



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1543

Appeal P-9700331

Criminal Injuries Compensation Board



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NATURE OF THE APPEAL:

The Criminal Injuries Compensation Board (the Board) received a two-part request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to:

1. 1997 audits, evaluations, reviews, investigations (draft/interim/final reports, for example) done on the Criminal Injuries Compensation Board and its administration, finances, personnel, awards and other matters, and changes made/to be made.
2. 1997 issue sheets, briefing notes, reports, personnel actions, investigations done on the former Chairperson of the Criminal Injuries Compensation Board, and resulting departure, and on the background and activities of the Board's investigators, including [a named individual], including on reasons for resignations and resulting actions.

The Board located a number of records and, with one exception, it denied access to them, claiming that pursuant to section 65(6) of the Act, the records fall outside the ambit of the Act. Access was granted, in part, to one record with severances made pursuant to section 21(1) of the Act (invasion of privacy).

The appellant appealed the Board's decision.

A Notice of Inquiry was provided to the Board and the appellant, as well as another individual whose interests may be affected by the disclosure of the information contained in the severed record (the affected person). Submissions were received from the appellant, the affected person and from the Ministry of the Attorney General, on behalf of the Board. The affected person consented to the disclosure of his personal information and the remaining portions of the severed record were made available to the appellant.

The 23 records at issue consist of an Audit Plan, briefing notes, house book notes, "Questions and Answers", an e-mail, memoranda, correspondence and an investigation report.

DISCUSSION:

JURISDICTION

In this appeal, the sole issue to be decided is whether sections 65(6) and (7) of the Act apply to any of the 23 records. These two sections 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.

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 outside the Commissioner's jurisdiction.

Section 65(6)3

In order to fall within the scope of paragraph 3 of section 65(6), the Board must establish that:

1. the record was collected, prepared, maintained or used by the Board 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 institution has an interest.

[Order P-1242]

Requirements 1 and 2

The Board states that 22 out of the 23 records at issue were either “collected, prepared, maintained, or used” by the Board for the purpose of “meetings, discussions, consultations, or communications” concerning an audit and an investigation undertaken into issues surrounding work performed by Board investigators. Having reviewed the records, it is clear to me that they were prepared and used by officials within the Board, and this preparation and use was in relation to meetings, consultations, discussions and communications within the Board and the Ministry of the Attorney General.

Accordingly, I find that the first two requirements have been met with respect to the records which relate to the audit and investigation.

Requirement 3

The Board states that because all of the 22 records involve an audit and investigation into the activities of Board investigators, questions surrounding performance issues and expense claims of employees qualify as employment-related matters.

The records deal with an investigation into possible malfeasance, as well as the work performance of employees acting as investigators on behalf of the Board. As such, I am satisfied that the discussions and communications which are reflected in the records are about an employment-related matter within the meaning of section 65(6)3.

The only remaining issue is whether these employment-related matters can be characterized as ones in which the Board has an interest.

In Order P-1242, Assistant Commissioner Tom Mitchinson made the following comments 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 Board submits that it has a legal interest in the audit and investigation undertaken which is reflected in the 22 records. This interest arises from the Board’s obligation as an employer at common law to ensure that its employees do not engage in any illegal or criminal activity. It argues that the Board has a legal obligation to investigate any such allegations and take appropriate measures to correct any problems which are identified. Further, the Board submits that it has a legal obligation under the Financial Administration Act to ensure that funds allocated to it from the Consolidated Revenue Fund are properly expended. In addition, the Board argues that it has a legal obligation to investigate and determine whether an applicant under the Compensation for Victims of Crime Act (the CVCA) is properly entitled to compensation. If the investigation undertaken into an applicant’s claim was flawed, the Board could be liable to the applicant. Accordingly, the Board submits that it has a legal obligation to ensure that applications for compensation are investigated competently and properly.

I have reviewed each of the 22 records pertaining to the audit and investigation and find that the Board has the requisite legal interest in their subject matter. In my view, the Board has a legal obligation at common law to ensure that its employees do not abuse their positions for personal gain. Furthermore, I find that the matter in which the Board has an interest, the propriety of its' employees' actions when conducting investigations into an individual's entitlement to benefits under the CVCA, has the capacity to affect the Board's legal rights or obligations under that Act, within the meaning of section 65(6)3.

Accordingly, these records fall within the ambit of section 65(6)3. I also find that the exceptions in section 65(7) do not apply. The 22 records relating to the audit and investigation undertaken by the Board are not, therefore, subject to the Act.

With respect to the final responsive record, I am satisfied that it represents a document which was prepared for the Board for the purpose of communicating its contents, thus satisfying the first two requirements of section 65(6)3. Further, I find that the subject of the record was an employment-related matter within the meaning of section 65(6)3. With respect to the question of whether the Board has the requisite interest in the record, it submits that:

Under the Compensation for Victims of Crime Act, the Board must have a chair, to be appointed by the Lieutenant Governor in Council. Thus the Ministry has a legal obligation (and thus a legal interest) in ensuring that when a chair resigns, the appropriate steps are taken to replace him or her.

In my view, the Board has not provided me with sufficient evidence to establish the required connection between this record and any legal interest or obligation which it may have, under the CVCA or at common law. Because I have found that the Board has failed to establish the requisite legal interest in the subject matter of the this record, I find that it falls within the ambit of the Act and I order the Board to issue the appellant a decision letter with respect to it.

ORDER:

1. I uphold the Board's decision with respect to the 22 records which relate to its audit and investigation.
2. I order the Board to provide the appellant with a decision letter with respect to Record HR-24(a) and (b) by **March 31, 1998**.
3. I order the Board to provide me with a copy of the decision letter provided to the appellant in accordance with Provision 2 by forwarding a copy to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

Original signed by: _____

March 10, 1998

Donald Hale
Inquiry Officer