



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER PO-2157**

**Appeal PA-030108-1**

**Ministry of Public Safety and Security**



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## **NATURE OF THE APPEAL:**

This is an appeal from a decision of the Ministry of Public Safety and Security (the Ministry), made under the *Freedom of Information and Protection of Privacy Act* (the *Act*).

As background, the Office of Child and Family Service Advocacy (OCFSA) is responsible for protecting the rights and interests of children, youth and families receiving or seeking services provided by the Ministry, the Ministry of Community, Family and Children's Services (MCFCS) and the Ministry of Education. The duties of OCFSA Advocacy Officers, as described in the Ministry's representations, include mediating complaints, negotiating with service providers, government officials and the community, identifying systemic problems affecting youth, and advising ministries of service delivery gaps.

On March 13, 2002, members of the Ontario Public Service Employees Union (OPSEU) went on strike, including employees of young offender facilities under the jurisdiction of the Ministry. During the labour dispute, staff from the OCFSA visited these Ministry facilities and reported on the conditions found in them.

The labour dispute ended on May 5, 2002.

The requester (now the appellant) made a request to the MCFCS for access to certain reviews completed by the OCFSA from January 1, 1999 to the date of the request.

During the course of responding to the request, the MCFCS decided that the Ministry had a greater interest in 24 of the records at issue. The MCFCS transferred the request for access to these 24 records to the Ministry, relying on the provisions of section 25(2) of the *Act* (transfer of request).

The MCFCS decided to release other records to the appellant and, as well, denied access to some on the basis of certain exemptions under the *Act*. The appellant appealed from the decision of the MCFCS to deny access to some records and also appealed from its decision to transfer part of the request to the Ministry. That appeal is No. PA-020329-2.

After receiving notification that part of the request had been transferred to it by the MCFCS, the Ministry sent a decision to the appellant denying access to the 24 records, relying on section 65(6) (labour relations and employment information) of the *Act*. The Ministry takes the position that the records are excluded from the scope of the *Act* because of the application of section 65(6). The appellant appealed from this decision and this file (PA-030108-1) was opened.

I reviewed both appeal files, and decided to conduct my inquiry into Appeal No. PA-030108-1 first, as I concluded that the disposition of this appeal may have an impact on the disposition of Appeal No. PA-020329-2.

I sent a Notice of Inquiry to the Ministry initially, inviting it to submit representations on the facts and issues raised by this appeal. These representations were shared with the appellant, who has also provided submissions.

## CONCLUSION:

Under section 65(6), the records at issue are excluded from the scope of the *Act*.

## RECORDS:

There are 24 records at issue, consisting of institutional review reports prepared by the Office of the Child and Family Service Advocacy during March to May 2002 in relation to a number of youth facilities under the jurisdiction of the Ministry. The reports were prepared during the course of a labour dispute between the Ontario Public Service Employees Union (OPSEU) and the provincial government.

## DISCUSSION:

### Introduction

The only issue to be determined in this appeal is whether section 65(6) applies. Section 65(6) is record-specific and fact-specific. If section 65(6) applies, and none of the exceptions found in section 65(7) apply, section 65(6) has the effect of excluding the records from the scope of the *Act*. In its representations, the Ministry clarifies that it relies on section 65(6)3.

Section 65(6)3 provides:

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:

3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

In order for the records to be excluded from the Act under section 65(6), 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.

The Ministry submits that its management staff collected, maintained and used the institutional review reports in relation to meetings, consultations, discussions and communications regarding

the 2002 OPSEU strike and the effect of this strike on the care of youth residing at Ministry young offender secure custody facilities. These meetings, consultations, discussions and communications took place in the context of the labour dispute to address concerns arising from labour relations and/or employment-related matters related to the circumstances of the OPSEU strike. The Ministry submits that the context of the records reflects labour relations issues and employment-related matters. Further, the Ministry submits that these labour relations and employment-related matters are ones in which it has an interest.

The Ministry states that the records continue to be excluded from the *Act* despite the conclusion of the strike.

The Ministry relies on the findings in a privacy complaint investigation, PC-200022, concerning video surveillance of picket line activity during the OPSEU strike.

