



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-1464

Appeal P\_9700046

Ministry of Community and Social Services



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## **NATURE OF THE APPEAL:**

The appellant is a “tri-local” committee of three Canadian Union of Public Employee (CUPE) locals who are currently working together as a result of their common labour negotiation issues. The appellant submitted a request to the Ministry of Community and Social Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to records for the following information related to Ministry approved service plans for agencies funded by the Ministry:

1. The most recent approved service plan and supporting documentation for four identified agencies.
2. The most recent by-laws of the four identified agencies.
3. Copies of the 1996 correspondence which relates to the funding of the four identified agencies.
4. Copies of any internal correspondence dated from September 1st, 1996, including inter-office memoranda, housebook notes, briefing notes and correspondence between the respective area offices and the developmental services branch where the above identified agencies are named but excluding any correspondence from or to the organizations and the Ministry.

The Ministry responded by providing access to a large quantity of records. The Ministry denied access in whole or part to a number of records pursuant to sections 17(1)(b) (third party information) and 21(1) (invasion of privacy) of the Act.

The appellant appealed only the decision to deny access to the records which relate to parts 3 and 4 of the request with respect to three of the four agencies. The appellant also appealed the reasonableness of the Ministry’s search for responsive records.

During mediation, the reasonableness of the Ministry’s search for responsive records was resolved. In addition, 120 records were removed from this appeal leaving 48 whole or part pages of records at issue.

Further mediation resulted in the Ministry issuing a new decision letter releasing several additional pages of requested records. The decision letter further indicated that access was being denied on the basis that, pursuant to section 65(6) of the Act, certain identified records are removed from the scope of the Act.

This office sent a Notice of Inquiry to the appellant, the Ministry and four organizations (the affected parties) whose interests may be affected by the disclosure of the records at issue. Representations were received from all parties. The representations from three of the affected parties were prepared by the same legal counsel. In its representations, the Ministry asserts that a number of records are not responsive to the appellant's request. Counsel for three of the affected parties submits that the mandatory exemption in section 17(1)(a) also applied to the records at issue.

Because these two issues were raised at this late stage, this office sent a Supplementary Notice of Inquiry to all of the parties in order to give all interested parties an opportunity to address them. Supplemental representations were received from the Ministry, the appellant and counsel for three of the affected parties.

## **RECORDS:**

The records which remain at issue consist of staffing budget requests, interoffice memorandum, handwritten notes, letters and meeting agenda.

## **PRELIMINARY MATTERS:**

### **NON-RESPONSIVE RECORDS**

The Ministry claims that Records 785, 832 - 836, 837 - 842 and 864 are not responsive to the appellant's request. In its representations, the Ministry submits that it interpreted the request too broadly, in two ways. First, the Ministry submits that handwritten notes created by Ministry staff were not requested by the appellant, and should not be considered responsive to the request. Second, the Ministry submits that it has included correspondence which is not related to funding, and that this correspondence is therefore not responsive.

The appellant states that:

I had oral discussions with the [policy analyst], and I thought we had a common understanding as to the nature of my request. In my view, I requested any records naming the organizations. The fourth part of my request was not restricted to records related to funding. The documents that I have not seen must relate to the request or they would not have appeared in the initial index.

In Order P-880, former Inquiry Officer Anita Fineberg considered the standard to be applied in deciding whether records are responsive to a request. She stated:

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

I have reviewed the records and the request. Although the records do not pertain directly to funding, in my view, the request is sufficiently broad to encompass such records. Accordingly, I find that the records are reasonably related to the request and are, therefore, responsive.

## **JURISDICTION**

The next issue raised by the Ministry is whether the records fall within the scope of sections 65(6) and (7) of the Act. These provisions read:

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

The Ministry claims that section 65(6)3 applies to Records 785, 832 - 836, 837 - 842, 859, 864, 905, 906 and 907. These records consist of information received from Executive Directors of the three agencies concerning the impact on agency operations caused by labour disputes and identification of the labour management strategies employed during the dispute and/or a summary of the agencies' contingency plan in the event of a work stoppage.

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.

I will begin with the third requirement referred to above. In my view, a finding that section 65(6) applies in the circumstances turns on whether the Ministry has an interest in the matter at issue.

