



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

ORDER PO-1724

Appeal PA-990004-1

La Cité Collégiale



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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 La Cité Collégiale, Collège d'arts appliqués et de technologie (the College). The request was for access to all records relating to the classification of job position 616 at the College.

The College informed the appellant that the records he was seeking access to were excluded from the scope of the Act under section 65(6) of the Act. The College also cited the exemptions found in sections 13 (advice or recommendations), 17 (third party information) and 18 (economic or other interests) of the Act in support of its decision to deny access.

The appellant appealed the College's decision to deny access.

I sent a Notice of Inquiry to the College and the appellant. Representations were received from both parties.

RECORDS:

The College identified 16 records as responsive to the appellant's request. They consist of e-mail messages, notes, memos, draft job descriptions and evaluation forms, and the results of the evaluation.

DISCUSSION:

APPLICATION OF THE ACT:

In this appeal, the first issue to be decided is the interpretation of sections 65(6) and (7) of the Act. These amendments to the Act may apply to the records requested by the appellant.

The interpretation of sections 65(6) and (7) of the Act is a preliminary issue which goes to the Commissioner's jurisdiction to continue an inquiry. These 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.

The College relies on section 65(6)3.

Section 65(6)3

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

1. it 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.

[Order P-1242]

Requirement 1

[IPC Order PO-1724/November 2, 1999]

The College explains that the job classification file contains documents pertaining to the establishment of a position and its evaluation and was compiled by specialists in its human resources department.

In my view, these records were clearly collected, prepared and used by the College, and I find that the first requirement of section 65(6)3 has been established.

Requirement 2

The College indicates that each manager is responsible for maintaining communications with the human resources specialist in order to discuss the position description content and the job evaluation. The College submits that all of the records are closely related to the reclassification process and reflect the various exchanges and advice given between human resources specialists and the College administration relating to the present or future incumbent's assigned duties and the position classification.

On the basis of the information before me, I am satisfied that the records were collected, prepared and used in relation to communications, thereby satisfying the second requirement of section 65(6)3.

Requirement 3

The College submits that the reclassification process is an "employment-related matter" in which the College "has an interest".

The College submits that the reclassification process was initiated at the appellant's request and deemed necessary by the College in the context of its supervisory functions. I am satisfied that, in the circumstances of this appeal, the communications in relation to which this record was prepared or used were about employment-related matters.

Previous orders have held that an interest is more than mere curiosity or concern. An "interest" for the purposes of section 65(6)3 must be a legal interest in the sense that the matter in which the College has an interest must have the capacity to affect the legal rights or obligations of the College (Orders P-1242 and M-1147).

Several recent orders of this Office have considered the application of section 65(6)3 (and its municipal equivalent in section 52(3)3) in circumstances where there is no reasonable prospect of the institution's "legal interest" in the matter being engaged (Orders P-1575, P-1586, M-1128, P-1618 and M-1161). The conclusion of this line of orders has essentially been that an institution must establish an interest that has the capacity to affect its legal rights or obligations, and that there must be a reasonable prospect that this interest will be engaged.

The College indicates that position classifications and the content of the position descriptions are governed by the collective agreement between the College and the Ontario Public Service Employees Union. Under section 18 of the collective agreement, a grievance may be filed against any decision made by the College's

administration regarding a job classification or the content of a position description. The College indicates that it has an interest in the matter raised because the reclassification process could have a significant impact on all questions regarding its workforce and pay equity. Further, the College indicates that in this particular situation, the appellant has chosen to file a grievance with regard to the reclassification process which will eventually be referred to an arbitration board.

Based on the information before me, I am satisfied that the communications to which the records relate are about employment- related matters in which the College has an interest. I am also satisfied that the matter has the capacity to affect the College's legal rights or obligations, and that this legal interest has been engaged by way of the appellant's grievance.

Therefore, the third requirement for section 65(6)3 has been established, and I find that the records fall outside the jurisdiction of the Act.

As stated above, section 65(6) is record specific and fact specific. The appellant's submission that he filed the grievance after filing his request under the Act does not alter my finding because, at the present time, the College's legal interests have been engaged.

ORDER:

I uphold the decision of the College.

Original signed by: _____
Holly Big Canoe
Adjudicator

November 2, 1999