



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2057

Appeal PA-010392-1

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



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NATURE OF THE APPEAL:

The appellant is an employee of the Ministry of Correctional Services, now the Ministry of Public Safety and Security (the Ministry). In March 2000, staff from the appellant's place of employment (the Probation office) raised a number of issues with the Regional Director, Adult Community and Young Offender Operations (the Regional Director). The Regional Director initiated a "joint review process" to address these issues. In June 2000 a Human Resource Consultant and a Risk and Assurance Consultant, Audit Services Branch conducted the review. The results of this review were communicated to staff of the Probation office in October 2000 by way of an Executive Summary. At that time, the staff's request for a copy of the full final report of the review was denied.

The appellant subsequently submitted a request to the Ministry under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of the final report.

The Ministry denied access to the requested record in its entirety claiming that it was not accessible under the *Act* by virtue of section 65(6) of the *Act*.

In appealing the Ministry's decision, the appellant wrote:

...it is we, as staff, who initiated the review process. This was meant as a tool to improve the workings of this office. We were asking for assistance, and participated in the review in full faith, and yet have been, and still are, denied the results of the inquiry we ourselves put in motion. This was seen as a tool to make things better. We requested the tool, we helped build the tool, and yet are being denied the finished product.

Mediation could not be effected and this appeal was forwarded to adjudication. I decided to seek representations from the Ministry, initially. The Ministry submitted representations in response. In its representations, the Ministry indicates that it relies only on section 65(6)3 as the basis for excluding the records from the scope of the *Act*. I, therefore, modified the copy of the Notice that I sent to the appellant to reflect this (by removing all questions relating to the possible application of the other two paragraphs of section 65(6)). I also provided the appellant with a copy of the Ministry's representations in their entirety. The appellant submitted representations in response.

RECORD:

The record at issue consists of a 17-page report dated September 2000, prepared by a Human Resource Consultant and a Risk and Assurance Consultant, Audit Services Branch.

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

The Ministry notes that the objective of the Joint Review (as described in the Executive Summary) was two-fold:

1. To examine workload issues and, where appropriate, develop strategies and recommendations for effective workload management (Risk and Assurance Consultant).
2. To review the working relationships and, where appropriate, determine resolutions (Human Resources Consultant).

The Ministry states:

The content of the responsive record and the background information supplied by the appellant reflect that meetings, consultations, discussions and communications were undertaken in relation to the workload and working relationships raised by employees of the [Probation office]...

The appellant acknowledges that:

[t]he necessary information for the preparation of the Operational Review Report was collected through interviews with staff ... and supporting written materials. Meetings, consultations, discussions and written communications were the means through which staff expressed their concerns and the Consultants examined the issues.

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 am satisfied that the record at issue was prepared, maintained and used by the Ministry in relation to meetings, consultations and communications relating to the workload and working relationships with respect to employees of the Probation office. Accordingly, I find that the first two requirements have been met.

Requirement 3

The Ministry submits that the workload and working relationship issues reflected in the content of the responsive record are about labour relations and employment-related matters. The Ministry submits further:

As an employer, the Ministry has an inherent interest in working with employees to achieve resolution of identified issues and to support the development of harmonious and productive workplaces.

The Ministry’s interest in the record at issue also arises from statute, including the *Public Service Act* and the *Ministry of Correctional Services Act*, from collective agreements, including the Central Collective and Correctional Bargaining Unit Agreements between the Ontario Public Service Employees Union and the Government of Ontario and from general common law principles regarding employer-employee relations, including the right of the employer to manage and direct its workforce.

The appellant does not dispute that the records are about labour relations or employment-related matters. With respect to the Ministry’s interest in the records the appellant states:

The Ministry claims to have sufficient interest in the document for reasons related to labour relations and employment-related matters so as to invoke Section 65(6) and deny our request for disclosure. This position is a convenient use of the Act with the language of Section 65(6) being vague and undefined; and could potentially apply to most if not all meetings, discussions or communications

shared between the Ministry and its employees in a business context, which by its nature is employment-related and involving labour relations. In establishing its interest pursuant to Section 65(6)3, the Representations submitted by the Ministry cited simply a motherhood statement regarding harmonious and productive workplaces without addressing specifically how the document or disclosure would be counter to that goal.

The "interest" that the Ministry is said to have in the Operational Review, and on which the argument for exclusion is based, is ironically the same goal identified by staff at the time we requested that a review be undertaken. In the Representations submitted by the Ministry, the author in fact refers to the document as the Joint Review Report. As a Joint Review, it remains unclear as to why the interests of the Ministry should outweigh the interests of the staff at the [Probation office], who had enough of a vested interest from the start to initiate the review process.

The record relates to a review conducted by the Ministry to examine workload and workforce issues. I find that issues of this nature are clearly employment-related.

The term "labour relations" appears in section 17(1) of the Act. In that context, Adjudicator Holly Big Canoe discussed the term "labour relations information" in Order P-653 as follows:

In my view, the term "labour relations information" refers to information concerning the collective relationship between an employer and its employees. The information contained in the records was compiled in the course of the negotiation of pay equity plans which, when implemented, would affect the collective relationship between the employer and its employees.

Previous orders have concluded that Adjudicator Big Canoe's interpretation of the term is equally applicable in the context of section 65(6)3 (see, for example, Order MO-1264). I agree, and find that "labour relations" for the purpose of this section is properly defined as the collective relationship between an employer and its employees. Because a collective agreement governs the relationship between the Ministry and its employees at the Probation office, I find that this record also relates to labour relations matters.

It is apparent from the submissions of both parties that the Ministry initiated the Joint Review in response to workload and other human resources concerns raised by employees of the Probation office. I accept that the Ministry, as an employer, has an interest in addressing and resolving these issues as part of the overall management of its workforce.

Accordingly, based on the representations of both parties and my review of the record, I find that the Ministry has provided sufficient evidence to establish that the record was collected, prepared, maintained and used for meetings, consultations, discussions and communications in relation to labour relations and employment-related matters in which the Ministry has an interest.

All of the requirements of section 65(6)3 of the *Act* have thereby 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 record falls within the parameters of this section, and therefore is excluded from the scope of the *Act*.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ October 29, 2002