



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1529

Appeal P-9700316

Ministry of Health



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NATURE OF THE APPEAL:

The Ministry of Health (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all information relating to a complaint filed against the requester. In particular, the requester sought access to “the initial complaint, handwritten notes, incident reports, recommendations and conclusions” by all the parties involved in the investigation which resulted from the complaint. The Ministry identified the responsive records but denied access to them on the basis that they fall outside the scope of the Act (section 65(6)). The requester appealed the decision to deny access.

A complaint was made against the requester, an employee of the Emergency Health Services, Peel-York & District Ambulance Services of the Ministry, as a result of an ambulance call that he made. The records requested were generated as part of the Peel-York & District Ambulance Services’ investigation into the complaint. The records at issue consist of a 30-page investigation report which includes interviews, conclusions and recommendations, memoranda, complaint/inquiry report, call details report, incident reports, supplemental report and handwritten notes.

This office provided a Notice of Inquiry to the appellant and the Ministry. Representations were received from both parties.

DISCUSSION:

JURISDICTION

The sole issue in this appeal is whether the records fall within the scope of section 65(6) of the Act.

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 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.

Sections 65(6) and (7) 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, a 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 submits that section 65(6)3 applies to the records which were generated as a result of a complaint made against the appellant. The Ministry submits that the records, therefore, are concerned with employment-related matters in which the Ministry has an interest.

By way of background, the Ministry states that the Peel-York & District Ambulance Service is a ministry-owned and operated ambulance service. Section 27 of Ontario Regulation 19 to the Ambulance Act, the regulation in effect at the time that the records were created, outlines the procedures which applied to complaints and incident reports and sets out the Ministry's obligations. Section 27(1) of O.Reg. 19 states:

Every operator shall ensure that an incident report is made respecting,

- (a) each formal complaint relating to the operator's ambulance service received by the operator or on the operator's behalf;
- (b) each investigation carried out by the operator or under the operator's authority relating to the operator's ambulance service; and
- (c) every unusual occurrence, including unusual delays, suspicious circumstances, equipment deficiencies or

interference in the performance of ambulance service, encountered or experienced by the operator or any of the operator's employees in the course of providing ambulance service.

The Ministry states that its Emergency Health Services Branch also has a policy which sets out the required process for responding to complaints from both internal and external sources. The Ministry states that the complaint against the appellant and a co-worker was fully investigated by the Operations Manager who concluded that the complaint was unfounded. This finding was conveyed to both the appellant and the co-worker.

The appellant states that false allegations are constantly made against paramedics and he intends to launch a law suit against the complainant for the distress caused by the frivolous and unfounded complaint. The appellant submits that he requires access to the records to assist him in the law suit.

In order for the records to qualify under section 65(6)3, the Ministry must establish that:

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.

[Order P-1242]

Requirements 1 and 2

The records consist of the investigation report which includes memoranda, supplemental report, call details report, incident report and handwritten notes that were generated as part of the investigation by the Ministry. The Ministry submits that the records were either collected, prepared, maintained and/or used by the Ministry. The Ministry submits that the records were used to further discussions with the appellant, the co-worker and other individuals and were used in relation to these meetings, discussions and communications. I accept the Ministry's position and I find that the first and second requirements have been met.

Requirement 3

The Ministry submits that the meetings, discussions and communications were about employment-related matters because the investigation arose out of allegations of on-the-job misconduct by the appellant and a co-worker. The investigation was conducted by the Ministry as part of its obligations under the Ambulance Act and its obligations as an employer at common

law. I am satisfied that the meetings, discussions and communications were about “employment-related matters” for the purposes of section 65(6)3.

In Order P-1242, Assistant Commissioner Tom Mitchinson stated the following regarding the meaning of the term “has an interest”:

Taken together, these [previously discussed] authorities support the position that an “interest” is more than mere curiosity or concern. An “interest” must be a legal interest in the sense that the matter in which the Ministry has an interest must have the capacity to affect the Ministry’s legal rights or obligations.

The Minister refers to section 4(1) of the Ambulance Act which outlines the functions of the Minister and states as follows:

The Minister has the duty and the power,

- (a) to ensure the development throughout Ontario of a balanced and integrated system of ambulance Services and of effectual ambulance communications facilities;
- ...
- (d) to establish and operate, alone or in co-operation with one or more organizations, institutes and centres for the training of personnel for ambulance Services.

The Ministry argues that the above section speaks to one of the implied legal rights of the Ministry as an employer to expect the appellant to fulfill his contractual obligations. The Ministry states that the records at issue were generated as part of an investigation to determine whether, in fact, the appellant had breached these obligations. The Ministry submits that its “interest” in these employment matters also arises from the Public Service Act and from common law principles regarding employer/employee relations, including the right of the employer to manage and direct its workforce. The Ministry points out that, if proven, the allegations against the appellant could also have led to civil liability.

I find that the Ministry has an interest in adhering to the standards and requirements under the Ambulance Act, the Public Service Act and its obligations as an employer at common law. Accordingly, I find that the third requirement has been met.

All the requirements of section 65(6)3 of the Act have been established by the Ministry. None of the exceptions contained in section 65(7) are present in the circumstances of this appeal, and I find that the records fall within the parameters of this section and therefore, are excluded from the scope of Act.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ February 13, 1998