



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2058**

**Appeal PA-010338-1**

**Ministry of Correctional Services**



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## **NATURE OF THE APPEAL:**

The appellant is a former employee of the Ministry of Correctional Services, now the Ministry of Public Safety and Security (the Ministry). He submitted a request to the Ministry under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to “all materials, correspondence and any file contents in relation to the [Ministry’s] Independent Investigation Unit’s [the IIU] investigation of all my harassment claims”.

The Ministry located responsive records and denied access to them claiming that they are not accessible under the *Act* by virtue of section 65(6) of the *Act*.

The appellant appealed this decision. Mediation could not be effected and the file was forwarded to adjudication. The sole issue to be determined on adjudication is whether the records fall outside the scope of the *Act* pursuant to section 65(6).

I decided to seek representations from the Ministry, initially. The Ministry submitted representations in response. Initially, the Ministry did not specify which paragraph of section 65(6) it relied on in withholding the records. In its representations, however, the Ministry indicates that it relies on only paragraph 3 of section 65(6). I therefore amended the Notice of Inquiry accordingly, by removing questions pertaining to the application of sections 65(6)1 and 2 and sent it to the appellant, along with the complete representations of the Ministry, and invited him to submit representations on the issues identified therein. The appellant did not respond.

## **RECORDS:**

The Ministry has identified 181 pages of responsive records consisting of correspondence, forms, occurrence reports and handwritten notes.

## **DISCUSSION:**

### **APPLICATION OF THE ACT**

#### **Introduction**

As indicated above, the Ministry relies on section 65(6)3 to deny access to the record at issue. 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 falls outside the scope of the *Act*.

#### **Section 65(6)3**

##### ***General***

In order to fall within the scope of paragraph 3 of section 65(6), the 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.

### **Requirements 1 and 2**

In explaining why it claimed the application of section 65(6) to the requested records, the Ministry sets out the history of events involving the appellant and the records:

The appellant was employed by the [Ministry] as a correctional officer at a [named] jail at the time these records were prepared.

The records indicate that the appellant had suffered an injury while performing duties as a Correctional Officer in January 2000. A dispute arose between the appellant and management related to his Workplace Insurance and Safety Board (WSIB) claim and subsequent return to work. The appellant, as a result of this conflict, made a complaint to the IIU under the Workplace Discrimination and Harassment Policy (WDHP) policy.

The Ministry notes also that the appellant, as a member of the Ontario Public Service Employees Union (OPSEU) filed grievances, which were put on hold pending the IIU investigation, but that these grievances are no longer active since the appellant is no longer an employee of the Ministry.

With respect to the requirements under section 65(6)(3), the Ministry indicates that the appellant's complaint against Ministry staff under the WDHP policy was investigated by the IIU and the records at issue were collected, maintained and used by it during the course and in response to the investigation. The Ministry notes that the records reflect meetings, consultations, discussions and communications relating to the employment of the appellant, which were forwarded to the IIU.

In Order P-1223, Assistant Commissioner Tom Mitchinson commented as follows regarding the interpretation of the phrase "in relation to" in section 65(6) of the *Act*:

In the context of section 65(6), I am of the view 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 "in relation to" that activity.

I agree with this interpretation, and on review, I am satisfied that the records all relate to the matters that were investigated by the IIU. Accordingly, I find that they were collected, prepared, maintained and/or used by the IIU in relation to meetings, consultations and communications relating to the appellant's complaint and the Ministry's response to it.

### Requirement 3

The Ministry submits that the records at issue, which include the appellant's WSIB claim, his subsequent dispute with his return to work and his resulting complaint to the IIU, as well as the grievances, are inherently employment-related matters.

In support of this position, the Ministry relies on Order P-1242, in which Assistant Commissioner Tom Mitchinson found that an investigation into harassment complaints under a WDHP policy was an "employment-related matter" within the meaning of section 65(6)3. In coming to this conclusion, Assistant Commissioner Mitchinson stated:

The government's WDHP Directive is one of a series of Human Resources Directives and Guidelines issued by MBS. Directives explain human resource practices that must be followed across the Ontario public service, and Guidelines outline best practices and procedures to help human resource professionals manage effectively.

One of the objectives of the WDHP Directive is "to provide the principles and mandatory requirements essential to creating a work environment that is free from discrimination and harassment". The Directive applies to all employees appointed under the *Public Service Act*, and covers all "employment-related discrimination and harassment, except systemic discrimination". According to the Guidelines which accompany the Directive, "the [Directive] applies to discrimination in any aspect of employment ..."

In my view, the WDHP program is, by definition, designed to address an employment-related concern, and I find that any investigation which takes place under the terms of the program is properly characterized as an "employment-related matter" for the purposes of section 65(6)3 of the *Act*.

I agree with these conclusions and find that the IIU's investigation into the appellant's WDHP complaint is about an employment-related matter. Moreover, I am satisfied that the Ministry has established that its interest in this matter is engaged by virtue of the WDHP Operating Policy (see also, Order PO-1770).

As a result, I find that the Ministry has established that the records at issue were collected, prepared, maintained and/or used by the IIU in relation to meetings, consultations, discussions or communications about employment-related matters (the appellant's WDHP complaint) in which the Ministry has an interest. Accordingly, all of the requirements of section 65(6)3 of the *Act* have been established by the Ministry. None of the exceptions contained in section 65(7) are present in the circumstances of this appeal, and I find that the records fall within the parameters of this section, and therefore are excluded from the scope of the *Act*.

**ORDER:**

I uphold the Ministry's decision.

Original signed by:  
Laurel Cropley  
Adjudicator

October 29, 2002 \_\_\_\_\_