



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2148

Appeal PA-020272-1

Ministry of Public Safety and Security



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NATURE OF THE APPEAL:

This appeal concerns a decision of the Ministry of Public Safety and Security (the Ministry) made pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant), a Ministry employee, had sought access to records relating to a complaint he had made to the Ministry that was forwarded to the Ministry's Independent Investigations Unit (IIU). The IIU investigates employee complaints under the Ontario Public Service Workplace Discrimination and Harassment Prevention (WDHP) Operating Policy.

The Ministry denied access to the responsive records on the basis that the *Act* does not apply to them by virtue of the exclusion under section 65(6).

The appellant appealed the Ministry's decision to this office.

Mediation was not successful in resolving the issues in the appeal and the matter was referred to me for inquiry.

I first sought representations from the Ministry. The Ministry submitted representations and they were shared with the appellant in their entirety. I then sought representations from the appellant. The appellant submitted representations; however, they do not address the section 65(6) issue.

RECORDS:

Six pages of records are at issue in this appeal

- a "Record of Verbal Transaction" prepared by the IIU (2 pages)
- a fax cover sheet to the IIU from a Correctional Services – Investigation and Security Unit staff person (1 page)
- a second copy of the above fax cover sheet with handwritten notes on it (1 page)
- an e-mail from the appellant to a Correctional Services – Investigation and Security Unit staff person setting out his complaint and a handwritten note signed by this staff person and the appellant (2 pages)

CONCLUSION:

The *Act* does not apply to any of the records at issue by virtue of section 65(6)3.

DISCUSSION:

APPLICATION OF THE ACT

Introduction

As stated above, the Ministry has taken the position that paragraphs 1 and 3 of section 65(6) apply to the records. If one of these paragraphs applies, and none of the exceptions found in section 65(7) applies, section 65(6) has the effect of excluding the records from the scope of the *Act*.

Section 65(6)1 and 3 and 65(7) state:

(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 for a record to fall within the scope of section 65(6)3, the Ministry must establish that:

1. the records were collected, prepared, maintained or used by an 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 states:

The appellant, an employee of the Ministry, made a complaint against ministry staff under the WDHP Operating Policy. The complaint was investigated by the IIU. The records at issue were collected, prepared, maintained and used by the IIU during the course and in response to investigation. The records reflect meetings, consultations, discussions and communications relating to the employment of the appellant, which was forwarded to the IIU.

The file does contain correspondence from the IIU, pages 1 and 2, advising of their findings arising from the investigation.

The Ministry also submits that the records contain the appellant's complaint which was forwarded to the IIU.

In Order P-1223, Assistant Commissioner Tom Mitchinson stated 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 a complaint filed by the appellant and investigated by the IIU. I find that the records were collected, prepared, maintained and/or used by the Ministry in relation to meetings, consultations, discussions and communications relating to the investigation of the appellant's complaint. On this basis, I find that the first two requirements have been satisfied.

Requirement 3

The Ministry submits that the records at issue relate to an employment-related matter, the investigation by the IIU of a harassment complaint made under the WDHP Operating Policy.

In support of this position, the Ministry relies on Orders P-1242 and PO-2058, in which the decision makers in those cases found that an IIU investigation into an individual's complaint of harassment under a WDHP Operating Policy is an "employment-related matter" within the meaning of section 65(6)3.

In coming to his conclusion in P-1242, Assistant Commissioner Tom 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.

I am also satisfied that the Ministry has established that it "has an interest" in this matter by virtue of the WDHP Operating Policy (see also, Orders P-1242, PO-1770 and PO-2058).

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.

In my view, none of the exceptions contained in section 65(7) are present in the circumstances of this appeal.

I find that the records fall squarely within the parameters of paragraph 3 of section 65(6). Therefore, the records are excluded from the scope of the *Act*.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Bernard Morrow
Adjudicator

_____ May 27, 2003