



Information and Privacy
Commissioner/Ontario

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

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. PC-020022-1

Ministry of Public Safety and Security



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MEDIATOR: **Maria Tzimas**

INSTITUTION: **Ministry of Public Safety and Security**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner/Ontario (the IPC) received a privacy complaint under the *Freedom of Information and Protection of Privacy Act* (the Act) involving the Ministry of Public Safety and Security (the Ministry).

The complainant was concerned that the Government of Ontario was conducting video surveillance of picket lines during a recent Ontario Public Service Employees Union (OPSEU) strike that commenced on March 13, 2002. The complainant witnessed the video surveillance at a particular location where offices of the Ministry are located.

BACKGROUND INFORMATION

The Ministry provided the following information by way of background to the complaint:

On December 31, 2001, the Collective Agreement between the Ontario Government and the Ontario Public Service Employees Union (OPSEU) expired. On March 13, 2002, the members of OPSEU went on strike. A new Collective Agreement was eventually negotiated and on May 5, 2002, the strike ended.

During the course of the strike, Ontario Government buildings and leased premises throughout the province were picketed by striking employees. In some locations, the picket line activity resulted in the obstruction of individuals attempting to enter or exit from such premises. Where efforts were not successful in ensuring that individuals were not obstructed from entering and exiting Ontario Government premises, injunctive relief was sought from the courts.

The Ontario Government Building ... (the "Building"), houses the Ministry of Public Safety and Security, the Ministry of the Attorney General, the Ministry of Health and Long-Term Care and Management Board Secretariat. At times during the OPSEU strike, the picket line activity outside the Building was volatile and

unpredictable. On many occasions the picket line activity at the Building resulted in the obstruction and/or intimidation of individuals attempting to enter or exit the Building.

For the safety and protection of the striking employees, non-striking employees and other individuals, management staff decided to use video surveillance rather than stationing management staff at the picket line for monitoring activity, and therefore installed a video camera on the second floor of the Building. This was in keeping with instructions issued by the Ministry Strike Team to all locations with picket lines. Management staff also believed that the digital images resulting from the video surveillance may prove to be necessary evidence in the event that an escalation of picket line activities necessitated a request to the courts for injunctive relief. In actual fact, it did become necessary to seek injunctive relief from the courts and on April 14, 2002, an order was issued granting same.

The Ministry of Public Safety and Security (the Ministry) is sensitive to the privacy concerns that may arise from the use of video surveillance. However, in the context of the Ontario Government OPSEU labour dispute, as described above, the Ministry believes its actions were reasonable and necessary in these extraordinary circumstances. This extraordinary temporary measure was taken by the Ministry only after careful consideration of all relevant circumstances, particularly the safety and security of individuals and the protection of property.

The video camera used by the Ministry was connected to a computer that was capable of saving video images to a digital format. The video surveillance of the picket line was not continuous. The video camera was activated only when there was an escalation in picket line activity or when aggressive behaviour was exhibited by individuals on the picket line towards individuals attempting to cross the picket line.

Where there was a need to retain the video images of picket line activity, the information was saved in a digital format on CDs. The CDs were maintained by management staff in a secure filing cabinet with no access by other staff. The CDs are being maintained and used only in connection with proceedings arising from the labour dispute. The CDs are not being used for any other purpose. The Ministry will consult with Recorded Information Management Staff in regard to establishing appropriate records retention requirements for this information.

Although the Ministry did not post signage notifying individuals about the video surveillance monitoring of the picket line, there was no attempt to hide the video camera and many individuals were aware of its existence. The Ministry was in the process of reviewing the matter of signage, when the labour dispute ended and the video surveillance ceased.

The Ministry supports the principles of fair information practices and will ensure that appropriate signage is posted should video surveillance be required in the

context of a future labour dispute. The Ministry has included a reference to the complaint in its strike response documentation. In addition, the Ministry will be recommending to other participants involved with the government-wide contingency planning process that the matter of signage be included in the Ontario Public Service Strike Response Guide and that future training address this issue.

DISCUSSION:

The following issues were identified as arising from the investigation:

(A) Do sections 65(6) and (7) of the *Act* apply to the records involved in this complaint?

(B) If the answer to (A) is yes, is the information at issue “personal information” as defined in section 2(1) of the *Act*?

