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# PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. PC-020052-1

Ministry of Public Safety and Security

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# PRIVACY COMPLAINT REPORT

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**MEDIATOR:**                                      **Susan Ostapiec**

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

## **SUMMARY OF COMPLAINT:**

The Office of the Information and Privacy Commissioner/Ontario (the IPC) received a complaint from a correctional officer employed by a correctional institution at the Ministry of Public Safety and Security (the Ministry). The correctional officer (now the complainant) is concerned that the Ministry inappropriately disclosed and used his personal information.

Specifically, the complainant states that on July 19, 2002, the Superintendent of the correctional institution conducted a meeting with a union representative to discuss matters pertaining to his behaviour and, during the meeting, the Superintendent verbally disclosed that the complainant had a previous substance addiction problem.

### **Ministry's response**

In response to this complaint, the Ministry takes the position that section 65(6) of the *Freedom of Information and Protection of Privacy Act* (the *Act*) applies in the circumstances of this complaint and that the *Act* does not apply.

The Ministry also provided the following background information. On July 19, 2002, the Superintendent of the correctional institution where the complainant is employed had a meeting with a local union representative to discuss matters of mutual interest, including discipline issues relating to the complainant. The complainant had received a three-day suspension from work for inappropriate behaviour toward a supervisor and had been sent home from work earlier in the day on July 19, 2002 due to management concerns about his behaviour.

The Ministry states that the complainant is a member of the Ontario Public Service Employees Union (OPSEU) and that he filed a grievance on September 19, 2002 relating to the alleged inappropriate disclosure of "personal medical information" at the July 19, 2002 meeting. The Ministry further states that the proceedings are presently before the Grievance Settlement Board, that the Vice-Chair is seized with the issue, and that a number of dates have been set for a hearing.

## **DISCUSSION:**

The following issue was identified as arising from the investigation:

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

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 proceedings.
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 paragraph 1 and 3 of section 65(6) apply in the circumstances of this complaint. These sections refer to “records”. Although I have not been provided with records containing the information at issue, I am satisfied in the circumstances that the information at issue was derived from Ministry 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 paragraph 3 of section 65(6), an 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 is not subject to the Commissioner's jurisdiction.

### **Requirements 1 and 2**

The Ministry submits that management staff collected, prepared, maintained and/or used records relating to the alleged inappropriate disclosure of personal information during the July 19, 2002 meeting in relation to meetings, discussions or communications about the complainant's grievance.

In Order P-1223, Assistant Commissioner Tom Mitchinson held that if the preparation (or collection, maintenance, or use) of a record was for the purpose of, as a result of, or substantially connected to an activity listed in sections 65(6)1, 2 or 3, it would be found to be "in relation to" that activity. I agree with this approach.

The Ministry has provided a copy of the complainant's statement of grievance, which alleges that the complainant's personal medical information was disclosed in violation of Article 3 of the Central Collective Agreement between the Ontario Government and OPSEU. I am satisfied that in the circumstances, the records at issue in this complaint would have been "collected, prepared, maintained or used" by the Ministry in its capacity as the complainant's employer. I also find that such records would have been collected, prepared, maintained and/or used "in relation to consultations, discussions or communications" surrounding the complainant's employment in the Ministry and the related grievance. On this basis, I find that the first two requirements have been satisfied.

### Requirement 3

The Ministry submits that the meetings, consultations, discussions and communications regarding the complainant's grievance constitute labour relations and/or employment related matters.

It has been established in a number of previous orders that grievances which are initiated pursuant to the procedures contained in the collective agreement between OPSEU and the Government of Ontario are, by their very nature, about labour relations matters (Orders P-1223, P-1253 and P-1255).

Therefore, because the records at issue relate directly to the subject matter of the complainant's grievance, I am satisfied that they qualify as records about "labour relations or employment related matters" for the purposes of section 65(6)3.

The only remaining issue is whether the Ministry "has an interest" in this matter.

A number of previous orders have addressed the issue of whether or not an institution "has an interest" in a matter for the purposes of section 65(6)3 of the *Act*. 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), the Ontario Court of Appeal specifically addressed the meaning of the phrase "in which the institution has an interest" as follows:

As already noted, section 65 of the *Act* contains a miscellaneous list of records to which the *Act* does not apply. Subsection 6 deals exclusively with labour relations and employment related matters. Subsection 7 provides certain exceptions to the exclusions set out in subsection 6. Examined in the general context of subsection 6, the words "in which the institution has an interest" appear on their face to relate simply to matters involving the institution's own workforce. Sub clause 1 deals with records relating to "proceedings or anticipated proceedings relating to labour relations or to the employment of a person **by the institution**" [emphasis added]. Sub clause 2 deals with records relating to "negotiations or anticipated negotiations relating to labour relations or to the employment of a person **by the institution**" [emphasis added]. Sub clause 3 deals with records relating to a miscellaneous category of events "about labour-relations or employment related matters in which the institution has an interest". Having regard to the purpose for which the section was enacted, and the wording of the subsection as a whole, the words "in which the institution has an interest" in sub clause 3 operate simply to restrict the categories of excluded records to those **records relating to the institutions' own workforce** where the focus has shifted from "employment of a person" to "employment-related matters". ...

The Ministry submits that it has an interest in records that relate to its own workforce. The Ministry further submits that as an employer, it has an inherent interest in working with bargaining agents, such as OPSEU, to resolve grievances filed pursuant to collective agreements involving the Ministry's workforce. I concur with the Ministry's position, and find that it "has

an interest" in this matter, thereby satisfying the final requirement of section 65(6)3. Accordingly, the third requirement of the test for section 65(6)3 has been met.

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 in 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.

**CONCLUSION:**

I have reached the following conclusions based on the results of my investigation:

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

June 19, 2003

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Susan Ostapiec  
Mediator