services



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

NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Solicitor General and Correctional Services (the Ministry). The request was for access to the appellant's complaint file with the Professional Standards Bureau (the PSB) of the Ontario Provincial Police (the OPP).

The Ministry located responsive records and claimed that they fell within the parameters of section 65(6)3 of the Act, and therefore outside the scope of the Act. The appellant appealed this decision.

This office provided a Notice of Inquiry to the appellant and the Ministry. Representations were received from both parties. In her representations, the appellant indicates her dissatisfaction with the investigation of her complaint and is generally unhappy with the manner in which her access request was dealt with by the Ministry. Her representations do not, however, address the issue in this appeal.

RECORDS:

The records at issue in this appeal relate to the appellant's complaint to the PSB, including correspondence and documents by the PSB, officers' duty reports, notebook entries, an occurrence report, correspondence by the appellant, the OPP and the Office of the Police Complaints Commissioner (the PCC).

DISCUSSION:

JURISDICTION

The sole issue in this appeal is whether the records fall within the scope of section 65(6) of the Act. If so, they would be excluded from the scope of the Act unless they are records described in section 65(7), which lists exceptions to the exclusions established in section 65(6).

These sections state:

- (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.

Section 65(6)3

In order to fall within the scope of paragraph 3 of section 65(6), 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 M-835, M-899, M-922 and P-1242]

Requirements 1 and 2

The Ministry indicates that the appellant made a public complaint in August, 1996 to an intake officer with the PCC. The complainant alleged that (1) a named constable (a member of the OPP) abused his authority as a police officer in order to take advantage of the appellant's situation for his own ends, and (2) the officer was falsifying his duty report by indicating that he

was performing property checks on the appellant's property. The intake officer subsequently corresponded with the commander of the PSB, transferring all relevant documentation to the PSB.

The Ministry advises that the OPP then commenced an internal investigation with respect to the public complaint made pursuant to part VI of the Police Services Act (the PSA).

In this regard, the Ministry indicates that section 76(1) of the PSA obliges the Commissioner of the OPP (the Commissioner) to establish and maintain a Public Complaints Investigation Bureau within the OPP to investigate public complaints against police officers.

The Ministry states that the PSB is the Bureau established to investigate these public complaints. The Ministry indicates further that during the course of investigating the public complaint made by the appellant, information and records were gathered and created in order to properly and thoroughly investigate the allegations and arrive at a proper conclusion.

The Ministry indicates further that when the investigation has been completed, the information is used "in relation to" the preparation of a report for the Commissioner, who will then make a decision as to the disposition of the complaint under section 90(3) of the PSA. By means of the final report, the investigating officers communicate the results of their investigation into a public complaint to the Commissioner.

The Ministry submits that the records at issue were collected, prepared, maintained and used in response to the public complaint made by the appellant. The Ministry submits further that the records were directly related to the investigation of the public complaint, and in communicating the results of this investigation to the Commissioner.

In Order P-1223, Assistant Commissioner Mitchinson made the following comments regarding the interpretation of the phrase in "relation to":

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.

I am satisfied that the records at issue in this file were collected, used and maintained by the PSB of the OPP, meeting requirement 1. In my view, the records at issue were used by the OPP for the purpose of, and therefore "in relation to" communications between the officers, the Commissioner and the PCC. Accordingly, requirement 2 is also satisfied.

Requirement 3

I must now determine whether the records, or "communications", are "about an employment-related matter in which the [Ministry] has an interest". In my view, the records concern, or are "about" an investigation under Part VI of the PSA. In Order M-931, Inquiry Officer Donald Hale concluded that such an investigation was an employment-related matter, and because of the statutory requirements imposed on the police in Part VI of the PSA to investigate public

complaints, he found that the police “have an interest” in the investigation within the meaning of section 52(3)3 of the municipal Act, which is similar to section 65(6)3 of the Act. I agree with this conclusion, which in my view applies equally in this case. Accordingly, requirement 3 has also been met.

Since all three requirements have been met, I find that section 65(6) applies to the records. As these are not records to which section 65(7) applies, they are excluded from the scope of the Act.

ORDER:

I uphold the Ministry’s decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ November 6, 1997