

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

---

## ORDER PO-3144

Appeal PA11-67

Ministry of Government Services

November 29, 2012

**Summary:** The appellant seeks access to 26 OPS-wide policies and procedures governing a variety of human resources matters that address issues that arise in the context of the ministry's role as employer. The ministry denied access on the basis that the records were excluded from the operation of the *Act* under the exclusion in section 65(6)3. In this order, the adjudicator upholds the ministry's decision that the records fall within the ambit of the exclusion in section 65(6)3.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 65(6)3

**Orders and Investigation Reports Considered:** PO-2212

### OVERVIEW:

[1] The Ministry of Government Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

...directions, directives, manuals, practices, policies, procedures, standards or documents however denominated governing access to, control, custody or maintenance by government and non-government person(s) of personal information dealing with; naming, belonging, referring or

relevant to; respecting or under any identifiers or particulars of the current or former employee(s) of the government, Province of Ontario.

The requested herein information pertain to the individual making this request, formerly in employ by the government, Province of Ontario. This request is made by operation of the Ministry of Government Services' authority to have custody of or control or maintain personal information of or on the current or former employees of the government, Province of Ontario. ...

[2] The ministry issued a decision letter to the appellant, indicating that records responsive to the request are excluded from the *Act*, pursuant to section 65(6)(3), because of their connection to employment-related matters in which the Ministry has an interest. However, the ministry did release a document titled *OPS Human Resources Privacy and Security Guidelines* outside the context of a request under the *Act*.

[3] Upon appeal of the ministry's decision to this office, a mediator was appointed to explore the potential for resolution. Following a teleconference with both parties, the ministry released another document requested by the appellant titled *Information Security and Privacy Classification Operating Procedures*.

[4] As the appellant does not accept that the ministry has responded to her request in its entirety, she requested that the appeal proceed to adjudication.

[5] Just prior to the appeal being transferred to adjudication, the Mediator reviewed the title of each responsive record identified by the ministry with the appellant. As a result of this discussion, the appellant removed the following four records from the scope of the appeal: HIV Infection & AIDS in the OPS Workplaces Directive and Workplaces Guideline, 38a-1 Rehabilitation and 43-1 Exits or Terminations: Death.

[6] As no further mediation was possible, the appeal was transferred to the adjudication stage. Adjudicator Loukidelis sent a Notice of Inquiry to the ministry initially, seeking representations on the exclusion in section 65(6) of the *Act*. In a second decision letter to the appellant dated February 28, 2012, the ministry agreed to disclose some 28 additional records, set forth in Appendices 1 and 2 to the decision, upon payment of a fee of \$228.80. The ministry also provided this office with its representations, a copy of which was shared with the appellant, with the exception of two small excerpts.

[7] On April 6, 2012, the appellant responded to the ministry's February 28, 2012 decision letter, indicating that she is appealing the ministry's decision to deny access to the 26 records described in Appendix 3 under the exclusionary provision in section 65(6). The appellant also provided representations in response to a Notice of Inquiry

responding to the submissions of the ministry in which she also raised the possible application of section 33(1)(b) of the *Act*.

## **RECORDS:**

[8] There are 26 records at issue, which are listed in Appendix A to this order. These records are described by the ministry as follows:

. . . originate from the Ontario Shared Services (OSS) Division are operational procedure documents related to the administration and processing of pay and benefits, and other human resource matters for employees of the OPS. These documents are procedural in nature, and detail steps OSS staff follows in order to input human resources transactions in the OPS enterprise-wide human resources management system. For example, the records would instruct a user how to process within the system (step-by-step) the hiring of an employee, a leave of absence, or a change in pay rate or benefits payments.

## **ISSUES:**

[9] The sole issue for determination in this appeal is whether the records are excluded from the *Act* as a result of the operation of section 65(6)3.

## **DISCUSSION:**

### **Does section 65(6)3 exclude the records from the *Act*?**

[10] The ministry is relying on paragraph 3 of section 65(6) in claiming the exclusion of the records listed above from the *Act*. 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:

. . .

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

[11] 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*.

[12] For the collection, preparation, maintenance or use of a record to be “in relation to” the subjects mentioned in paragraph 3 of this section, it must be reasonable to conclude that there is “some connection” between them [Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.)].

[13] 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. The meaning of “labour relations” is not restricted to employer-employee relationships [*Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.). See also Order PO-2157].

[14] The term “employment of a person” refers to the relationship between an employer and an employee. 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].

[15] 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].

