



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2499**

**Appeal PA-040361-1**

**Ministry of Community Safety and Correctional Services**



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## **BACKGROUND:**

In June 1998, an individual was arrested for attempted murder and assaulting police officers by two Niagara Regional Police Service (Niagara Police) officers. The arrest followed an altercation between the individual, who was a passenger in a car stopped by the police, and Niagara Police officers. The charges were dropped and the individual was released almost immediately.

Two days after the incident, the Chief of Police for the Niagara Police asked the Halton Regional Police (Halton Police) to conduct a “chief’s complaint” on his behalf into the actions of the police officers. After the complaint investigation was completed by a Halton Police officer, and a discussion had taken place between the investigator and a crown attorney, the Halton Police file was closed with no criminal or disciplinary charges being filed against the Niagara Police officers.

The individual involved subsequently launched a civil action against the two arresting officers and the Niagara Regional Police Services Board (Niagara Police Board). In September 2000, a Justice of the Ontario Superior Court condemned the conduct of the two officers and several unidentified officers and awarded general, special and punitive damages to the individual.

Shortly after the release of the court’s decision, the Chief of the Niagara Police and the Niagara Police Board requested that the Ontario Civilian Commission on Police Services (OCCPS) conduct an investigation into the circumstances arising out of the June 1998 incident.

As set out in the representations of the Ministry of Community Safety and Correctional Services (the Ministry) in this appeal, OCCPS is an independent, civilian, quasi-judicial agency that reports to the Minister of Community Safety and Correctional Service:

The Commission is responsible for ensuring the adequacy and effectiveness of policing services. The mandate of the Commission also includes overseeing Ontario’s restructuring and streamlining system for the handling of public complaints about police services, services or officer conduct. Chiefs of Police, members of Police Services and Police Services Boards are ultimately accountable to the public through the Commission.

The OCCPS investigation report was completed by a Senior Investigator in June 2004 and was provided to the Chief of Police of the Niagara Police by way of a transmittal letter, signed by the Senior Investigator and dated July 29, 2004.

The OCCPS investigation was conducted pursuant to section 25 of the *Police Services Act*. Section 25(1) of the *Police Services Act* provides, in part:

The Commission may, at the Solicitor General's request, at a municipal council's request, at a board's request or of its own motion, investigate, inquire into and report on,

- (a) the conduct or the performance of duties of a police officer, a municipal chief of police, an auxiliary member of a police

force, a special constable, a municipal law enforcement officer or a member of a board;

(b) the administration of a municipal police force.

## **NATURE OF THE APPEAL:**

A newspaper reporter (the requester) filed an access-to-information request with the Ministry under the *Freedom of Information and Protection of Privacy Act* (the *Act*), seeking access to the OCCPS report and related transmittal letter signed by the Senior Investigator.

The Ministry denied the requester access to the responsive records and cited sections 13(1) (advice to government), 14(2)(a) (law enforcement), 15(b) (relations with other governments), and 19 (solicitor-client privilege). The Ministry also claimed that disclosure of the records would constitute an unjustified invasion of privacy and relied on the factors listed at 21(2)(f), 21(2)(h) as well as the presumptions in 21(3)(a), 21(3)(b) and 21(3)(d) of the *Act*.

The requester (now the appellant) appealed the Ministry's decision to this office. In his appeal letter, the appellant stated that while he believed it would be in the public interest to know all of the details of the OCCPS investigation, he was most interested in OCCPS' observations and/or conclusions concerning the investigation conducted by Halton Police immediately after the June 1998 incident.

During the mediation process, the appellant raised the possible application of the public interest override in section 23 of the *Act* to the records at issue. The Ministry also confirmed that the exemptions claimed applied to both the report and the letter.

No further mediation was possible, and the appeal was moved to the adjudication stage. After reviewing the records at issue, I identified 14 affected parties. Initially, I issued a Notice of Inquiry to the Ministry and the 14 affected parties. I received representations from the Ministry and 11 affected parties, including Halton Police, Niagara Police Board, seven Niagara Police officers, a special constable with the Niagara Parks Police, and a Crown Attorney. The Notice of Inquiry and the complete representations of the Ministry, and the non-confidential portions of the representations of the Niagara Police and Halton Police were provided to the appellant who was invited to provide representations. I also provided the appellant with a summary of the representations submitted by the seven Niagara Police officers, the Niagara Parks Police special constable, and the Crown Attorney.

The appellant submitted representations in response. The appellant's representations state that he is only interested in obtaining access to the sections of the report and/or letter that specifically address OCCPS' investigation of Halton Police's investigation into the incident. Accordingly, the appellant only submitted representations regarding the application of sections 13, 15 and 23 of the *Act*.

## **RECORDS:**

There are two records at issue in the appeal:

- A two-page transmittal letter, dated July 29, 2004, from OCCPS to the Chief of Police of the Niagara Police Board
- A 24-page report issued by OCCPS, dated June 2004, entitled, “Niagara Regional Police Service – Report on an Investigation – Pursuant to Section 25 of the Police Services Act”

As the contents of the transmittal letter are inextricably connected to, and for the most part form a summary of, the facts and conclusions described in the report, for the purposes of this appeal I will deal with them as the same document. Reference to “the record” includes both the two-page transmittal letter and the 24-page report.

## **DISCUSSION:**

As stated above, the Ministry denied access to the responsive records pursuant to sections 13(1), 14(2)(a), 15(b) and 19. The Ministry also claimed that disclosure of the records would constitute an unjustified invasion of privacy and relies on the factors listed at 21(2)(f), 21(2)(h) as well as the presumptions in 21(3)(a), 21(3)(b) and 21(3)(d) of the *Act*. The appellant, in turn, raised the possible application of the public interest override in section 23 to the records at issue. Section 23 of the *Act* does not apply to records exempt under sections 14 and 19. Halton Police, one of the affected parties, also raised the possible application of section 65(6)3 of the *Act* in their representations.

