

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3519

Appeal PA13-439

Ministry of Community Safety and Correctional Services

July 30, 2015

**Summary:** The ministry received a request for reports for each collision involving an OPP vehicle or boat since January 1, 2011. The ministry identified the responsive records and issued a decision stating that the records fell outside the scope of the *Act* on the basis of the exclusionary provision in section 65(6)3 (employment-related matters). This order finds that the identified responsive records fall outside the scope of the *Act* because of the application of section 65(6)3 of the *Act*.

**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:** Orders MO-2242, MO-2862 and MO-2911.

### OVERVIEW:

[1] The Ministry of Community Safety and Correctional Services (the ministry) received the following request under the *Act*:

I seek a breakdown of the number of collisions and damage occurrences involving [Ontario Provincial Police (OPP)] vehicles and boats each year since 2005. I ask that this breakdown specify how many of these collisions were classified as "preventable."

I further ask for copies of the occurrence reports for each collision involving an OPP vehicle or boat since Jan. 1, 2011. I ask that the officers' names, their detachment, the date and time of the incident and any details of the collision be included in these reports.

[2] After clarifying the two parts of the request, the ministry issued an access decision for each part of the request.

[3] The ministry clarified part 1 of the request as "a breakdown of the number of collisions involving OPP vehicles and boats each year since 2005 which includes a breakdown specifying how many of the collisions were classified as preventable." With respect to part 1 of the request, the ministry's decision was to grant full access to a table containing the collision statistics for the specified time period.

[4] The ministry clarified part 2 of the request as "a copy of the Vehicle Damage Report (Form TP22) prepared for every collision involving an OPP employee operating an OPP vehicle or boat since January 1, 2011." With respect to part 2 of the request, the ministry's decision was to deny access to the Vehicle Damage Reports on the basis of the exclusion in section 65(6) of the *Act*. In its decision, the ministry advised as follows:

The Ministry is of the opinion that section 65(6) is applicable in the circumstances of your request. For your reference, each Vehicle Damage Report is reviewed by an OPP Collision Review Committee. Collision Review Committees review all collision/damage occurrences involving OPP vehicles. The review can result in the imposition of corrective action such as employee discipline. Accordingly, it is the position of the Ministry that the records requested in Part 2 of your request fall outside the scope of the *Act*.

[5] The appellant appealed the ministry's decision to deny access to the Vehicle Damage Reports. He advised that he was not appealing the ministry's response to part 1 of the request.

[6] During mediation the appellant also confirmed that he was not pursuing access to the small portions of the records (dates of computer printouts) identified as non-responsive.

[7] Mediation did not resolve the issues, and the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator conducts a written inquiry under the *Act*. I sent a Notice of Inquiry to the ministry, initially, inviting it to provide written representations on the application of section 65(6). After receiving the ministry's representations, I sent the Notice of Inquiry along with a copy of the

ministry's representations to the appellant. The appellant also provided representations which were in turn shared with the ministry, which provided representations in reply.

[8] For the reasons that follow, I find that the records are excluded from the scope of the *Act* on the basis of the exclusion in section 65(6)3 of the *Act*.

## **RECORDS:**

[9] The records at issue consist of approximately 2,000 Vehicle Damage Reports. The ministry provided this office with 95 Vehicle Damage Reports, as a representative sample of the responsive records.

## **DISCUSSION:**

### **Are the records excluded from the scope of the *Act* on the basis of section 65(6)3?**

[10] As background, the ministry indicates that it prepares a Vehicle Damage Report (OPP form TP22) each time there is a collision involving an OPP vehicle or boat.

[11] The ministry submits that the records at issue are excluded from the application of the *Act* by section 65(6)3 because they are "confidential employment records used for the purpose of managing the OPP workforce." It states that the records:

... are created specifically so that collision review committees established by the OPP can determine whether collisions involving a vehicle or boat were preventable. If the committee determines that a collision was preventable, then the committee can impose corrective action, including employee discipline or training. ...

[12] The ministry also states that preventing collisions in general, as well as any corrective action imposed as a result of preventable collisions, are within the OPP's mandate as an employer.