[16] Section 65(6) may apply where the institution that received the request is not the same institution that originally “collected, prepared, maintained or used” the records, even where the original institution is an institution under the *Municipal Freedom of Information and Protection of Privacy Act* [Orders P-1560 and PO-2106].

[17] The type of records excluded from the *Act* by section 65(6) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees’ actions [*Ministry of Correctional Services*, cited above].

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

[18] For section 65(6)3 to apply, the institution 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.

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

[19] The ministry submits that the records:

. . . were created by the Support System Group in the Payroll Business Support Branch, Pay and Benefits System Division (PBSD), within Ontario Shared Services (OSS). The PBSD is responsible for administering and processing enterprise-wide pay and benefits and providing business support to the enterprise-wide system, Workforce Information Network (WIN).

The System Support Group prepared the records to provide operational guidance for specific individuals within the PBSD responsible for accessing and using the enterprise-wide system to input and modify information in respect of pay and benefits and other human resource matters. Notably, the only select individuals within the PBSD are able to input and modify employee information in the enterprise-wide system. The individuals are assigned role specific authorizations in order to access and use the system strictly for the purposes of recording and modifying information in respect of various human resource transactions. Accordingly, the Ministry submits that the first requirement of 'collected, prepared, maintained or used' is satisfied.

[20] Clearly, the records at issue in this appeal were created by agencies of the government of Ontario to enable it to manage its operations as an employer. The records address a number of aspects of payroll, human resources and employee benefits from the perspective of and in the ministry's capacity as an employer. I find that the records were collected, prepared, maintained or used by the ministry and that the first part of the test under section 65(6)3 has been satisfied.

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

[21] The ministry submits that the records were prepared to communicate to staff across the Ontario public service how to access and use the systems in place for inputting and implementing various human resources transactions "that may arise in the course of the employment relationship." It goes on to state that the records are

intended to “communicate consistent business practices with respect to how employee pay, benefit and other HR transactions are to be administered” in the system.

[22] Based on my review of the records, it is clear that they were collected, prepared, maintained or used in relation to consultations, discussions or communications between public service management personnel and the front line staff within the Ontario Public Service who are responsible for implementing human resource and pay and benefit policies on behalf of employees of the government of Ontario. Accordingly, I am satisfied that the second part of the test under section 65(6)3 has been met.

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

[23] In support of its contention that the records are about “employment-related matters” within the meaning of section 65(6)3, the ministry submits that they relate to human resource issues. It indicates that “[W]hile the records were created as operational guides, the subject matter of these records . . . is the determinative factor.” It goes on to add that “it is precisely the subject matter that differentiates these records from generic training manuals” which have been found in previous orders not to satisfy the requirements of the exclusion in section 65(6)3 or its equivalent provision in the municipal *Act*. It suggests that because the records at issue in this appeal do not just address the “operational functions of a certain position”, but rather “contain detailed information about how to properly input and implement a variety of human resource transactions – including hiring a new employee, processing leaves of absence, terminations, phased retirement and other changes to employee status”, they fall within the ambit of records that are about “employment-related matters”.

[24] The ministry goes on to submit that the records “are fundamentally about how OPS employees are paid, provided benefits, assigned leaves of absence, etc. The records are central to the administration and processing of human resources matters in the OPS [the Ontario Public Service] and consequently, the Ministry maintains an employment-related interest in the records.”

[25] With respect to the question of whether the ministry “has an interest” in the records, as is required under the third part of the test under section 65(6)3, it submits that:

[T]he Ministry is the corporate employer for the OPS and [is] responsible for managing and implementing various human resource and pay and benefits processes in relation to employment with the Government of Ontario. OSS is a branch within the Ministry that performs a key role in supporting the corporate employer by managing and operating enterprise wide applications dealing with various human resource matters. Within OSS, the PBSO has three broad areas of responsibility in relation to

human resources: 1) payroll administration; 2) benefits administration; and 3) business support to the government's enterprise electronic human resources management system.

...

The Ministry submits that its responsibility for administering pay and benefits within the enterprise-wide system creates an interest in these records in a manner similar to what the IPC has previously recognized in Order PO-2212.

...

The Ministry has a direct interest in ensuring consistency and reliability of how OSS processes employment transactions (e.g. pay, benefits) in the enterprise wide applications. The documents at issue are procedural guides meant to ensure that transactions entered into the enterprise wide system are made in a consistent and appropriate manner. Moreover, these documents are intended to assist designated individuals within the OSS who have been granted role-specific authorizations to undertake employment-related transactions. Given its role as the corporate employer, and responsibility for the administration of pay, benefits and other related human resources transactions across the OPS, the Ministry submits that it maintains a clear interest in these particular records.