In her representations, the appellant takes issue with the purported transfer of part of her request to the Ministry. It is unnecessary for me to consider that issue here, as that is a matter to be determined in Appeal No. PA-020329-1. The appellant states that she is not seeking employment or labour related information, but rather, information concerning the conditions under which children in these facilities were living during the specific period. She states that the Ministry's decision to deny access is unreasonable because it is a "block denial", not record or fact specific.

The appellant states that members of the public have a right to information concerning the well being of children in the state's care whether or not there is a labour dispute. The state has a responsibility to ensure that children are properly cared for irrespective of the circumstances. The appellant asserts that it is in the public interest to know to what conditions these children may have been subjected. She states that the intent of the *Act* is not being addressed in denying access to these 24 records.

### **Part One – collected, prepared, maintained or used**

I am satisfied that the Ministry has established Part One of the three requirements for the application of section 65(6)3. Although it did not prepare the records, it did collect and use them.

### **Part Two – in relation to meetings, discussions, communications**

The Ministry has also established that it used the records in discussions during the course of the strike about the effect of the strike on the care of youth at its facilities.

### **Part Three – labour relations or employment-related matters in which the institution has an interest**

Finally, I am satisfied that the Ministry has established that the discussions in which it made use of the records were about labour relations matters in which it has an interest.

In considering this part of the test under section 65(6)3, I find that “labour relations” matters refers to matters arising out of the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation. “Labour relations” matters are distinct from “employment-related” matters, which may cover human resources or staff relations issues that do not arise out of a collective bargaining relationship.

In Order P-1369, former Adjudicator John Higgins adopted the requirement articulated in Order P-1223 that the collection, preparation, maintenance or use of a record must have a “fairly substantial” connection to an activity listed in section 65(6) in order for it to be “about” that activity. In Order P-1369, the former Adjudicator described the record at issue as a review of the Liquor Control Board of Ontario (LCBO) whose purpose was to set “the policy and direction for the future management of the LCBO”. As a “broadly-based organizational review which touches occasionally, and in an extremely general way, on staffing and salary issues”, the review was found to have too remote a connection to labour relations negotiations for section 65(6) to apply. As section 65(6) did not apply, the review was subject to the *Act*.

I find that the records at issue in this appeal, and the Ministry’s use of them, have a substantial connection to labour relations matters. Unlike Order P-1369, the connection is more than merely occasional or general.

Firstly, to the extent that the labour dispute arose out of an impasse in collective agreement negotiations between OPSEU and the provincial government, I am satisfied that this is a “labour relations” matter for the purposes of section 65(6). Further, based on the representations of the Ministry and a reading of the records, it is clear that an important purpose of the OCFSA reviews is to document the effects of the labour dispute on the conditions at the young offender facilities. Rather than touching generally on matters of labour relations, the OPSEU strike and its impact on the delivery of services at these facilities is at the heart of the discussion in those reviews.

The appellant has stated that she is not seeking “employment or labour related information” but “information concerning the conditions under which children in these facilities were living during the specified period.” However, these two categories of information cannot be separated from each other. The labour dispute ongoing during the time of these reviews was not an incidental background event, but a significant factor in the conditions at the facilities. To a large measure, in discussing the conditions under which the youth were living during the time of the strike, the reviews relate these conditions to the effects of the strike.

Further, I am satisfied that the Ministry had a significant interest in the labour dispute and in receiving and using information given by the OCFSA in its discussions over the labour dispute. Accordingly, I find that the Ministry’s use of the records was in relation to discussions about labour relations matters in which the Ministry had an interest.

I further find that none of the exceptions to section 65(6) found in section 65(7) apply in the circumstances of this appeal.

As section 65(6)3 applies, the records are excluded from the scope of the *Act*.

I appreciate that the appellant will not be satisfied with this result. She has received similar information in relation to facilities not experiencing a labour dispute. She believes that the public has a right to information concerning the well being of children in the state's care, whether or not there is a labour dispute. The reality, however, is that because of section 65(6), the *Act* does not apply to a broad category of information, including the records in this appeal. Since the *Act* does not apply, I am unable to review a decision to exempt the information from disclosure, or to consider whether there is compelling public interest that would require its disclosure.

**ORDER:**

I uphold the Ministry's decision.

Original Signed By:  
Sherry Liang  
Adjudicator

June 27, 2003