[13] The appellant takes the position that the records are not excluded from the scope of the *Act*. He also states that the inappropriate application of section 65(6)3 to these records would result in a blanket denial of access to records of great interest to the public.

[14] 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.

[15] If section 65(6)3 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*. There is no suggestion that the exceptions in section 65(7) apply, and I find that they have no application in the circumstances of this appeal.

[16] 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.<sup>1</sup>

[17] 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.<sup>2</sup>

[18] 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.<sup>3</sup>

[19] 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.<sup>4</sup>

[20] 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.<sup>5</sup>

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

### ***Introduction***

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<sup>1</sup> Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

<sup>2</sup> *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.

<sup>3</sup> Order PO-2157.

<sup>4</sup> *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.

<sup>5</sup> *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

[21] 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.

***Requirement 1: collected, prepared, maintained or used by an institution***

[22] The ministry submits that the records were collected, prepared and used by OPP staff, and that they therefore meet the first part of the test. It states that each time there is a collision involving an OPP vehicle or boat, a record is "prepared by OPP staff." It also indicates that different OPP staff must prepare different parts of the record depending on whether they are:

- a) The vehicle or boat operator, who has to prepare the part of the record explaining the cause of the collision;
- b) The investigating member of the OPP, who has to indicate in the record if the collision was preventable; and
- c) Members of the collision review committees composed of OPP members, which have to make recommendations in the record that could include employee discipline or training, in the event the collision is found to be preventable.

[23] The appellant accepts that the records were collected, prepared, maintained and used by the ministry.

[24] In the circumstances, and based on my review of the representations and the records themselves, I am satisfied that the records at issue were collected, prepared, maintained or used by the OPP. Accordingly, part one of the three-part test is met.

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

[25] The ministry submits that there is a "strong and substantial" connection between the creation of the records and their use in meetings, consultations, discussions and communications to determine whether a collision was preventable and whether corrective discipline or training should be imposed. It states:

The fact that the records are used for communicative purposes is clear. Different parts of the record are completed sequentially by different members of the OPP .... This means that part of the record is completed by the vehicle or boat operator, then it is forwarded to the investigating member who completes part of it, then it is forwarded to the Regional Collision Reporting committee who completes part of it, and finally it is forwarded to the vehicle or boat operator's manager, who may then use the record to communicate the recommendations in it to the vehicle or boat operator. Each OPP member that receives the record relies upon what has already been completed, which is communicated to them in order that they may complete their portion, or take action, specifically in the case of the OPP vehicle or boat operator or his or her manager.

[26] The ministry also submits that the records were used for discussion purposes. It refers to discussions that may take place between members of the Collision Review Committee for the purpose of determining whether and what corrective action should be taken in each case, as well as discussions between the vehicle or boat operator and his or her manager, once the Collision Review Committee had made its recommendations.

[27] Finally, the ministry submits that the records may also be used in relation to meetings such as internal OPP meetings concerning any grievance hearings or disciplinary proceedings that may result from an operator complaint about the Collision Review Committee's recommendations.

[28] The appellant accepts that the records were prepared, maintained and used by the ministry in relation to meetings, consultations, discussions or communications.

[29] On my review of the representations and the sample records provided to me, I am satisfied that the records were collected, prepared or used in relation to meetings, consultations, discussions or communications. Each of the records is a standard form Vehicle Damage Report (form TP22) which, in addition to the identifying information on the top of the form and the reference to the attachments at the bottom of the form, contains four parts labeled Parts A through D. Part A, which is labelled "Investigating Member" and appears to be filled out by that individual, contains factual information about the operator, the time and place of the occurrence, the vehicle or boat, and the damage. Part B, labelled "Operator" and completed by the vehicle or boat operator, contains a narrative explanation of the collision occurrence. Part C, which is again labelled "Investigating Member," contains a narrative description of the finding of the investigating member, including details about the reasons for the finding. Part D, labelled "Division/District" contains the decision of the Collision Review Committee.

