



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2217

Appeal PA-030040-1

Royal Ontario Museum



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NATURE OF THE APPEAL:

The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Royal Ontario Museum (the ROM) for access to the following information about a named private individual

1. copies of the letters/agreements dated October 1, 1998 and October 20, 1999 about a performance/stay bonus
2. had the ROM exercised the option to purchase a minimum of ten days' consulting services by the individual and, if so, how many days of consulting service had the ROM purchased and what services had been provided
3. a copy of Schedule V referred to in the ROM's response to an earlier request

With respect to Part 2 of the request, the ROM advised the appellant that the option had not been exercised. In response to Part 3, the ROM provided the appellant with Schedule V.

The ROM denied access to the letters requested in Part 1 on the basis that they fall outside the scope of the *Act* by virtue of sections 65(6)2 and 3 of the *Act*. Only this decision remains at issue in this appeal.

Though I sent a Notice of Inquiry to and sought representations from both the ROM and the appellant, only the ROM responded.

RECORDS:

There are two records at issue here

1. a letter dated October 1, 1998, addressed to the named individual
2. a letter dated October 20, 1999, addressed to the named individual recording a performance evaluation and bonus arrangement

CONCLUSION:

The records at issue are excluded from the application of the *Act* by virtue of section 65(6).

ANALYSIS:

APPLICATION OF THE ACT

Introduction

Section 65(6) states:

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.
2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

Section 65(7) states:

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.

The ROM relies on paragraphs 2 and 3 of section 65(6). I will first consider the application of section 65(6)3.

Section 65(6)3: matters in which the institution has an interest

For section 65(6)3 to apply, the ROM must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
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.

In general, the ROM makes only these representations on the applicability of section 65(6):

The ROM is confident in its position that the relevant records are protected under FIPPA, Section 65(6)2 and 3.

The relevant records are: letters or agreements dated October 1, 1998 and October 20, 1999, that were referred to in a confidential memo dated March 31, 2000 regarding [a named individual's] performance/stay bonus. The final agreement emanating from the negotiations outlined in the above-named correspondence was released to the requester in response to an earlier FOI request.

Record 1 is a letter from the ROM to the affected party written in response to a letter from the affected party. The ROM's letter attempts to address the affected party's concerns about his particular terms of employment. Record 2 is another communication from the ROM to the affected party. This letter records the affected party's performance evaluation, reiterates the application of the bonus arrangements made earlier, and confirms the method of evaluation for the next year.

In general, it is clear that the ROM prepared or used these records in relation to their communications with the affected party about the terms of his employment with the ROM. These communications were about employment-related matters in which the ROM, as the employer of the affected party, has an interest. Record 1 clarifies the ROM's position about the compensation arrangements and seeks to confront the affected party's concerns. Record 2 is essentially the affected party's performance evaluation. This office has previously found that notes about an employee's performance are about an *employment-related matter* for the purpose of section 65(6)3 (Orders P-1575 and PO-1676). The discussion of bonus payments within this record is clearly related to the affected party's performance.

Furthermore, section 65(7) does not apply in these circumstances. Neither of the records is an agreement as contemplated by any of sections 65(7)1, 2, or 3. Indeed, as declared by the ROM, it appears that the final agreement emanating from the negotiations between the ROM and the affected party has already been disclosed to the appellant.

Accordingly, I conclude that section 65(6)3 applies to exclude the records from the scope of the *Act*.

ORDER:

I uphold the ROM's decision that the *Act* does not apply to the records.

Original signed by: _____

Rosemary Muzzi

Adjudicator

December 15, 2003 _____