



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2512**

**Appeal PA-060070-1**

**Ministry of Community Safety and Correctional Services**



Tribunal Services Department  
2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
Canada M4W 1A8

Services de tribunal administratif  
2, rue Bloor Est  
Bureau 1400  
Toronto (Ontario)  
Canada M4W 1A8

Tel: 416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Ministry of Community Safety and Correctional Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records maintained by the Ontario Provincial Police (the OPP) pertaining to an incident which occurred on the evening of July 2, 2005, and the morning of July 3, 2005. In his original letter to the Ministry, the requester indicated that he wanted the notebook entries of two named OPP constables. He required this information to verify the sign-in/out time of one of the constables on July 2, 2005, and the sign-in time of this same constable on July 3, 2005. The requester also wanted the notebook entries of the second constable that relate to the sign-in/out times of the first constable on July 2, 2005.

In a subsequent letter from the requester to the Ministry, the requester clarified the scope of his request to include the notebook entries of six named officers and their supervisors for the time period of the incident in question. The requester indicated that this information was required to support his ongoing complaint concerning the conduct of these officers. He advised the Ministry that his complaint to the OPP's Professional Standards Bureau (PSB) had been dismissed and that this decision was to be reviewed by the Ontario Civilian Commission on Police Services (OCCPS).

The Ministry located the requested records and denied access to them pursuant to section 65(6) of the *Act*, which excludes certain employment and labour relations records from the scope of the *Act*. The requester (now the appellant) appealed the Ministry's decision.

During mediation, the appellant advised the mediator that his complaint had been dismissed by the OCCPS. Since he had not received further information from the PSB or OCCPS, he advised the mediator that he wished to proceed with the appeal. In discussions with the mediator, the appellant advised that he only wished to pursue access to the notes pertaining to the two constables named in his original request letter. He indicated that he did not wish to pursue access to the notes of any other OPP officers.

Also during mediation, the Ministry confirmed that it relies upon section 65(6)1 and 3 of the *Act* to withhold access to the records. As further mediation was not possible, the file was moved to the adjudication stage of the appeal process. I began my inquiry by sending a Notice of Inquiry to the Ministry, outlining the issues in the appeal and inviting representations. The Ministry responded with representations. I then sent the Notice of Inquiry to the appellant, along with the complete representations of the Ministry, and invited the appellant to provide representations. The appellant did not respond to the Notice of Inquiry.

## **RECORDS:**

The records at issue consist of 8 pages of two OPP officer's notes (4 pages per constable).

## **DISCUSSION:**

### **LABOUR RELATIONS AND EMPLOYMENT RECORDS**

The preliminary issue to be decided is whether sections 65(6)1 and 65(6)3 of the *Act* operate to

remove the records from the scope of the *Act*.

Sections 65(6)1 and 3 state:

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

If I find that one of these paragraphs of section 65(6) applies to the records, and none of the exceptions listed in section 65(7) apply, I need not go further to examine the applicability of the other paragraph.

### ***Section 65(6)1***

#### ***Introduction***

In order for a record to fall within the scope of section 65(6)1, the Ministry must establish that:

1. the record was collected, prepared, maintained or used by the Ministry or on its behalf;  
**and**
2. this collection, preparation, maintenance or usage was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity; **and**
3. these proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the Ministry.

#### ***Requirement 1 - Were the records collected, prepared, maintained or used?***

With reference to section 65(6)1, the Ministry states that:

... the 8 pages of officers' notebook entries at issue were collected, maintained and used by the Ministry in relation to the complaint the appellant has filed pursuant to section 56(l) of the *PSA* [*Police Services Act*] on July 3, 2005. A copy of the 8 pages of officers' notebook entries was provided to the OPP Professional Standards Bureau for purposes in relation to the investigation of the appellant's *PSA* complaint and subsequent *OCCPS* review...

The Ontario Civilian Commission on Police Services (OCCPS) is an independent, civilian, quasi-judicial agency that reports to the Minister of Community Safety and Correctional Services. OCCPS is responsible for ensuring the adequacy and effectiveness of policing services. The mandate of OCCPS also includes overseeing Ontario's restructured and streamlined system for the handling of public complaints about police policies, services or officer conduct. Chiefs of Police, members of Police Services and Police Services Boards are ultimately accountable to the public through OCCPS

I find that the records, the responsive OPP officers' notebook entries, were provided by the OPP to the PSB for the purposes of investigating the appellant's complaint filed pursuant to section 56(l) of the *PSA*. Therefore, I find that Requirement 1 has been satisfied as the records were maintained or used by the Ministry in relation to the appellant's *PSA* complaint.

***Requirement 2 - Was the collection, preparation, maintenance or usage of the records in relation to proceedings or anticipated proceedings?***

The Ministry submits that proceedings arising from complaints filed under the *PSA* constitute proceedings before an "other entity" for the purposes of section 65(6)1.

