



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

ORDER P-1550

Appeal P-9700360

Ministry of Natural Resources



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NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of all records, stored or held in any form, pertaining to the requester, directly or indirectly. The records sought relate to his work-related back injury and surrounding employment, re-employment, recovery, tests, meetings, evaluations, proposed work trial(s), rehabilitation employment or any other matter, for the period of June 4, 1997 to October 24, 1997 inclusive. Specifically, the records include information about:

1. his Workers' Compensation Board claim;
2. his employment/re-employment to a specified job;
3. his consideration for other employment/re-employment placement;
4. his proposed return to a work-trial at a specified location; and
5. his return to work to a specified job from September 15, 1997 onwards.

The request included a detailed description of the type of records to which access was sought and identified the individuals and the offices with whom or where these records may be located.

The Ministry responded by disclosing some of the records but also stated that it was not required to disclose the information requested under the Act. The requester appealed the Ministry's decision.

During mediation, the Ministry clarified its position and issued a supplementary decision, stating that the responsive records relate to employment matters and are exempt from the Act under section 65(6). The Ministry also indicated that, despite the foregoing, it had previously disclosed some of the records and that this disclosure was outside of the Act and consistent with its human resources practices.

The records at issue consist of 80 pages of e-mail, draft documents related to the appellant's return to work, draft correspondence, correspondence related to the appellant's WCB claim, correspondence, memoranda, and forms related to the appellant's re-employment and abilities for re-employment.

This office provided a Notice of Appeal to the appellant and the Ministry. Representations were received from both parties.

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. 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.

Sections 65(6) and (7) 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.

In its representations, the Ministry submits that the records relate to both labour relations and employment and therefore, any one of paragraphs 1, 2 or 3 of section 65(6) could apply to

exclude the records from the Act. I will first consider whether the requirements of paragraph 3 are present in the circumstances of this appeal.

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.

[Order P-1242]

Requirements 1 and 2

The Ministry states that the appellant suffered from a work-related injury and the records relate to his WCB claim and his re-employment. The Ministry submits, therefore, that the records were collected, prepared, maintained or used by the Ministry on its behalf for meetings, consultations, discussions and communications. The Ministry submits that this was done for the “purpose of, as a result of, or substantially connected to’ administering a WCB claim and assisting the appellant with his potential re-employment or job placement”.

I have carefully reviewed the records together with the representations of the appellant and the Ministry. I find that the records were prepared or used by the Ministry or on its behalf, for the purpose of and in connection with discussions, communications and/or meetings related to the WCB claim and the appellant’s re-employment and job placement. I am satisfied that Requirements 1 and 2 have been met.

Requirement 3

The appellant defines “employment” as “the acts of hiring and of the leaving of an employee”. He argues that records which are not directly related to the hiring or termination process should not be excluded from the Act.

I am satisfied that the appellant is an employee of the Ministry. Previous orders of the Commissioner have held that records relating to a WCB claim qualify as employment-related records (Order P-1514). Having reviewed the records, I find that they are “about” the appellant’s WCB claim and the Ministry’s involvement, as his employer, in his re-employment and job-placement. Accordingly, I am satisfied that the records relate to an employment-related matter.

I must now determine whether the Ministry “has an interest” in the employment-related matter. Previous orders have held that an “interest” for the purposes of section 65(6)3 must be more than

a 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 its legal rights or obligations (Order P-1242).

The records relate to appellant's WCB claim and rehabilitation process and the Ministry has an interest in this claim under the Workers Compensation Act. I find that Requirement 3 has been met.

Since all three requirements have been met, I find that section 65(6) applies to the records. I have reviewed the provisions of section 65(7) and I find that none of them are applicable to the records at issue in this appeal. Accordingly, the records are excluded from the scope of the Act.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ March 30, 1998