



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1518

Appeal P-9700237

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was for access to lists containing the classifications of all Ministry employees by compensation group, as of the date of the request. The request was made by a representative of the bargaining agent for a group of Ministry employees. The Ministry located the requested information and denied the appellant access to it, claiming that, under section 65(6) of the Act, it was excluded from the scope of the Act.

The appellant appealed the Ministry's decision. During the mediation of the appeal, the Ministry provided the Commissioner's office with representative samples of the information requested. This office then provided the Ministry and the appellant with a Notice of Inquiry soliciting their submissions on the question of whether the records were excluded from the scope of the Act as a result of section 65(6). Both parties made representations.

DISCUSSION:

JURISDICTION

The only issue in this appeal 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 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.

The Ministry claims that the responsive records fall outside the jurisdiction of the Act under section 65(6)3. In Order P-1242, Assistant Commissioner Tom Mitchinson stated that in order for a record to fall within the scope of paragraph 3 of section 65(6), 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.

Requirements 1 and 2

The Ministry submits that its staff collected, prepared and maintained and/or used the information contained in the records at issue in relation to meetings, consultations, discussions or communications about employment-related matters in which the Ministry has an interest. It further indicates that the collection of the information in the records was pursuant to its statutory obligations under the Public Service Act (the PSA).

I am satisfied that the information which is reflected in the records was collected, prepared, maintained or used by the Ministry. I further find that this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications both within the Ministry itself and between the Ministry, Cabinet and Management Board Secretariat. Accordingly, I find that the first two requirements of section 65(6)3 have been met.

Requirement 3

I find that because the information contained in the records relates to the Ministry's collective relationship with its employees, it is "about labour relations" for the purpose of section 65(6)3.

The next question to be addressed is whether the Ministry has an interest in the labour relations matter which is the subject of the information contained in the records. In Order P-1242, Assistant Commissioner 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.

In Order P-1476, Inquiry Officer Laurel Cropley accepted that an institution "has an interest" in a record for the purposes of Requirement 3 where that record contains information which has the capacity to affect its rights and obligations. In that case, the Ministry of the Solicitor General and Correctional Services was found to "have an interest" for the purposes of section 65(6)3 in records containing an inventory of some of that Ministry's positions indicating the branch, position title, and status of each, as well as which positions are bilingual. I adopt the findings of Inquiry Officer Cropley in this respect.

The Ministry argues that it has a legal interest in the information contained in the records as a result of the application of the PSA and because of its obligations as an employer at common law. It submits that these rights include the right to manage and direct its workforce and make decisions about staffing. The Ministry also indicates that it is about to begin the negotiation of a new collective agreement with the association represented by the appellant and that it has a legal interest in the outcome of the collective bargaining process.

More significantly, the Ministry has provided me with submissions with respect to the possible impact which the disclosure of the information contained in the records may have on the collective bargaining process and its ability to make decisions about its workforce. Because of the nature of those submissions, I am unable to describe them in any detail in this order.

The appellant submits that the information in the records does not relate to the collective bargaining process and that its disclosure will simply serve to enable the bargaining agent which he represents to realize the redeployment rights set out in its Interim Agreement with the Ministry. In addition, the appellant submits that it currently receives a monthly list of vacancies for one category of employees but that this list does not include temporary assignments. The

Ministry confirms that the bargaining agent represented by the appellant currently receives information regarding its own members' positions, but not those which are represented by other bargaining agents.

I agree that the Ministry, in its capacity as an employer, has a legal interest in adhering to the standards and requirements of section 26(4) of the PSA, as well as those which it derives from common law. I further find that the Ministry's interest in the outcome of its ongoing collective bargaining negotiations may properly be described as a "legal interest" for the purposes of section 65(6)3.

In this appeal the records consist of lists of position titles and, in some cases, the names of the individuals who hold those positions, by geographical location. In my view, the legal interest which the Ministry has in the **subject matter of these records** can reasonably be characterized as one "which has the capacity to affect the Ministry's legal rights or obligations".

I find that the legal interest which the Ministry is obliged to adhere to under the PSA, at common law and in the context of collective bargaining is reflected in these records. I specifically find that the mandated responsibilities which flow from the Ministry's legal obligations under the PSA, at common law and from its position as employer at the bargaining table are included as part of the subject matter of the present records. Accordingly, I find that the Ministry has an interest in the labour relations matter which is the subject of the information contained in these particular records for the purposes of section 65(6)3.

As a result, I find that the third requirement of section 65(6)3 has been satisfied. Because I have found that the records fall within the parameters of this section, they are excluded from the scope of the Act.

ORDER:

I uphold the Ministry's decision and dismiss the appeal

Original signed by: _____

January 21, 1998

Donald Hale
Inquiry Officer