[30] Based on the ministry's representations in which it indicates that the record is completed sequentially by different members of the OPP, who then forward the record

to other OPP members for completion of their part based on the information provided as outlined above, I am satisfied that the records are collected, prepared and/or used in relation to meetings, consultations, discussions or communications, as indicated by the ministry.

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

[31] 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 in the context of the institution's possible vicarious liability in relation to those actions, as opposed to the employment context.<sup>6</sup>

[32] The phrase "labour relations or employment-related matters" has been found to apply in the context of:

- a job competition<sup>7</sup>
- an employee's dismissal<sup>8</sup>
- a grievance under a collective agreement<sup>9</sup>
- disciplinary proceedings under the *Police Services Act*<sup>10</sup>
- a "voluntary exit program"<sup>11</sup>
- a review of "workload and working relationships"<sup>12</sup>
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.<sup>13</sup>

[33] The phrase "labour relations or employment-related matters" has been found *not* to apply in the context of:

- an organizational or operational review<sup>14</sup>
- litigation in which the institution may be found vicariously liable for the

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<sup>6</sup> *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 Div. Ct.

<sup>7</sup> Orders M-830 and PO-2123.

<sup>8</sup> Order MO-1654-I.

<sup>9</sup> Orders M-832 and PO-1769.

<sup>10</sup> Order MO-1433-F.

<sup>11</sup> Order M-1074.

<sup>12</sup> Order PO-2057.

<sup>13</sup> *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.).

<sup>14</sup> Orders M-941 and P-1369.

actions of its employee.<sup>15</sup>

[34] 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.<sup>16</sup>

[35] The records collected, prepared, maintained or used by the ministry are excluded only if [the] meetings, consultations, discussions or communications are about labour relations or “employment-related” matters in which the institution has an interest. Employment-related matters are separate and distinct from matters related to employees’ actions.<sup>17</sup>

[36] The ministry submits that the records at issue are related to labour relations or employment-matters for four main reasons:

- a finding that a collision was preventable results in the records being used for the purpose of assessing whether employee discipline should be imposed, which relates to the terms and conditions of the operator’s employment;
- the employee discipline could lead to an investigation and prosecution under the *Police Services Act* or, if the operator challenges the discipline, a grievance process may be activated;
- a finding that a collision was preventable may result in additional training for the operator, which relates to the employment of the operator; and
- the ministry has an interest in ensuring that collisions involving its vehicles and operators are not a result of employees contravening laws or policies, and the collision review committee’s review is a mechanism for preventing these actions.

[37] In addition, the ministry refers to Orders MO-2242 and MO-2822 in support of its position that the records at issue are excluded from the scope of the *Act*. It states:

In Order MO-2242, the IPC found that Toronto Police Service damage reports, which appear to be identical in nature to the records at issue in this appeal, were properly excluded [under the equivalent to section 65(6)3 of the *Act*]. In Order MO-2822, the IPC also upheld this exclusion, this time for a report on the circumstances of a collision between a bus and a pedestrian in [a municipality]. As with the records at issue in this

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<sup>15</sup> Orders PO-1722, PO-1905 and *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

<sup>16</sup> *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.

<sup>17</sup> *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).



appeal, the record in MO-2282 was prepared for the municipality's Collision Review Committee, a committee that seems to have the same purpose as the collision review committees that the records at issue are prepared for.

[38] The appellant takes the position that the records fail to satisfy the third part of the test and, as a result, they fall within the scope of the *Act*.

[39] The appellant begins by referring to the statement found in the Divisional Court decision in *Ontario (Ministry of Correctional Services) v. Goodis* which reads: "[e]mployment-related matters are separate and distinct from matters related to employees' actions."<sup>18</sup> He notes that the records at issue are partially prepared by the vehicle or boat operator and that they contain detailed explanations of what caused each collision. As a result, the appellant submits that the Vehicle Damage Reports are actually records of an employee's actions, rather than employment or labour-related records.

[40] The appellant also submits that the portion of each record in which an investigating member of the OPP determines whether a collision was preventable should also be viewed as distinct and separate from employment-related matters as interpreted under the *Act*.

