



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1566

Appeals P-9800016 and P-9800017

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEALS:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received two requests under the Freedom of Information and Protection of Privacy Act (the Act) from an employee (the appellant) for records relating to the employee. The first request was for a report about the appellant's grievance written by a named Lieutenant at the Metro Toronto East Detention Centre. The second request was for the Daily Roster Sheets of the Metro Toronto East Detention Centre for specified dates in 1995, 1996, and 1997. The Ministry denied access to the records which would be responsive to both requests pursuant to sections 65(6)1 and 3 of the Act on the basis that the information is outside the scope of the Act.

The appellant appealed both decisions and two appeal files were opened, P-9700016 and P-9700017. Because the subject matter in the two appeals is related, this order will dispose of the issues in both appeals.

RECORDS:

The records at issue in this appeal are:

Appeal P-9700016, a 10-page report entitled "Summary of Grievance of C/O 2"; and

Appeal P-9700017, Duty Roster Sheets of the Metropolitan Toronto East Detention Centre dated December 16 and 22, 1996, and February 5 and 16, 1996. These four records were submitted as a representative sample of the records at issue in this appeal.

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

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 paragraphs 65(6)1 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.

The Ministry indicates that the appellant, who is a member of the Ontario Public Service Employees Union (OPSEU), has filed grievances pursuant to Article 22 of the Central Collective Agreement between OPSEU and the Government of Ontario. The grievances were filed with respect to the Attendance Enhancement Program and related Accommodation issues. The Ministry advises that these grievances are outstanding and that the Ministry is awaiting notification of hearing dates before the Grievance Settlement Board (the GSB).

The Ministry indicates that the records at issue in these two appeals were collected, maintained and used to respond to the appellant's grievances and are also maintained and used in anticipation of proceedings before the GSB.

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 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. I find that the second requirement has been met.

Requirement 3

Similarly, previous orders have determined that proceedings involving an appellant's grievances before the GSB relate to labour relations within the meaning of section 65(6)1 (see: for example, Orders P-1223 and P-1554). I agree with the findings in this line of orders. 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 these appeals 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 section 65(6)3 to them.

ORDER:

I uphold the Ministry's decisions.

Original signed by: _____

Laurel Cropley

Adjudicator

(formerly Inquiry Officer)

_____ May 14, 1998