



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# ORDER P-1317

Appeal P\_9600333

Management Board Secretariat



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## **NATURE OF THE APPEAL:**

The appellant made a multiple part request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Agriculture, Food and Rural Affairs (the Ministry). The request was for access to records which related to the recent Ontario Public Service Employees Union (OPSEU) strike and the actions and positions of different government agencies. The Ministry transferred three of the appellant's requests to Management Board Secretariat (MBS), as it appeared that MBS had responsive records.

The transferred requests were for access to records which relate to meetings between MBS and OPSEU held during the strike and concerning the services provided by the Ministry's Meat Industry Inspection Branch (Request 1). Also requested were records relating to a specific Ontario Labour Relations Board (OLRB) decision and discussions relating to an appeal made to the OLRB (Requests 2 and 3).

MBS informed the appellant that the records were not accessible as they fall outside the scope of the Act, pursuant to section 65(6).

A Notice of Inquiry was sent to MBS and the appellant. Representations were received from MBS only. In its representations, MBS indicated that Records 28 and 29 represent the final agreement which was signed by both OPSEU and the Employer. MBS submits that these records fit within the exception in section 65(7) paragraph 1 and are, therefore, subject to the Act. MBS has not claimed an exemption for these records and submits that they may, therefore, be disclosed. This order will, accordingly, contain a provision to that effect.

## **DISCUSSION:**

Sections 65(6) and (7) read:

- (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 interpretation of sections 65(6) and (7) is a preliminary issue which relates to the Commissioner's jurisdiction to continue an inquiry.

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

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

MBS submits that Records 1-16 are excluded from the scope of the Act by virtue of paragraph 1 of section 65(6). These records relate to the OLRB decision and appeal and are held by MBS's Legal Services Branch (Requests 2 and 3).

In order for a record to fall within the scope of this provision, MBS must establish that:

1. the record was collected, prepared, maintained or used by MBS 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 MBS.

The OLRB decision was made pursuant to an essential services agreement settlement between the Crown and OPSEU. The OLRB directed that in the event of a strike, slaughtering operations

at provincially licensed premises were to be shut down. It further ordered and that 26 meat inspectors were to provide the essential service of monitoring sites to ensure that, in fact, slaughtering operations were shut down. The Ontario Independent Meat Packers and Processors Society made an application for judicial review of the OLRB decision, which was dismissed by a single judge of the Ontario Court (General Division) (Divisional Court).

I have reviewed Records 1-16 and find that they were collected, prepared, maintained or used on behalf of MBS by its Legal Services Branch in relation to the proceedings before the Ontario Court (General Division) (Divisional Court). The first two requirements of section 65(6)1 have, accordingly, been met in relation to these records.

I find that these proceedings relate to the collective relationship between an employer and its employees. Accordingly, they fall within the definition of "labour relations" for the purposes of section 65(6)1. I find, accordingly, that the third part of section 65(6)1 has been established.

In summary, I find that Records 1-16 were collected, prepared and used by or on behalf of MBS in relation to proceedings before a court and that these proceedings relate to "labour relations". All of the requirements of section 65(6)1 have been established by MBS. None of the exceptions contained in section 65(7) apply and these records are therefore excluded from the scope of the Act.

### **Section 65(6)2**

MBS submits that Records 17-27 and 30-37 are excluded from the scope of the Act by virtue of paragraph 2 of section 65(6). These records relate to the negotiation of the current collective agreement between the government and the Union (Request 1) and are located in MBS's Negotiations Secretariat.

In order for a record to fall within the scope of paragraph 2 of section 65(6) of the Act, MBS must establish that:

1. the record was collected, prepared, maintained or used by MBS or on its behalf; **and**
2. this collection, preparation, maintenance or usage was in relation to negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution; **and**
3. these negotiations or anticipated negotiations took place or will take place between the institution and a person, bargaining agent or party to a proceeding or anticipated proceeding.

Records 17-27 and 30-37 consist of background material, handwritten notes, position papers and draft agreements. MBS submits that all of the records were used by staff at the negotiating table and, in fact, the handwritten notes are made on stationary with the letterhead of the venue where the negotiations took place. MBS indicates that the records all relate to the issues surrounding staffing requirements to provide essential service during the strike.

I find that these records were collected, prepared, maintained and used by MBS in relation to negotiations which took place between MBS and OPSEU, a bargaining agent. I am also satisfied that these negotiations relate to labour relations.

All three requirements have, therefore, been met, and these records are outside the scope of the Act as they fall within the parameters of section 65(6)2.

**ORDER:**

1. I order MBS to disclose Records 28 and 29 to the appellant by sending him a copy of these records by **January 6, 1997**.
2. I uphold MBS's decision and dismiss the appeal with respect to the remaining records.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ December 16, 1996