



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

# ORDER P-1334

Appeal P\_9600380

Ministry of the Solicitor General and Correctional Services



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The appellant submitted a request to the Ministry of the Solicitor General and Correctional Services (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). The appellant sought access to the following records concerning a specified job competition in which he was an unsuccessful candidate:

1. All documents pertaining to the appellant's score on the competition, and his final score.
2. All documents pertaining to the successful candidate's score.
3. The final score of the successful candidate and date when this person was appointed to classified service.

The Ministry located the records responsive to the appellant's request and denied access to all of them, claiming that they fall within the parameters of section 65(6) of the Act, and, therefore, outside of the scope of the Act.

The appellant appealed the Ministry's decision. This office sent a Notice of Inquiry to the appellant and the Ministry, seeking representations on the jurisdictional issue raised by sections 65(6) and (7). Representations were received from the Ministry only.

## **RECORDS:**

The records at issue in this appeal consist of Competition Report Forms, Qualification and Assessment Forms, written exercises, references listing and authorization, and interview sheets containing questions, comments, points, ratings and responses for the appellant and the successful candidate. The records at issue also consist of documents from the successful candidate's personnel file which contain information regarding this person's appointment to classified service.

## **DISCUSSION:**

### **JURISDICTION**

The sole issue in this appeal is whether the records fall within the scope of sections 65(6) and (7) of the Act. These provisions read as follows:

- (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 goes 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.

In its representations, the Ministry indicated that it had originally advised the appellant that the records were denied pursuant to section 65(6)3 of the Act. However, in view of the fact that the appellant had filed a grievance in relation to the job competition, the Ministry was of the opinion that section 65(6)1 also applied to the records at issue.

I shall consider the application of section 65(6)3 first.

### **Section 65(6)3**

In order for the records to fall within the scope of paragraph 3 of section 65(6), the Ministry must establish the following:

1. the record was collected, prepared, maintained or used by the Ministry 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 Ministry has an interest.

I find that the records at issue were collected, prepared, maintained or used by the Ministry in connection with the job competition. Therefore, the first requirement has been met. Under the second requirement, I find that the records were generated for the purpose of, as a result of, or are substantially connected to, and therefore, “in relation to” job applications, employment interviews and deliberations about the results of a competition by the panel, all of which qualify as meetings, discussions or communications (Order P-1258).

Under the third requirement, it is clear that a job competition is an employment-related matter and, therefore, that these meetings, discussions or communications were “about” employment-related matters. In Order P-1258, former Assistant Commissioner Tom Mitchinson found that the mandatory non-discrimination requirements of the Ontario Human Rights Code apply to job competitions, and impose legal obligations on an institution concerning the manner in which the competition is conducted. I agree with this finding. Accordingly, I find that the Ministry “has an interest” in this matter as the job competition has the capacity to affect the legal rights or obligations of the Ministry.

Moreover, the appellant is a member of the Ontario Public Service Employees Union, which has a Central Collective Agreement (the central agreement) with the government of Ontario. According to submissions and documentation supplied by the Ministry, the appellant has filed a grievance pursuant to Article 27 of the central agreement, alleging that the Ministry violated the conditions of the central agreement with respect to the hiring and competition process in which he was a candidate. The grievance is stated to be at Stage Two and will, if not settled, proceed to the Grievance Settlement Board. In my view, the competition process has the potential to affect the legal rights or obligations of the Ministry and means that the Ministry “has an interest” in the job competition.

For both of these reasons I find that the job competition is an employment-related matter in which the Ministry has an interest.

Accordingly, all of the requirements of section 65(6)3 of the Act have been established. As none of the exceptions contained in section 65(7) are present, I find that the records are excluded from the scope of the Act.

Because of the way in which I have decided the issue under this section, I need not consider the application of section 65(6)1.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ January 21, 1997