



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2318

Appeal PA-040006-1

Ministry of Natural Resources



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NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought access to all records pertaining to the changes in the Communications Services Branch of the Ministry that precipitated the decision to eliminate his position within the Ministry. His request specified that he was seeking access to a broad range of records.

The Ministry identified the records responsive to the request and granted full access to some records and partial access to others. The Ministry relied on the mandatory exemption in section 21(1) of the *Act* (invasion of privacy) to deny access to the undisclosed information contained in these records. Subsequently, the Ministry located an additional record responsive to the request, a four-page briefing note. The Ministry issued a revised decision denying access to this record on the basis that it fell outside the ambit of the *Act* because of the operation of the exclusionary provision in section 65(6)3.

The individual (now the appellant) appealed this decision.

During the course of mediation of the appeal, the appellant indicated that he was not interested in the information withheld under section 21(1). As a result, this information is no longer at issue in the appeal. Further mediation was not possible and the matter was moved to the adjudication stage of the appeals process.

Initially, this office sought and received the representations of the Ministry, which were then shared in their entirety with the appellant. The appellant was also invited to and did submit representations in response to a Notice of Inquiry as well.

RECORDS:

The sole record remaining at issue is a four-page briefing note.

DISCUSSION:

LABOUR RELATIONS AND EMPLOYMENT RECORDS

The Ministry takes the position that, because of the operation of section 65(6)3, the record at issue falls outside the operation of the *Act*.

General Principles

Section 65(6)3 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:

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

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 “labour relations” refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships [Order PO-2157, *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.)]. 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].

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.

In support of its contention that the record is excluded from the operation of the *Act* by virtue of section 65(6)3, the Ministry submits that:

... [the record] is a briefing note to provide information/advice about program re-organization and surplus actions which would impact upon specific employees and to obtain approval to proceed with the recommendations in the note. By signing off on the briefing note, approval was granted to act. The record, based on the above orders [P-1516 and PO-2157], is clearly a communication about labour relations or employment related matters, i.e., the surplussing of employees. The employees are members of OPSEU and subject to the collective agreement between the Crown and OPSEU. The note resulted in the issuance of surplus

notices to the employees on April 10.03 following the terms of the OPSEU Collective Agreement, the *Employment Standards Act* and the *Public Service Act*. As the note addresses human resources issues as part of the management of its workforce, according to Order PO-2057, it deals with labour relations or employment-related matters in which the Ministry has an interest. Therefore, the record falls within subsection 65(6)3 and is a record to which the *Act* has no application.

The appellant's representations do not specifically address the application of section 65(6)3 to the record. Rather, they focus on the reasons behind his request for the record.

In Order P-1516, I addressed the application of section 65(6)3 to records containing information relating to an institution's plans for the deployment and reduction of its workforce. I found that:

. . . each of these records, or parts of records, was collected, prepared, maintained or used by the Ministry in relation to meetings, consultations, discussions or communications, both within the Ministry and involving the affected party. In addition, I find that each of these documents contain information about staffing levels within the Ministry and anticipated reduction in those levels. In my view, this information addresses the collective relationship between the Ministry and its employees. I find, therefore, that their subject matter qualifies as a "labour relations" matter for the purposes of section 65(6)3 (Orders P-1223 and P-1242).

In the present appeal, I find that the record was prepared, maintained and used by the Ministry in relation to meetings, consultations, discussions and communications concerning a staffing issue within the Ministry. In my view, based on my review of the record itself, the representations of the Ministry and the reasoning expressed in Order P-1516, the information addresses the collective relationship between the Ministry and a number of its employees. It follows, accordingly, that the subject matter qualifies as a "labour relations" matter for the purposes of section 65(6)3.

I must now determine whether the labour relations matter which is the subject matter of the record is one in which the Ministry "has an interest". The phrase "in which the institution has an interest" means more than a "mere curiosity or concern", and refers to matters involving the institution's own workforce [*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].

I found above that the record was prepared and used by the Ministry in relation to meetings, discussions, consultations or communications about a labour relations matter, and the Ministry's decision to reduce the size of one area of its staff complement. I conclude that, because that decision involved Ministry staff whose relationship with it was governed by a collective agreement and involves the management of a part of its workforce, the Ministry had the requisite degree of interest in the labour relations matter that is the subject of the record.

To summarize, I find that the record at issue is subject to the exclusion set out in section 65(6)3 and that none of the exceptions listed in section 65(7) apply. Accordingly, I conclude that the record at issue falls outside of the ambit of *Act*.

ORDER:

I uphold the decision of the Ministry.

Original Signed By _____
Donald Hale
Adjudicator

_____ September 13, 2004