



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

ORDER P-1476

Appeal P_9700192

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 request was for the total number of OAG-6 positions in the Ministry and in each branch of the Ministry, the position title, and how many positions are bilingual. The Ministry denied access to the responsive information pursuant to section 65(6)3 of the Act. The requester appealed this decision.

This office provided a Notice of Inquiry to the Ministry and the appellant. Representations were received from the Ministry only.

RECORDS:

There are two records at issue in this appeal: an inventory of Ministry positions showing the branch, position title, class title and position status (19 pages); and a report showing all positions in each branch of the Ministry and whether they are bilingual (22 pages).

DISCUSSION:

JURISDICTION

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:

- (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.

Section 65(6)3

In Order P-1242, Assistant Commissioner Tom Mitchinson stated that in order for a record 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.

Requirements 1 and 2

The Ministry indicates that the records at issue were prepared by employees on behalf of the Ministry. The Ministry advises that the first record represents a compiled list of all OAG-6 positions in the Ministry and may be used to assist in properly preparing required classification information. In this regard, the Ministry states that each year the Ministry provides classification

data, with bilingual positions, in a report form to the French Language Services Branch (FLS). The FLS branch then submits a yearly report to the Office of Francophone Affairs (OFA) in response to the OFA's request for the data. The Ministry indicates that the second record at issue represents a portion of the report sent to the OFA from the FLS, as the full report would contain all classification levels, not just those of OAG-6.

I am satisfied that the records were collected, prepared, maintained or used by the Ministry and that this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications between the Ministry and other branches of the government. Accordingly, the first two requirements are met.

Requirement 3

I am satisfied that the communications between the Ministry and other branches regarding the records relate to the employer's collective relationship with its employees, and are, therefore, "about labour relations" for the purpose of section 65(6)3.

In Order P-1242, the Assistant Commissioner stated the following regarding the meaning of the term "has an interest":

Taken together, these [previously discussed] authorities support the position that an "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.

The Ministry states that it has an interest in ensuring fair and equitable classification levels, based on Ontario Public Service standards. This includes classification levels designated as bilingual, for individuals performing similar employment functions within the Ministry, and amongst government ministries. The Ministry states further that if it were to fail to respond adequately to issues relating to classification it may result in the filing of a grievance by an employee who disputes his or her classification. Moreover, salaries paid to employees of the Ministry also are heavily impacted by the various classification levels. Therefore, the Ministry submits that it has a legal interest in the records in that they have the capacity to affect the Ministry's legal rights or obligations vis a vis its employees.

I find that the Ministry has an interest in adhering to the standards and requirements of the Public Services Act.

Accordingly, I find that the third requirement has been met.

All of the requirements of section 65(6)3 of the Act have thereby been established by the Ministry. 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 this section, and therefore are excluded from the scope of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ October 30, 1997