



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1554

Appeal P-9700210

Ministry of Community and Social 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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for all Ministry personnel files, including files in the local Fort Frances satellite office, District Manager's and supervisor's files at the District Office and files in the area office and corporate office relating to the requester. The request also included access to the program supervisor's files including all telephone records, e-mail messages and personal notes and all files within "the various hierarchical levels" of the Ministry. The Ministry denied access to the responsive records, in their entirety, on the basis that section 65(6) of the Act applied and the records were outside the scope of the Act. The requester appealed the decision.

During mediation, the requester, now the appellant, clarified that she was seeking access to all records from March, 1981 when she first commenced employment with the Ministry. The Ministry confirmed that the four boxes of records forwarded to this office for the purpose of this appeal include all the records relating to the appellant since 1981.

The requester is a former employee with the Ministry and has been a party to various grievances since 1989. Some of these grievances have been resolved and others are outstanding.

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

RECORDS:

The records consist of Records B1 to B15 which include the grievance, client correspondence, reprimands, performance and workload issues, client complaints, dismissal and personnel file. In addition to these, there are 1988 pages of internal memoranda and correspondence, e-mail messages, facsimile transmittal sheets, client information and correspondence regarding various grievances and financial transaction sheets.

DISCUSSION:

JURISDICTION

The sole issue to be addressed in this order is whether the records fall within the scope of sections 65(6) and (7) of the Act. These provisions 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 the labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or a party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employee-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 the 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.

The Ministry has claimed that all three paragraphs, sections 65(6)1, 2 and 3 apply to exempt the record from the Act. I will first consider the application of section 65(6)1.

Section 65(6)1

In Order P-1223, Assistant Commissioner Tom Mitchinson analysed the requirements of section 65(6)1 and found that:

[I]n order for a record to fall within the scope of this provision, 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 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 the Ministry.

I adopt this approach and will apply it in the present appeal.

The Ministry has provided evidence to establish that the appellant has filed several grievances under the collective agreement between the Ontario Public Service Employees Union (OPSEU) and the Government of Ontario and has pursued complaints to the Ontario Human Rights Commission (the OHRC). The grievances cover a number of areas pertaining to the appellant's performance and the actions allegedly taken by the Ministry. The appellant was a member of OPSEU when the grievances were filed.

The Ministry submits that there remains an outstanding grievance of the appellant's dismissal and that the records relating to this matter were collected, maintained and used to respond to the appellant's grievances and are also maintained and used in anticipation of proceedings before the Grievance Settlement Board. The Ministry points out that its Human Resources policies and the terms of the Collective Agreement, negotiated under the terms of the Crown Employees Collective Bargaining Act (CECBA), require that expectations, directions and decisions be properly articulated and recorded for acceptable employment management and for the protection of all parties in the resolution of disputes.

The appellant submits that she was a full-time employee of the Ministry at the time that she submitted her request and that she is seeking access to all of her personal information dating back to 1981 when she first commenced her employment.

Requirement 1

Based on my review of the records and the submissions of the Ministry, I find that the records were collected and/or prepared, used and maintained by the Ministry.

Requirement 2

Hearings before the GSB and the OHRC have been recognized as proceedings before a tribunal for the purposes of section 65(6)1 (Orders P-1257 and M-861). I find that the records responsive to the request were collected and/or prepared, used and maintained by the Ministry for the purpose of preparing for proceedings and anticipated proceedings before the GSB and the OHRC. I find that the second requirement has been met.

Requirement 3

I must now determine whether these proceedings and anticipated proceedings related to labour relations or the employment of a person by the Ministry.

In Order P-1223, Assistant Commissioner Tom Mitchinson established that, in section 65(6)1, the legislature intended the terms “labour relations” and “employment” to have separate and distinct meanings. In that same order which addressed the application of section 65(6)1 to records relating to a grievance filed by a Ministry employee, he made the following comments:

The term “labour relations” also appears in section 17(1) of the Act. In this context, Inquiry Officer Holly Big Canoe discussed the term “labour relations information” in Order P-653, and made the following statements:

In my view, the term “labour relations information” refers to information concerning the **collective** relationship between an employer and its employees. The information contained in the records was compiled in the course of the negotiation of pay equity plans which, when implemented, would affect the **collective** relationship between the employer and its employees.

Given the particular wording of section 65(6)1, I find that Inquiry Officer Big Canoe’s interpretation of the term is equally applicable in the context of paragraph 1. Therefore, I find that “labour relations” for the purposes of section 65(6)1 is properly defined as the collective relationship between an employer and its employees.

In the circumstances of this appeal, the Ministry has established that the appellant, who was a member of OPSEU at the time, filed her grievance under the procedures contained in Article 27 of the collective agreement between the government and OPSEU. The collective agreement contains provisions which outline the role of the Grievance Settlement Board in hearing and resolving grievances filed by members of OPSEU. Therefore, I find that the anticipated proceedings before the Grievance Settlement Board which existed at the time the grievance was filed by the appellant related to labour relations and the third requirement of section 65(6)1 has been established.

I agree with the approach taken by the Assistant Commissioner and find that, for the reasons expressed above, the proceedings involving the appellant’s grievances before the GSB relate to labour relations within the meaning of section 65(6)1. Accordingly, the third requirement of section 65(6)1 has been met. I have reviewed section 65(7) and find that none of the exceptions apply in the circumstances of this appeal.

In summary, I find that the records at issue in this appeal were prepared and/or collected, maintained and used by the Ministry in relation to proceedings before a tribunal, the GSB, and that these proceedings relate to labour relations. Accordingly, I find that the records fall within

the parameters of section 65(6)1 and are excluded from the scope of the Act. Because I have found the records to be excluded from the Act under section 65(6)1, I do not need to consider the application of sections 65(6)2 and 3 to them.

ORDER:

I uphold the decision of the Ministry.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ April 8, 1998