In Order P-1223 former Assistant Commissioner Mitchinson stated the following in regard to the meaning of "proceedings" for the purposes of section 65(6)1:

...I am of the view that a dispute or complaint resolution process conducted by a court, tribunal or other entity which has, by law, binding agreement or mutual consent, the power to decide the matters at issue would constitute "proceedings" for the purposes of section 65(6)1.

In Order PO-1797 former Assistant Commissioner Mitchinson stated:

...proceedings stemming from complaints made under the *PSA* are properly considered proceedings for the purposes of section 65(6)1 ...(Order M-835).

The appellant made a complaint to the OPP (which is part of the Ministry) pursuant to section 56(l) of the *PSA* in regard to the conduct of six named OPP officers. Section 56(l) of the *PSA* reads:

Any member of the public may make a complaint under this Part about the policies of or services provided by a police force or about the conduct of a police officer.

The appellant's complaint was investigated by the PSB. Following the investigation of this complaint, the Bureau Commander of the PSB wrote to the appellant and advised that his *PSA* complaint was unsubstantiated on the basis of insufficient evidence.

The authority for this determination by the PSB derives from section 64(6) of the *PSA*, which reads:

If, at the conclusion of the investigation and on review of the written report submitted to him or her, the chief of police is of the opinion that the complaint is unsubstantiated, the chief of police shall take no action in response to the complaint and shall notify the complainant and the police officer who is the subject of the complaint, in writing, together with a copy of the written report, of the decision and of the complainant's right to ask the Commission (OCCPS) to review the decision within 30 days of receiving the notice. 1997, c. 8, s. 35.

The appellant subsequently asked the OCCPS to review the decision of the PSB. The OCCPS confirmed the PSB decision and advised the appellant that no further action would be taken in the matter, pursuant to section 72(8) of the *PSA*. Section 72(8) of the *PSA* provides that:

Upon completion of the review, the Commission may confirm the decision or may direct the chief of police, detachment commander or board to process the complaint as it specifies...

Based on my review of the records, the *PSA* and the submissions of the Ministry, I find that the records were maintained or used by the PSB in relation to the investigation of the appellant's *PSA* complaint and subsequent OCCPS review. Therefore, I find that Requirement 2 has been satisfied as the records were maintained or used in relation to proceedings or anticipated proceedings before two entities, the PSB and the OCCPS.

***Requirement 3 - Did the proceedings or anticipated proceedings relate to labour relations or to the employment of the OPP officers?***

Requirement 3 stipulates that the relevant proceedings, i.e., those referred to in Requirement 2, must relate to labour relations or to the employment of a person by the institution.

The Ministry takes the position that the records at issue were collected, maintained and used by Ministry staff in relation to anticipated disciplinary proceedings relating to the employment of employees (the OPP officers) under Part V of the *PSA*.

I agree with the Ministry's position that "disciplinary hearings under Part V of the *PSA* relate to the employment of a person by the institution" for the purposes of section 65(6)1. I adopt the findings of former Assistant Commissioner Tom Mitchinson in Order M-835 where he found that the penalties which follow the discipline of police officers pursuant to the *PSA* "can only reasonably be characterized as employment related actions".

I find that the investigation of the appellant's complaint could have led to disciplinary proceedings against the OPP officers whose records are in issue in this appeal. These proceedings relate to the employment of the officers by the OPP, which forms part of the

Ministry. These officers could have been subjected to the employment-related penalties enunciated in section 68(1) of the *PSA*, at either the PSB or OCCPS stage of the proceedings.

Therefore, I find that Requirement 3 has been satisfied as the maintenance or use of the records by the Ministry was in relation to proceedings or anticipated proceedings concerning the employment of the two subject OPP officers.

In conclusion, I find that section 65(6)1 applies as the Ministry has established that:

1. the records in issue were maintained or used by the Ministry;
2. this maintenance or usage was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity;
3. these proceedings or anticipated proceedings relate to the employment of the OPP officers, whose records are at issue, by the Ministry.

As section 65(6)1 applied at the time the records were maintained or used, it did not cease to apply at a later date. "Once effectively excluded from the operation of the *Act*, the records remain excluded". [*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]. Therefore, the section 65(6)1 exclusionary provision still applies even though there may not be further disciplinary proceedings against the OPP officers whose notebook entries comprise the records in this appeal.

Accordingly, I find that all three parts of the test under section 65(6)1 of the *Act* have been met and, subject to my findings concerning section 65(7), the records are excluded from the operation of the *Act* under that section. Therefore, there is no need for me to determine whether these records are also excluded under section 65(6)3.

### ***Section 65(7)***

If the records fall within any of the exceptions in section 65(7), the *Act* applies to them. 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 Ministry submits that section 65(7) does not apply in the circumstances of the appellant's request to exclude the records from the scope of the *Act*. I agree with the Ministry that the records, which are notebook entries of OPP officers, do not fall within any of the exceptions listed in section 65(7). Therefore, section 65(6)1 applies to the records to exclude them from the *Act*.

**ORDER:**

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

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ October 11, 2006