[41] Regarding the recommendations of the Collision Review Committee, the appellant submits that the recommendations are conclusions reached by the Committee based on the actions of a public servant acting in his or her professional capacity. As such, the appellant submits that the recommendations themselves do not constitute employment-related matters.

[42] The appellant goes on to compare the Vehicle Damage Reports to other occurrence reports, which he submits are "routinely disclosed." In support of this submission, he cites Orders MO-2862 and MO-2911 as two cases in which this office has ordered a police services board to disclose occurrence reports to a requester. The appellant submits that an operator's description of how the collision occurred in the records at issue is no different than the description of an officer's actions and the narrative of an event in these other occurrence reports. He also submits that the determination of whether or not a collision was preventable is akin to a portion of an occurrence report that concludes whether a case is open or closed, as both pieces of information are determinations made by OPP staff based on actions and events performed or observed by their employees.

[43] The appellant notes that grievances, disciplinary proceedings or hearings stemming from preventable collisions would conceivably fall under section 65(6) of the

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<sup>18</sup> (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

*Act*, but submits that his access request did not encompass that type of information. Rather, he seeks access to records that describe the nature and circumstances surrounding an action by an OPP employee. He submits that the OPP are involved in over 1,000 collisions a year, 46 percent of which are preventable, and that these collisions are occurring in vehicles and boats that are paid for by taxpayers. The appellant submits that excluding these records under section 65(6) of the *Act* shields OPP operations from public scrutiny and damages the public's faith in the transparency and accountability of the OPP.

[44] Finally, the appellant refers to the *Act's* guiding principle to disclose as much information as possible, while complying with the *Act's* exclusions and exemptions. Based on this principle, the appellant asks that I order as much information as possible to be disclosed from each record in the event that I find that portions of the records are covered by the section 65(6) exclusion.

[45] In its reply representations, the ministry submits that the appellant incorrectly characterizes the records at issue as being about "an employee's actions", and therefore "no different than occurrence reports". The ministry submits that occurrence reports are created and used for an operational, law enforcement purpose, which is different from the employment-related purpose served by the Vehicle Damage Reports at issue in this appeal. The ministry also submits that the employment-related exclusion was not an issue in Orders MO-2862 and MO-2911, and that these orders are not relevant to this appeal.

#### *Analysis and findings*

[46] Previous decisions issued by this office have held that section 65(6) is record-specific and fact-specific. Therefore, the record for which the exclusion is claimed must be examined as a whole.

[47] I have considered each record as a whole. Although portions of each of the records (particularly parts A and B) contain merely factual information about the incidents, I am satisfied that this factual information is used specifically to assist in the determinations, contained in the other parts of each of the records, regarding whether or not a collision was preventable and whether disciplinary action should be taken against the operator. On this basis, I accept the ministry's position that the records at issue relate to labour relations or employment-matters because their purpose is to determine whether a collision was preventable, and to establish whether employee discipline should be imposed and, if so, the nature of any such discipline. I am satisfied that these purposes relate directly to labour relations or employment-related matters.

[48] As a result, I find that the records relate to determinations into whether or not a collision was preventable and, if so, what corrective action should be imposed. Given that corrective action may be in the form of operator training or discipline, I accept the

ministry's position that the records relate to the terms and conditions of an operator's employment and therefore concern employment-related matters.

[49] I have also considered the appellant's arguments. Although he may be correct in comparing the nature of some of the information in these records to the information contained in regular police "occurrence reports," ordinary occurrence reports relate to the actions of members of the public, and therefore do not relate to "labour relations or employment related matters."<sup>19</sup> In contrast, the records at issue in this appeal concern the actions of OPP vehicle or boat operators and relate directly to the workforce. I agree with the ministry's position that occurrence reports are created and used for an operational, law enforcement purpose, which is different from the employment-related purpose served by the Vehicle Damage Reports at issue in this appeal.