[26] The appellant argues that because she is no longer an employee of the OPS, the ministry is not "acting as an employer" with respect to her request for the subject information.

[27] In Order PO-2212, former Assistant Commissioner Tom Mitchinson found that records relating to benefits afforded to OPS pensioners fell within the ambit of the exclusion in section 65(6)3. He first determined that the records were about an employment-related matter, regardless of the fact that the employees in question were no longer with the OPS. He found that their entitlement to benefits into retirement arose in the context of their employment. In addition, the former Assistant Commissioner went on to determine that the ministry had an interest in the records within the meaning of section 65(6)3 because they addressed the compensation that is afforded to not just its current, but also to its retired, workforce.

[28] The records under consideration clearly address matters that fit within the ambit of "employment-related". The records address in detail specific transactions that arise only in the context of the ministry's role as the entity responsible for the maintenance and administration of the government of Ontario's workforce. As a result, I find that

the records are concerned directly with "employment-related matters" within the meaning of section 65(6)3.

[29] In addition, I find that the ministry "has an interest" in the subject matter of these records in its capacity as the employer of those who are subject to the policies and procedures described in each of the records. I find that the ministry's interest in the records is engaged because of its role as the employer who is responsible for the management of all aspects of human resources for its employees. As both components of the third part of the test for exclusion under section 65(6)3 have been satisfied, I find that all three parts of the test have been met.

[30] In my view, the ministry has provided me with sufficiently detailed evidence to substantiate a finding that the records qualify for exclusion from the *Act* because of the operation of section 65(6)3. As a result, the records are not subject to the *Act*. Because of my finding with respect to this section, it is not necessary for me to address the appellant's arguments respecting the possible application of section 33(1)(b) of the *Act*.

**ORDER:**

I uphold the Ministry's decision and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_  
November 29, 2012



## **APPENDIX**

The records at issue consist of:

- HR Employee File Sharing
- OPS Pay and Benefit Procedures
- Employee Contact Information Change
- 12-1 Labour Relations: Grievance Management
- 20a-1 Hire and Fixed Term: Hire a New Employee
- 20b-1 Hire and Re-Hire: Re-Hire an Employee
- 215-1 Self Service: Employee Information Update
- 230-1 Pay Rate Change: Processing a Merit, Manager Self Service
- 231-1 Extension of a Job Assignment: Processing an Extension, Manager Self Service
- 31-1 Leave of Absence: Processing a Long Term Leave
- 33-1 Leave of Absence: LTIP
- 38-1 Leave of Absence: WSIB
- 39-1 Exit or Termination
- 45-1 Exits or Termination: Pension Bridging
- 47-1 Terminations: Phased Retirement
- 53-1 Pay Rate Reclassification
- 55-1 Pay Rate Change: Merit, ATB and Removing Salary Protection
- 59-1 Employee Movement: Multiple Jobs
- 60-1 Employee Movement: Temp Assignment
- 60a-1 Employee Movement: Contract Position
- 63-1 Employee Movement: Permanent Transfer
- 70a-1 Employee Job Data Change
- 72-1 Employee Information Change
- WIN System Procedures and Related Tip Sheets
- HR002-1 Surplus
- HR003a-1 Person Profile Management: Add or Update Profile
- Common Records Series for Administrative Functions
- Government of Ontario Records Schedule Requirements, April 1, 2009
- Implementing Record Schedules for Paper Records
- Management of Recorded Information Directive
- Government of Ontario Records Schedule Requirements, April 1, 2008
- A Manager's Guide to Equal Opportunity in the Ontario Public Service
- Confidential Disclosure to Bargaining Agents Directive
- Disclosure of Wrongdoing Directive
- Employment Accommodation and Return to Work Operating Policy
- Guide to Managing Attendance for Employees & Managers
- Guideline for Cross-Ministry Delegation and Subdelegation of HR Authority

- Health Information Program Manager's Guide
- Health Information Program Manual
- Health Reassignment Guideline
- Insurance Carrier Support for Early Return-to-work and Accommodation
- Key Directive on HR Administration
- Learning and Development Operating Policy
- A Manager's Guide to Staffing
- Operational Guidelines
- Pay on Assignment Operating Policy
- Performance Management Operating Policy
- Personnel Screening Checks Policy
- Attendance Support Program Manual
- Return-to-Work and Employment Accommodation Program Manual
- Staffing Operating Policy
- Workplace Discrimination and Harassment Prevention Policy
- Workplace Violence Prevention Policy