



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2075**

**Appeal PA-010164-1**

**Ministry of Public Safety and Security**

**(Formerly Ministry of the Solicitor General)**



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## **NATURE OF THE APPEAL:**

The Ministry of the Solicitor General (now the Ministry of Public Safety and Security, the Ministry) received a request for access under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to:

All documentation including rough notes, minutes of managers/supervisors meetings and the report of [a named individual] with respect to Investigators issues.

The Ministry originally located one record responsive to the request and denied access to it, claiming that the responsive document fell outside the ambit of the *Act* as a result of the operation of section 65(6) of the *Act*.

The requester, now the appellant, appealed the Ministry's decision on the basis that the responsive record is not subject to section 65(6). In addition, the appellant took the position that additional records responsive to his request, such as notes and minutes, ought to exist.

Following the unsuccessful mediation of the appeal, the matter was then moved to the Adjudication stage of the appeal process. Following the issuance of the Mediator's Report, the Ministry advised the appellant that it had located a large number of additional records and that it was taking the position that these records were also subject to the exclusionary provision in section 65(6). As a result, the appellant agreed that the "reasonable search" aspect of his appeal was no longer at issue.

On December 4, 2001, former Adjudicator Dora Nipp advised the appellant that his appeal was being placed "on hold" pending the outcome of an application for leave to appeal to the Supreme Court of Canada by the Commissioner's office following the decision of the Ontario Court of Appeal in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.). On June 13, 2002, the Supreme Court of Canada dismissed the Commissioner's motion for leave. The decision of the Ontario Court of Appeal therefore stands. The appeal was then moved back to the mediation stage in order to determine whether it may be possible to effect a settlement. As no such resolution was possible, the appeal was returned to the adjudication stage of the process.

I decided to seek the representations of the Ministry, initially, as it bears the onus of demonstrating that the records are subject to the exclusionary provision in section 65(6). The Ministry made representations, which were shared with the appellant, along with a copy of the Notice of Inquiry. Access to a small portion of the Ministry's representations was denied as I found this information to be confidential in nature. The appellant advised me that he would not be submitting representations in response to the Notice.

## **RECORDS:**

The thirty-one records at issue consist of a large number of notes, memoranda, meeting minutes, correspondence and a review report.

## **DISCUSSION:**

The Ministry has taken the position that sections 65(6)1 and 3 apply to the responsive records such that these records are excluded from the scope of the *Act*. These sections state:

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.

### **Introduction**

If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, section 65(6) has the effect of excluding records from the scope of the *Act*.

Section 65(6) has no application outside the employment or labour relations context. Therefore, unless the institution establishes that the anticipated proceedings for which the records are being maintained arise in an employment or labour relations context, the records do not relate to "labour relations or to the employment of a person by the institution", and section 65(6) does not apply. [Orders P-1545, P-1563, P-1564 and PO-1772]

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

#### ***General***

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

1. the record was collected, prepared, maintained or used by the Ministry 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.

***The Ministry's Representations with respect to Section 65(6)3***

The Ministry submits that the responsive records were collected, prepared, maintained and/or used by Ministry staff in relation to meetings and related discussions, consultations, discussions and communications regarding the issues raised by the fire investigators and communicated to the Deputy Fire Marshal on October 25, 2000. These issues included concerns about salaries, hours of work, systemic problems, management, staff morale, organizational structure, staffing and recruitment, health and safety, work assignments and related matters. The Ministry takes the position that all of these items, which form the subject matter of the records at issue, are “substantially connected to labour relations and employment-related matters.”

The Ministry goes on to add that it has the requisite “interest” in the subject matter of the records in its capacity as employer of the staff of the Fire Marshal’s Office. It submits that the Ministry’s interest in the records:

. . . arises from statute, including the *Public Service Act* and the *Fire Protection and Prevention Act*, from the Central Collective Agreement 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 an employer to manage and direct its workforce.

As an employer, the Ministry has an inherent managerial interest in human resource issues relating to its workforce including salaries, hours of work, assignments, working conditions, dispute resolution, employee morale, recruitment, training, grievances, health and safety issues and related matters.

***Findings***

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 adopt this interpretation for the purposes of the present appeal. I find that the records at issue in this appeal were collected, prepared, maintained and used by the Ministry and that this collection, preparation, maintenance and usage was in relation to meetings, consultations, discussions or communications. Accordingly, the first two parts of the three-part test described above have been satisfied.

As noted above, the records at issue in this appeal contain the Ministry’s response to certain issues raised by a number of investigators with the Office of the Fire Marshal. I find that these issues are directly concerned with problems and potential problems identified by the

investigators relating to employment-related matters. Accordingly, I find that issues such as those described in the records are clearly “employment-related” for the purposes of section 65(6)3.

In Order PO-2057, Adjudicator Laurel Cropley considered the application of section 65(6)3 to records of a similar nature relating to operational problems identified by the staff of a Probation Office. In that decision, she found that the subject matter of the records also could be considered to be “about labour relations”. She found that:

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.

I adopt these findings for the purposes of the present appeal and agree that the meetings, consultations, discussions and communications reflected in the records are also “about labour relations” for the purposes of section 65(6)3.

I also accept the position taken by the Ministry with respect to whether it has the requisite “interest” in the subject matter of the records. I find that the Ministry, in its capacity as an employer, has an interest in addressing and resolving the workplace issues raised by the fire investigators as part of the overall management of its workforce.

I am satisfied that the Ministry has provided me with sufficient evidence to establish all three components of the test under section 65(6)3. I further find that none of the exceptions in section 65(7) are present in the circumstances. Accordingly, I conclude that section 65(6)3 applies to the records at issue in this appeal and they are excluded from the scope of the *Act*.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ November 27, 2002