



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2015

Appeal PA-010215-1

**Ministry of Public Safety and Security
(Formerly Ministry of Correctional Services)**



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>

BACKGROUND:

The appellant is employed by the Ministry of Public Safety and Security (formerly the Ministry of Correctional Services) (the Ministry) as a correctional worker at a Correctional Centre (the Centre) operated by the Ministry. On September 13, 1998, he became seriously ill while at work and was subsequently transported to the hospital. Due to concerns expressed by the appellant, the Hamilton Police Service (the Police) were called in to investigate the circumstances of his illness. No charges were laid in regard to the incident.

NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records relating to himself and in particular, all records relating to the incident which occurred at the Centre.

The appellant also submitted a request under the municipal *Act* to the Police for records relating to their investigation (Appeal MA-010095-1). I disposed of the majority of records in the municipal appeal in Order MO-1524-I. The remaining records at issue in that appeal originated from the Centre, and I decided that additional issues pertained to them on which the parties should be given an opportunity to make submissions. This matter is currently at the representations stage.

The Ministry located the responsive records (which were located in the appellant's Human Resources file and in the Institutional file) and denied access to them in their entirety on the basis that the records fell outside of the scope of the *Act* by virtue of section 65(6) of the *Act*.

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

During mediation, the appellant confirmed that he had already viewed the records that were located in his Human Resources file and therefore, did not wish to pursue access to these records. The scope of the appeal was thus narrowed to those records in the Institutional file. During the course of mediation, the appellant further reduced the scope of the appeal to only those records that related to the incident described above. Accordingly, the records that remain at issue consist of a total of 15 pages numbered by the Ministry as Records 1-9 and 33-38 inclusive.

I decided to seek representations from the Ministry, initially and sent it a Notice of Inquiry setting out the facts and issues on appeal. The Ministry provided representations in response. I then sought representations from the appellant and sent him a copy of the Ministry's representations along with a copy of the Notice of Inquiry. The appellant did not submit representations.

RECORDS:

The records at issue include memoranda (pages 2 - 5), correspondence (page 35) various reports, including employee information reports and report of accident (pages 1, 6, 7, 8 and 36) and employer reports, including an occurrence report (page 9), employer's report of injury (pages 33 - 34) and manager's accident investigation report (pages 37 - 38).

DISCUSSION:

APPLICATION OF THE ACT

Introduction

Section 65(6) is record-specific and fact-specific. If section 65(6) applies to the record, and none of the exceptions found in section 65(7) applies, then the record is outside the scope of the *Act*.

As I indicated above, the Ministry claims that paragraphs 1 and 3 of section 65(6) apply to the records.

Sections 65(6)1 and 3 and 65(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.

...

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)3

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

1. the records were collected, prepared, maintained or used by the institution 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.

By way of background, the Ministry indicates that following his illness, the appellant did not immediately return to work. The Ministry indicates further that he ultimately applied for Long Term Income Protection (LTIP) benefits and also filed a claim with the Workplace Safety and Insurance Board (the WSIB). In addition, the Ministry states that the appellant, who is a member of the Ontario Public Service Employees Union (OPSEU), filed a grievance on March 9, 2001 in which he alleges that his employer has failed to accommodate him in the workforce. In this regard, the Ministry points out that the appellant believes that accommodation is required as a result of the September 13, 1998 incident. The Ministry notes that the Grievance Settlement Board hearing in regard to the appellant's grievance was to have been held in April 2002, but was postponed and rescheduled to be heard mid-May.

The Ministry states that:

[T]he records remaining at issue have been collected, prepared, maintained and used by the Ministry in relation to the appellant's employment with the Ministry. The records reflect meetings, consultations, discussions and communications relating to the September 13, 1998 incident and related matters, including the appellant's application for LTIP benefits and his Workplace Safety and Insurance Board claim. The Ministry submits that issues relating to LTIP benefits and WSIB claims are inherently employment-related matters.

The Ministry stresses that the records are directly connected to the appellant's grievance.

Requirements 1 and 2

In Order P-1223, Assistant Commissioner Tom Mitchinson held that if the preparation (or collection, maintenance, or use) of a record was for the purpose of, as a result of, or substantially

connected to an activity listed in sections 65(6)1, 2 or 3, it would be found to be "in relation to" that activity. I agree with this approach.

All of the records at issue in this appeal pertain to the September 13, 1998 incident involving the appellant. I find that the records were collected, prepared, maintained and/or used by the Ministry in relation to meetings, discussions or communications about the incident, including the issues pertaining to the appellant's grievance and WSIB claim, which arise directly from the matters addressed in the records at issue. On this basis, I find that the first two requirements have been satisfied.

Requirement 3

It has been established in a number of previous orders that grievances which are initiated pursuant to the procedures contained in the collective agreement between OPSEU and the Government of Ontario are, by their very nature, about labour relations matters (Orders P-1223, P-1253 and P-1255). Similarly, previous orders have found that WSIB matters are employment-related matters as contemplated by this section of the *Act* (Orders MO-1342 and MO-1348).

Therefore, because the records at issue relate directly to the subject matter of the appellant's grievance and WSIB claim, I am satisfied that they qualify as records about "labour relations" and/or "employment-related" matters for the purposes of section 65(6)3. As I noted above, the Grievance Settlement Board hearing with respect to the appellant's grievance was to have been held last month, but was rescheduled to be heard this month. In the circumstances, I am satisfied that the records were collected, prepared, maintained and used by the Ministry in relation to meetings, consultations, discussions and communication about labour relations and/or employment-related matters in which the Ministry has a current and active interest. The third requirement of the test for section 65(6)3 has, accordingly, been met.

As none of the exceptions in section 65(7) apply in the circumstances of this appeal, I find that the records fall outside the jurisdiction of the *Act*.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ May 13, 2002