The Ministry and the affected parties submit that the Ministry has an interest in the affected parties' labour relations matters. In this regard, counsel for three of the affected parties states:

It is submitted that the Ministry of Community and Social Services has an "interest" in the labour relations of the three agencies, particularly in light of the significant financial cutbacks imposed upon these agencies who are dependent for their very existence upon that funding. The Ministry is not a mere curious

bystander in respect of the labour relations of these agencies. It has a significant policy interest, mandated by the legislation under which these agencies operate, in ensuring that the clients of these agencies are well served. It has a very real financial interest in the labour relations, because if the agencies cannot achieve savings as a result of the labour relations negotiations in which they are now involved, the Ministry will either have to provide more funds to the agencies or achieve its policy obligations to these disabled individuals through some other means.

The Ministry submits that:

In addition, there are numerous policies and guidelines established by the Ministry for transfer payment agencies: Serious Occurrence Reporting, Compliance Review, Ministry Operational or Program Reviews, the Freedom of Information and Protection of Privacy Act. [The Ministry] has an interest in the ongoing labour relations dispute involving the transfer payment agencies in question.

Its interest relates to its rights and obligations for supervising and monitoring service provision and the expenditure of public funds. The Ministry as the funder, has a right to receive information and a right to monitor an agency's operation to ensure its compliance with the service contract, ministry legislation, policy and guidelines.

In Order P-1242, Assistant Commissioner Tom Mitchinson defined the term "has an interest" as follows:

[A]n "interest" is more than mere curiosity or concern. An "interest" must be a legal interest in the sense that the matter in which the Ministry has an interest must have the capacity to affect the Ministry's legal rights or obligations.

While I accept that the Ministry certainly has a policy interest in the operations of transfer payment agencies which receive funds and which are regulated by it, I do not accept that the Ministry has a "legal interest" in these matters. Although the labour relations dispute between the transfer payment agencies (the affected parties) and their employees may impact on the Ministry's obligations and interest in funding these agencies, it does not have the capacity to affect the Ministry's legal rights or obligations in the requisite sense.

Accordingly, I find that the records do not fall within the parameters of section 65(6)3 and are, therefore, subject to the Act.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Personal information is defined in section 2(1) as "recorded information about an identifiable individual". The Ministry claims that the following records contain personal information:

Records 72, 73, 76, 77, 80, 81, 82, 83, 220, 221, 244, 245, 281, 450, 466, 467, 479, 480, 485, 486, 495, 501, 502, 509, 520, 521, 534, 535, 540 and 541. These records contain salary information which is clearly linked to identifiable individuals and as such qualifies as their personal information.

The appellant recognizes that there may be cases where only one person occupies a particular position. In this case, the appellant argues that the Ministry should provide a reasonable salary range for these positions.

The records at issue are staffing forms provided to the Ministry by the agencies identified in the request. They are agency documents which contain salary information of agency employees. In my view, there is no obligation for the Ministry to create a record which contains a salary range for the positions identified on the staffing forms where this information relates to non-governmental positions.

There are a number of other records which contain personal information which have not been identified by the Ministry. Because section 21(1) is a mandatory exemption, I have reviewed these records and make the following determination:

- Records 443, 447, 667, 742, 743, 798, 801, 804, 805 and 824 - 827 contain the names of clients and/or their parents. Record 876 is a letter about a client and his/her family. In its representations, the appellant states that it is not interested in obtaining records that would disclose personal information about clients of the agencies or their families. Therefore, the personal information in these records is not at issue in this appeal and should not be disclosed to the appellant.
- Records 698, 752, 753, 798, 800, 803 and 806 contain names of individuals in their professional capacity. This information does not qualify as personal information.

In summary, as some of the severed portions of Records 698, 752, 753, 798, 800, 803 and 806 do not contain personal information and some of the severed portions of Records 443, 447, 667, 742, 743, 798, 801, 804, 805, 824 - 827 and 876 are not at issue in this appeal, the following discussion will concern only Records 72, 73, 76, 77, 80, 81, 82, 83, 220, 221, 244, 245, 281, 450, 466, 467, 479, 480, 485, 486, 495, 501, 502, 509, 520, 521, 534, 535, 540 and 541.

## **INVASION OF PRIVACY**

The Ministry claims that disclosure of the information withheld from Records 72, 73, 76, 77, 80, 81, 82, 83, 220, 221, 244, 245, 281, 450, 466, 467, 479, 480, 485, 486, 495, 501, 502, 509, 520, 521, 534, 535, 540 and 541 would constitute a presumed unjustified invasion of personal privacy as this information describes an individual's income (section 21(3)(f)).

While I agree that some of the information in the records contains salary information, which qualifies for exemption under section 21(3)(f), much of the information which has been severed from some of these records pertains to the job title and classification. In my view, this

information does not qualify for exemption under section 21(3)(f). I have considered the other provisions of sections 21(2) and (3) and find that none of them apply.