(C) Was the collection of the “personal information” in compliance with section 38(2) of the *Act*?

RESULTS OF THE INVESTIGATION:

Issue A: Do sections 65(6) and (7) of the *Act* apply to the records involved in this complaint?

The Ministry’s position is that section 65(6) of the *Act* applies in the circumstances of this complaint and that the *Act* does not apply to the records at issue.

Sections 65(6) and 65(7) of the *Act* state:

(6) 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.
2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

(7) 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 claims that paragraphs 1 and 3 of section 65(6) apply to the records. I will first consider the application of section 65(6)3.

Section 65(6)3

General

In order for a record to fall within the scope of section 65(6)3, the institution must establish that:

1. the records were collected, prepared, maintained or used by the 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.

Section 65(6) is record-specific and fact-specific. If section 65(6) applies to a specific record, in the circumstances, and none of the exceptions listed in section 65(7) are applicable, then the record is excluded from the scope of the *Act* and not subject to the Commissioner's jurisdiction.

Requirements 1 and 2

The Ministry submits:

...management staff collected, prepared, maintained and used the digital image records resulting from video surveillance in relation to meetings, consultations, discussions and communications about the OPSEU strike and the continual difficulties experienced by employees and other individuals seeking to enter or exit the Building. These meetings, consultations, discussions and communications took place in the context of the labour dispute to address labour relations and/or employment related matters.

In her response, the complainant states that “section 65(6) in reference to collection, preparation, and maintenance does not relate to video taping individuals.”

Based on the information before me, I am satisfied that the records at issue, those being the digital video images, were “collected, prepared, maintained or used” by the Ministry in relation to “consultations, discussions or communications” about the OPSEU strike and as a result of the ongoing labour dispute. Accordingly, the first two requirements of the three-part test have been met.

Requirement 3

The Ministry submits that the video surveillance of the picket line activity is a labour relations and employment-related matter. The Ministry goes on to state that as an employer, the Ministry has a managerial interest in working with bargaining agents, such as OPSEU, to resolve labour disputes related to collective bargaining issues involving the government’s workforce. It further submits that the Ministry also has a managerial interest in ensuring the safety and security of individuals and taking measures to ensure that picket line activity does not prevent individuals from entering and accessing Ontario Government premises.

In her response the complainant states:

The institution or employer referred to in this circumstance is the Ministry of Public Safety and Security. I am not nor have I ever been employed with this Ministry. I am an employee of the Ministry of Transportation. However during this labour dispute individuals on the “picket lines” ... consisted of family members, friends, and employees of other Ministries.

The complainant goes on to state that “during a labour dispute Government of Ontario employees are not “employed” by their respective Ministry.

As indicated above, the Ministry collected, prepared, maintained or used the records in relation to consultations, discussions or communications about the OPSEU strike and as a result of the ongoing labour dispute. The strike and labour dispute clearly are about labour relations matters in which the Ministry, as employer of some members of the striking union, has an interest. The fact that the video surveillance captured both striking Ministry staff and other individuals, including the appellant, does not negate the Ministry’s interest in the labour relations matters. In addition, whether or not the striking Ministry staff can technically be considered “employees” during a strike has no impact on the Ministry’s interest in the labour relations matters.

As all three requirements of section 65(6)3 have been met, I conclude that the records at issue in this complaint fall within the ambit of that section and are, therefore outside the scope of the *Act*. In addition, I find that none of the exceptions provided by section 65(7) apply in the circumstances of this complaint.

Because of my conclusion that section 65(6)3 applies in the circumstances of this complaint, it is not necessary for me to consider whether section 65(6)1 might apply. Furthermore, because of my finding with respect to Issue (A), it is not necessary to address Issues (B) and (C).

ADDITIONAL COMMENTS

In October 2001, the IPC issued a document entitled *Guidelines for Using Video Surveillance Cameras in Public Places*. Although I have concluded that the IPC does not have the jurisdiction to deal with this privacy complaint, the Ministry may benefit from consulting the aforementioned guidelines should it choose to use video surveillance in the future.

CONCLUSION:

I have reached the following conclusion:

Section 65(6) of the *Act* applies in the circumstances of this complaint and is not subject to the Commissioner's jurisdiction.

Maria Tzimas
Mediator

January 6, 2003