



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1590

Appeal P-9800059

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) for access to information relating to the requester's application for employment with the Ontario Provincial Police (the OPP). Specifically, the request sought access to all documentation gathered during a background investigation of the requester, including the interviewing of character and police references and any other persons who commented on the requester's character and potential. The Ministry denied access to the responsive records on the basis that the records fall within the parameters of section 65(6) of the Act and, therefore, outside the scope of the Act.

The requester appealed the decision to deny access.

During mediation, the requester, now the appellant, indicated that she was not seeking access to other information relating to her application, including information that she had supplied herself.

The records at issue consist of letters, reports and interview statements relating to the background investigation of the appellant.

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

DISCUSSION:

JURISDICTION

The interpretation of sections 65(6) and (7) is an 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 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.

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.

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.

The Ministry has withheld access to the records pursuant to section 65(6)3 of the Act.

The Ministry explains that the records resulted from an application for employment submitted by the appellant to the OPP. The recruitment process of the OPP has various phases which are undertaken by the applicants. Applicants who meet the basic prerequisites are required to write entrance examinations consisting of a series of aptitude tests, a spelling test and written compositions. Applicants who achieve a predetermined score in the examination session are then given an opportunity to present their qualifications at a personal interview. An applicant meeting a predetermined cut-off score would then proceed to a background check. The background check is conducted by members of the OPP recruitment branch and includes

meetings with various individuals. The results of these meetings are communicated in writing to the recruitment branch of the OPP. The Ministry submits that the records relate to the background investigation of the appellant in relation to the OPP's hiring process.

Requirements 1 and 2

The Ministry submits that the records were either collected, prepared, maintained or used by the recruitment branch of the OPP in relation to the recruitment process for the application for employment.

In my view, it is clear that job application records are either collected, prepared, maintained or used by the employer, and in many cases, all four. Therefore, Requirement 1 has been met.

I also find that the interviews notes, letters, recommendations, and reports were generated as a result of meetings, discussions or communications and can be characterized as being in relation to them. (Order P-1242). I find that Requirement 2 has been met.

Requirement 3

It is apparent from my review of the records that they relate to a job competition and also involved applicants other than the appellant. In my view, the recruitment process involved in a job application is an employment-related matter and therefore, the meetings, discussions and communications were "about" employment-related matters.

In Order P-1258, Assistant Commissioner Tom Mitchinson found that the mandatory non-discriminating requirements of the Ontario Human Rights Code apply to job competitions and impose legal obligations on an institution concerning the manner in which the competition is conducted. In the present circumstances, the records relate to an application for employment and it is evident that the "pre-determined scores" and other bench marks speak to the efforts of the OPP to ensure its legal obligations are met and to maintain the integrity of its recruitment process. Accordingly, I find that the Ministry has an interest in the subject matter of the records as the application and recruitment process has the capacity to affect the legal rights or obligations of the Ministry. Requirement 3 has been met.

Accordingly, all of the requirements of section 65(6) of the Act have been established. As none of the exceptions contained in section 65(7) are present, I find that the records are excluded from the scope of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Mumtaz Jiwan

June 30, 1998

Adjudicator