I have highlighted the portions of the records which contain salary information in yellow on the copies of these records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order. I find that neither section 21(4) nor section 23 applies to the information which is subject to the presumption in section 21(3)(f). Therefore, this highlighted information is properly exempt under section 21(1) of the Act.

### **THIRD PARTY INFORMATION**

The Ministry claims that sections 17(1)(a) and (b) apply to Records 785, 832 - 836, 837 - 842, 859, 864, 905, 906 and 907. The affected parties submit that sections 17(1)(a) and (b) apply to Records 72, 73, 76, 77, 80, 81, 82, 220, 221, 244, 245, 466, 467, 479, 480, 785, 832 - 836, 837 - 842, 859, 864, 905, 906 and 907. As I have found that the highlighted portions of Records 72, 73, 76, 77, 80, 81, 82, 220, 221, 244, 245, 466, 467, 479 and 480 are exempt under section 21(1), I will not consider them in this discussion. Therefore, my analysis under section 17(1) will pertain only to the non-highlighted portions of these records and to Records 785, 832 - 836, 837 - 842, 859, 864, 905, 906 and 907.

For a record to qualify for exemption under section 17(1)(a) or (b), the Ministry and/or the affected parties 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; **and**
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 (a) or (b) of section 17(1) will occur.

[Order 36]

All three parts of the test must be satisfied in order for the exemption to apply.

### **Type of Information**

In my view, the information remaining at issue on Records 72, 73, 76, 77, 80, 81, 82, 220, 221, 244, 245, 466, 467, 479 and 480 does not fall within any of the types of information referred to above. In particular, although these records contain staffing lists they do not pertain to the "collective relationship between an employer and its employees". Accordingly, they do not qualify for exemption under section 17(1).

The remaining records at issue in this part pertain primarily to discussions regarding the agencies' approaches to dealing with the management of their employees during a labour



dispute. These records contain contingency plans and strategies to be employed by the agencies in their dealings with their employees during and as a result of the dispute. I am satisfied that this qualifies as labour relations information.

### **Supplied in Confidence**

In order for this part of the section 17(1) test to be met, the information must have been supplied to the Ministry in confidence, either implicitly or explicitly. The information will also be considered to have been supplied if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the institution.

I am satisfied that the information in the records at issue was either supplied to the Ministry by the agencies or that its disclosure would reveal information supplied to the Ministry.

Both the Ministry and the affected parties describe the confidentiality with which they conducted their discussions and I am satisfied that such discussions were carried out in a confidential manner. Thus, the second part of the test has been met.

### **Harms**

In order to meet this part of the test, the Ministry and/or the affected parties must show how disclosure of the information in the record could reasonably be expected to result in the harms described in section 17(1)(a) and/or (b) of the Act.

### **Section 17(1)(a)**

This section provides that:

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, where the disclosure could reasonably be expected to,

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

With respect to section 17(1)(a), counsel for three of the affected parties describes the history of the affected parties negotiations with the union, which has been somewhat acrimonious to say the least. Counsel indicates that issues relating to labour negotiations are still on-going with the union. The Ministry states, in conclusion that:

Although no formal negotiations with the union are currently underway pending resolution of issues at OLRB [Ontario Labour Relations Board], we feel that in the context of labour relations and possible resumption of negotiations, release of this highly sensitive information eg. summary of contingency plan, labour management strategies, which is described above would interfere significantly

with negotiations between the agencies and CUPE, and compromise activities currently underway at the Ontario Labour Relations Board.

Upon consideration of the representations of the parties, I am satisfied that disclosure of the information contained in Records 785, 832 - 836, 837 - 842, 859, 864 and 905 - 907 would interfere significantly with the labour negotiations between the affected parties and the respective unions representing their employees. As all three parts of the test have been met for these records, they are exempt under section 17(1).

**ORDER:**

1. I order the Ministry to disclose the non-highlighted portions of Records 72, 73, 76, 77, 80, 81, 82, 83, 220, 221, 244, 245, 281, 450, 466, 467, 479, 480, 485, 486, 495, 501, 502, 509, 520, 521, 534, 535, 540 and 541 to the appellant by sending a copy of these records to it by **November 13, 1997** but not earlier than **November 10, 1997**.
2. I uphold the Ministry's decision to withhold the remaining records and highlighted portions of the records from disclosure.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the records that are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ October 9, 1997