



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2234

Appeal PA-030144-1

Ministry of Public Safety and Security



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The requester made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Public Safety and Security (now the Ministry of Community Safety and Correctional Services) (the Ministry) for a copy of his Ontario Provincial Police (OPP) personnel file. The requester has authorized an agent to act on his behalf during this appeal.

The Ministry issued a decision letter to the requester, denying access to the records in their entirety, claiming that section 65(6) (labour relations and employment) excludes them from the scope of the *Act*.

The requester (now the appellant) appealed the Ministry's decision.

Mediation did not resolve this appeal, and the file was transferred to adjudication. I sent a Notice of Inquiry to the Ministry, initially, outlining the facts and issues and inviting the Ministry to make written representations. The Ministry submitted representations in response to the Notice. At the same time, the Ministry issued a new decision letter to the appellant, stating that nine pages in the appellant's personnel file are caught by the exception at section 65(7)3 and therefore fall within the *Act's* scope. The Ministry granted the appellant access to these nine pages and as a result, these pages are no longer at issue. I then sent a Notice of Inquiry to the appellant, together with a copy of the Ministry's representations. The appellant, in turn, provided representations.

In this appeal I must decide whether the *Act* applies to the records.

RECORDS:

The records consist of the appellant's OPP personnel file, except for the nine pages the Ministry has already disclosed to him, as noted above.

BRIEF CONCLUSION:

The *Act* does not apply to the records.

DISCUSSION:

LABOUR RELATIONS AND EMPLOYMENT RECORDS

The Ministry takes the position that all the records at issue fall outside the scope of the *Act* by virtue of section 65(6)3, which reads:

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:

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

Section 65(7) reads:

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.

General Principles

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

The term “in relation to” in section 65(6) means “for the purpose of, as a result of, or substantially connected to” (Order P-1223).

The term “employment-related matters” refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship (Order PO-2157).

If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date (*Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507).

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

For section 65(6)3 to apply, the Ministry 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.

Representations

The Ministry submits:

... management staff collected, prepared, maintained and/or used all of the records remaining at issue in relation to meetings, consultations, discussions and communications respecting various aspects of [the appellant's] employment with the OPP. The records reflect the employer-employee relationship between the OPP and [the appellant].

... the content of the records at issue reflect a myriad of employment-related matters including training, working conditions, compensation issues, employment benefits, pension issues, employment responsibilities and promotional issues. The records on their face are about inherently employment-related matters.

...

... the records at issue were collected, prepared, maintained and/or used for meetings, consultations, discussions and communications in relation to employment-related matters in which the Ministry, as an employer, has an interest. As such, they are and continue to be excluded from the *Act*, notwithstanding the fact that [the appellant] has retired from the OPP.

Among other things, the appellant submits that access to one's own personnel file is of the utmost importance. He had always believed employees could inspect their own personnel files and correct any errors they contained. He further believes he is being denied access to materials he has previously seen, and that the file consists largely of correspondence between him and the OPP.

Findings

Exceptions to section 65(6)

I have reviewed the records still at issue and I find that none of the exceptions in section 65(7) applies.

Part 1: collected, prepared, maintained or used

I find that the OPP, which forms part of the Ministry, collected, prepared, maintained or used the records. Accordingly, the Ministry has satisfied the first part of the three-part test.

Part 2: meetings, consultations, discussions or communications

I also find that the OPP collected, prepared, maintained or used the records “in relation to ... meetings, consultations, discussions or communications.”

Part 3: labour relations or employment-related matters in which the Ministry has an interest

Finally, I find that the Ministry has satisfied the third part of the test, which requires two things: first, that the Ministry’s meetings, consultations, discussions or communications be about labour relations or employment-related matters; and secondly, that the Ministry have an interest in these matters.

First, I accept the Ministry’s submission that the records “reflect a myriad of employment-related matters including training, working conditions, compensation issues, employment benefits, pension issues, employment responsibilities and promotional issues.” As such, the Ministry’s activities in connection with these records are about “employment-related matters.”

Secondly, the Ministry has established that it has an interest in these employment-related matters. The phrase “in which the institution has an interest” has been interpreted to mean more than a “mere curiosity or concern” and to refer to matters involving the institution’s own workforce (*Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, *supra*). The matters giving rise to the records at issue in this appeal relate to the OPP’s management of its own workforce, thereby engaging the Ministry’s interest. In addition, the OPP’s interest as an employer is clearly more than a mere curiosity or concern (see also Reconsideration Order PO-2096-R and Order PO-2106). As noted above, if section 65(6) applied at the time the records were collected, prepared, maintained or used (which is the case here), it does not cease to apply at a later date. Thus, the fact that the appellant is no longer employed with the OPP does not negate the Ministry’s interest in these matters.

The Ministry has therefore established that section 65(6)3 applies to the records at issue. Consequently, the *Act* does not apply to the records.

In conclusion, I would note that I appreciate the appellant's desire to obtain access to his own personnel file. The law is clear, however, that this information is excluded from the *Act's* purview. As a result, I do not have the jurisdiction under the *Act* to review the Ministry's decision to deny access to the records at issue. I would also note, however, that my decision in this order does not preclude the Ministry from disclosing the records to the appellant outside the *Act*.

ORDER:

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

Original signed by: _____
Shirley Senoff
Adjudicator

_____ January 30, 2004