### **ARE THE RECORDS EXCLUDED DUE TO THE OPERATION OF SECTION 65(6)3?**

The Halton Police, as an affected party, has claimed the application of section 65(6)3 of the *Act* to the record at issue in this appeal.

Section 65(6)3 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) provides exceptions to the section 65(6) exclusions, none of which apply to the record at issue here.

Section 65(6)3 is record-specific and fact-specific. If section 65(6)3 applies to the record, the record is excluded from the scope of the *Act*.

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

#### ***General***

In order to fall within the scope of paragraph 3 of section 65(6), Halton Police 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.

Because of OCCPS' role in reviewing the activities of Halton and Niagara Police officers, it is clear that it could not itself have "an interest" in that matter. This would explain why, in this appeal, the application of section 65(6)3 has been claimed, not by the Ministry, but by the Halton Police. This is consistent with the finding of Adjudicator John Swaigen in Order PO-2426, where he quoted with approval from Adjudicator Donald Hale in Order P-1345:

[A]n institution...acting as an impartial adjudicator would not "have an interest" in a labour relations or employment-related matter before it, in the sense intended by section 65(6)3. Such an interest would be inconsistent with impartial adjudication.

Accordingly, the question here is not whether the records were "collected, prepared, maintained or used by or on behalf of OCCPS in relation to "employment-related matters" in which it has "an interest", but rather, whether this could be said of the Halton or Niagara Police.

In Order PO-2426, Adjudicator Swaigen noted that it is not possible simply to apply the provisions of the municipal *Act* to a request made to a provincial institution, for example, the Ministry in this appeal. He reviewed at length the issue of whether the word "institution" in section 65(6) can encompass an institution under the municipal *Act*. After reviewing the relevant orders of this office, he concluded that a police service, subject to the municipal *Act*, can be an institution for the purposes of section 65(6) of the *Act*. I have carefully reviewed Order PO-2426 and agree with Adjudicator Swaigen's decision. I am therefore satisfied that the Halton and Niagara Police are institutions for the purposes of section 65(6) of the *Act*.

I will therefore consider whether the record at issue meets the other requirements of section 65(6)3.

***Part 1: collected, prepared, maintained or used***

In its representations, the Halton Police state:

It is the position of this institution that the information requested was clearly collected, prepared, maintained and used by both the Halton Regional Police Service and the Niagara Regional Police Service in relation to communications about employment-related matters in which both institutions have a direct interest.

The preparation, maintenance and use of the records is for the specific purpose of complying with an employment-related statutory duty; namely, to investigate the actions of its employees and possibly to administer the internal discipline system. The Police Service, as the employer, is legally required to investigate and eventually administer the internal disciplinary process in accordance with Part V of the *Police Services Act*.

I am satisfied that the report was provided to the Niagara and Halton Police and was used by both services as part of their internal discipline system. I find that this requirement is met.

***Part 2: meetings, consultations, discussions or communications***

Halton Police's representations do not specifically identify or describe particular meetings, consultations, discussions or communications relating to the information in the record. However, based on the contents of the record and the statutory scheme governing OCCPS proceedings, and the fact that the record was provided by OCCPS to Niagara and Halton Police, I am satisfied that the collection and/or preparation, maintenance and use of the record by Niagara and Halton Police was in relation to communications and consultations between OCCPS and the two police services.

Accordingly, I find that requirement 2 has been met.

***Part 3: labour relations or employment related matters in which the institution has an interest***

To meet part 3 of the test, Halton Police must show that the meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

As noted above, the representations of the Halton Police rely on the fact that Halton Police, as an employer, has an obligation to investigate the actions of its employees in order to possibly administer the internal discipline system. The Halton Police further state:

...the Police Service, as employer, has an inherent interest in internal discipline and the results thereof. A finding of guilt in relation to a disciplinary misconduct

has the potential to subject the institution to significant legal consequences, both civilly and otherwise.

...

Accordingly, it is the position of this institution that the Report clearly deals with employment-related matters both within the Halton Regional Police Service and the Niagara Regional Police Service and it has a significant legal interest in the use and maintenance of the information, especially should it have lead to disciplinary matters relating to its employees.

I agree with the position taken by the Halton Police and accordingly, I have concluded that disciplinary matters involving police officers are "employment-related" matters for the purposes of section 65(6)3 of the *Act*.

It is also clear that the officers in question were officers of either the Niagara or Halton Police. As noted in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355, leave to appeal refused [2001] S.C.C.A. No.509, an interest "must relate to more than a mere curiosity or concern." I am satisfied that these requirements are met in this case, and I find that the Niagara and Halton Police have the requisite "interest". Requirement 3 is therefore met.

As all three requirements are met, I find that the records are excluded from the scope of the *Act* under section 65(6)3.

As I have found that the record at issue is excluded under the *Act*, it is not necessary for me to consider the application of sections 13(1), 14(2)(a), 15(b), 19 or whether disclosure of the record would constitute an unjustified invasion of privacy.

Similarly, while the appellant provides lucid arguments as to why there may be a compelling public interest in the release of the report, particularly as it concerns the quality of the investigation conducted by the Halton Regional Police officer, section 23 is not available where a record has been found to be excluded from the *Act*..

## **ORDER:**

1. I uphold the decision of the Ministry to deny access to the records at issue.

Original signed by: \_\_\_\_\_

Brian Beamish  
Assistant Commissioner

August 31, 2006 \_\_\_\_\_