[50] I have also reviewed Orders MO-2862 and MO-2911, raised by the appellant. I note that these orders dealt with access to occurrence reports documenting specific incidents in which officers reported that their use-of-force equipment was lost or stolen. Although there may be similarities between incidents concerning an officer's loss of use-of-force equipment and incidents concerning an officer's involvement in an accident, I find that these two orders are distinguishable from the circumstances in this appeal. First, as noted by the ministry, neither MO-2862 nor MO-2911 raised the possible application of the exclusionary provisions in the *Act*. Further, from my review of those two orders, the records at issue appear to include simply the facts of the loss of use-of-force equipment, including the narrative of the incident by the officer involved. This information appears to be similar to the information in parts A and B of the records before me. However, unlike the records before me, the records at issue in Orders MO-2862 and MO-2911 do not appear to include any reference to internal reviews of the actions of the officers or subsequent discipline or training of them. In that respect, Orders MO-2862 and MO-2911 are distinguishable from the records at issue before me.

[51] In my view, Order MO-2242, referenced by the ministry, is more relevant to the issues in this appeal. The records at issue in that order were internal police reports<sup>20</sup> used for the purpose of determining whether an officer involved in a collision requires additional training or, where a collision was caused by misconduct, a disciplinary hearing. This office found that those records were created for the purpose of or as a result of labour relations or employment-related matters, as they related directly to the management of the police workforce. In particular, this office found that the need for officer training or discipline was an employment-related matter.

[52] Lastly, for the section 63(6)3 test to be established, what remains to be determined is whether the meetings, discussions, consultations and communications are about employment-related matters "in which the institution has an interest," which has been previously held to mean more than a "mere curiosity or concern."

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<sup>19</sup> See, for example, Orders M-927 and MO-2131.

<sup>20</sup> Identified as Service Vehicle Collision Reports.

[53] In this appeal, the records relate to collisions in which OPP vehicle and boat operators were involved. Based on the information communicated in the records, an OPP Collision Review Committee determines if an operator should be subject to any discipline or training. I accept that because the OPP is the employer of the operators who are the subject of the records, it has an interest in the records under review by the Collision Review Committee and that interest is one of "more than a mere curiosity or concern." As a result, I am satisfied that the requisite "interest" exists in the employment-related matters which are the subject of the records.

[54] In conclusion, I find that the records at issue in this appeal were collected, prepared or used by the ministry in relation to meetings, discussions or communications about employment-related matters. The ministry also clearly has an interest in these records, and I am satisfied that they are excluded from the scope of the *Act* under section 65(6)3.

### ***Additional matters***

[55] The appellant also takes the position that even if the exclusion in section 65(6) applies to portions of the records, any portions of the records which do not contain excluded information can be disclosed. He refers to the principles of the *Act* which include disclosing as much information as possible, while complying with the exclusions and exemptions found in the *Act*. Based on this principle, the appellant asks that I order as much information as possible be disclosed from each record in the event that I find that portions of the records are covered by the section 65(6) exclusion.

[56] As noted above, previous decisions issued by this office have held that section 65(6) is record-specific and fact-specific.<sup>21</sup> Therefore, the record must be examined as a whole. I have found above that the records are excluded from the scope of the *Act*. As the records are excluded from the scope of the *Act*, the severance provisions in section 10(2) of the *Act* do not apply to them.

[57] As a final note, having found that the records at issue in this appeal are excluded from the scope of the *Act*, I wish to reiterate that this finding does not necessarily prohibit the ministry from disclosing the records in full or in part. As I stated in Order MO-2242:

... although I have found that the records are excluded from the scope of the *Act* as a result of the application of [the equivalent to section 65(6)3], this section in no way prohibits an institution from disclosing records or portions of records, it simply removes them from the access and privacy regimes established by the *Act*. Outside the scope of the *Act*, an

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<sup>21</sup> See Orders P-1242 and MO-3163.

institution still has the discretion to disclose records even when [section 65(6)] is applicable.<sup>22</sup>

[58] This discretion to disclose records even when section 65(6) applies also applies to the possible disclosure of portions of records.

**ORDER:**

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

Original signed by:  
Frank DeVries  
Senior Adjudicator

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July 30, 2015

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<sup>22</sup> See also Orders PO-2613 and MO-2822.