



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1547

Appeal P-9700248

George Brown College of Applied Arts and Technology



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to George Brown College of Applied Arts and Technology (the College). The request was for access to:

1. List of all complaints of discrimination or harassment made against the institution with the Ontario Human Rights Commission in the last five fiscal years and the outcome of the complaints;
2. List of complaints made by employees and students of discrimination or harassment made against the institution which did not or have not proceeded to the Ontario Human Rights Commission in the last five fiscal years and the outcome of the complaints;
3. List of all union grievances [whether settled, withdrawn or arbitrated] against the institution alleging discrimination or harassment and the outcome of the complaints;
4. List of all complaints, allegations, etc. of discrimination or harassment filed in any other forum [e.g. Ombudsman, courts] against the institution and the outcome of the complaints;
5. Number of overtime hours worked by employees in the Physical Resource Department of the institution.

The College granted access to the information responsive to part five of the request and denied access to the records responsive to the first four parts on the basis that section 65(6)1 of the Act applies to remove these records from the scope of the Act.

The appellant appealed the decision of the College to deny access to the information responsive to the first four parts of his request.

During mediation, the College advised that there are no records responsive to parts 2 and 4 of the request. The College issued a revised decision advising the appellant that access was being denied to parts 2 and 4 of the request on the basis that the records do not exist. The appellant appealed the revised decision.

This office sent a Notice of Inquiry to the appellant and to the College. Representations were received from both parties. In its representations, the College indicated that section 65(6)3 was also relevant in the circumstances of this appeal.

DISCUSSION:

JURISDICTION

Sections 65(6) and (7) 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 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)1

In order for a record to fall within the scope of section 65(6)1, the College must establish that:

1. the record was collected, prepared, maintained or used by the College or on its behalf; **and**
2. this collection, preparation, maintenance or usage was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity; **and**
3. these proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the institution.

[Order P-1223]

The College submits that the information responsive to Items 1 and 4 of the request, or that which would be created in response to Item 2 of the request, is collected, prepared, maintained and used by the Human Rights Advisor to the President of the College. The College indicates that the information outlined in Item 3 of the request is collected, prepared, maintained and used by Human Resources staff of the College. I am satisfied, based on my review of the information before me, that the first requirement of section 65(6)1 has been met with respect to all four aspects of the request.

The College submits that the information requested by the appellant is collected, prepared, maintained and used in relation to proceedings or anticipated proceedings before a court, tribunal or other entity. However, the College has not provided details of the relationship between these particular records and any existing or anticipated proceedings. Rather, the College has indicated that the records were used by the Human Rights Advisor in relation to a number of other purposes, including:

- development, implementation and monitoring a variety of programs to advocate for and support a discrimination and harassment free workplace and classroom environment;
- inform the President and Vice Presidents of the situation at the College with regards to human rights matters;
- monitor the various areas of the College to ensure that it is legally in compliance with the Ontario Human Rights Code, other relevant legislation and its internal policies; and
- maintain a record to provide recommendations to management on areas that may require special attention or initiatives.

While I can accept that information about the complaints was collected, prepared, maintained or used by the institution in relation to such proceedings, I find that the College has failed to establish a substantial connection between the collection, preparation, maintenance or use of **these records**, which are simply lists of complaints and grievances, and the described proceedings.

Accordingly, as the second requirement of section 65(6)1 has not been established, I find that section 65(6)1 does not apply.

Section 65(6)3

In order for a record to fall within the scope of section 65(6)3, the College must establish that:

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

As above, I am satisfied that the records were collected, prepared, maintained or used by the College or on its behalf. I am also satisfied that this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications between the Human Rights Advisor to the President of the College, the Human Resources staff, the College President and/or Vice Presidents. Accordingly, the first two requirements of section 65(6)3 have been established.

With respect to the third requirement, I am satisfied that the meetings, consultations, discussions or communications are about human rights matters, which are properly considered employment-related matters. Because the complaints have the potential to proceed to the Ontario Human Rights Commission, to a grievance, or to the courts, I am satisfied that these are matters in which the institution has an interest.

Because some of the complaints listed have likely since been resolved, it could be argued that the College may have **had** an interest but no longer **has** an outstanding or not yet settled interest in the identified matter. However, in my view, because each list would also contain information about matters which are still outstanding, such a finding would not be appropriate in the circumstances of this appeal.

As all of the requirements of section 65(6)3 of the Act have been established, and none of the exceptions in section 65(7) apply in the circumstances of this appeal, I find that the records are excluded from the scope of the Act.

Because I have found that the records fall outside of the scope of the Act, I find that I do not have the jurisdiction to address the reasonableness of the College's search for responsive records.

ORDER:

I dismiss the appeal.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ March 23, 1998