



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1576

Appeal P-9700364

Ministry of Education and Training



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NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Education and Training (the Ministry). The request was for access to an interview record pertaining to the appellant's son, who committed suicide in 1997. The appellant's son had been a student at a provincial school for the deaf from 1974 to 1986. In 1995, the appellant's son was interviewed about his experiences at the school by a Ministry investigator. The appellant had been present during the interview, but was out of the room for part of it. As well, the appellant did not understand all of the interview, because the interview was signed and she is not fluent in American Sign Language. The appellant states that her son's demeanor changed dramatically after the interview, and believes it contributed to his suicide.

The Ministry located records responsive to the request and denied access in full to them, based on the exemption in section 21 (invasion of privacy) of the Act. The appellant appealed the denial of access. As the appellant is referred to in the records, section 49(b) of the Act was also included as an issue in this appeal.

A Notice of Inquiry was sent to the Ministry, the appellant, and 11 individuals whose interests may be affected by the outcome of this appeal (the affected persons). Representations were received from the Ministry and the appellant. Notices sent to four of the 11 affected persons were returned as undeliverable.

In its representations, the Ministry raised the exclusion found in section 65(6) of the Act. A supplemental Notice of Inquiry was sent to the appellant and she provided representations on this issue as well.

RECORDS:

The records at issue in this appeal consist of transcripts of interviews with the appellant's son prepared by a Ministry investigator.

ISSUES:

JURISDICTION

In this appeal, the first issue to be decided is whether sections 65(6) and (7) of the Act apply to the interview transcripts. These sections 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.

Section 65(6) is record-specific and fact-specific. If section 65(6) applies, and none of the exceptions found in section 65(7) apply, section 65(6) has the effect of excluding records from the scope of the Act, which removes such records from the Commissioner's jurisdiction.

Section 65(6)3

In order for the interview transcripts 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 submits that it has been conducting an investigation into allegations made by former students that, over a period of many years, employees of Provincial Schools had engaged in abuse and/or inappropriate behaviour against them. These allegations were made by the former students (who are now adults) through their counsel in the context of threatened civil litigation against the Ministry. In 1994, the Ministry hired an investigator to conduct an investigation into the allegations.

The Ministry indicates that this investigation involved interviews with many former students, including the appellant's son. The requested records were collected and prepared by the investigator as part of this larger investigation, which is still ongoing. The interview records are maintained by the Ministry in a locked file cabinet where access is restricted.

I find that the records were collected, prepared, maintained or used by the Ministry in relation to meetings, consultations, discussions and communications, and the first two requirements of section 65(6)3 have been established.

Requirement 3

I am satisfied that the Ministry's investigation into the allegations of abuse of students by employees of Provincial Schools is an "employment-related matter" for the purposes of section 65(6)3. The only remaining issue is whether this is an employment related matter in which the Ministry "has an interest."

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

... 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 submits that the investigation is, at this point, primarily focussed on the allegations against current employees of the Ministry. At the conclusion of the investigation into each allegation, the Ministry indicates it will use the investigation reports to determine whether the allegations have been substantiated and, if so, to engage in settlement negotiations with the former students' counsel. In addition, the Ministry will use the investigation reports to determine what sanctions may be taken against individual employees and, if required, to modify existing employment strategies and policies.

In my view, the Ministry has established that it has an interest that has the capacity to affect its legal rights or obligations, and the third requirement of section 65(6)3 has also been met. I have reviewed section 65(7) and find that none of the exceptions apply in the circumstances of this appeal.

In summary, I find that the records at issue in these appeals were collected, prepared, maintained or used by the Ministry in relation to meetings, consultations, discussions or communications about employment-related matters in which the Ministry has an interest. Accordingly, I find that the records fall within the parameters of section 65(6)3 and are excluded from the scope of the Act.

Despite my sympathy for the appellant's situation, and as deserving as she may be of access to the records, I lack the jurisdiction to consider the remaining issues raised by this appeal.

ORDER:

I dismiss this appeal.

Original signed by: _____
Holly Big Canoe
Adjudicator
(formerly Inquiry Officer)

June 4, 1998