



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-1950

Appeal PA-000301-1

Ministry of the Attorney General



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 appellant was an unsuccessful candidate in a job competition held by the Ministry of the Attorney General (the Ministry) in April 2000. He submitted a request to the Ministry under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to his "rating and ranking including questions, anticipated responses and scores". In addition, the appellant asked for:

[A]ny information which explains or justifies the decision that no suitable candidates existed, including, but not limited to information contained in the competition documentation which provides the rationale for the conclusion that I was unsuitable or unsatisfactory for this position.

The Ministry located responsive records and denied access to them on the basis that they fall outside the scope of the *Act* pursuant to section 65(6)3 of the *Act*.

The appellant appealed the Ministry's decision.

Despite extensive mediation, the issues in the appeal could not be resolved and the matter was moved into inquiry.

I sent a Notice of Inquiry to the Ministry and it provided representations in response. I provided these representations in their entirety to the appellant along with a copy of the Notice of Inquiry. The appellant was asked to review the Ministry's representations and to refer to them where appropriate in responding to the issues in this appeal. The appellant did not submit representations to this office.

RECORDS:

There are 42 pages of records at issue consisting of: the description of the position specifications and statement of job responsibilities; the interview questions form, which includes the questions, a suggested response for each question (where appropriate), the responses given by the appellant as recorded by each of the interview panel and the scores given for each question by each panel member; and a summary of the overall scores.

DISCUSSION:

APPLICATION OF THE ACT

Introduction

Section 65(6) is record-specific and fact-specific. If section 65(6) applies to the record, and none of the exceptions found in section 65(7) applies, then the record is outside the scope of the *Act*.

As I indicated above, the Ministry claims that section 65(6)3 applies to the records.

Section 65(6)3

Sections 65(6)3 and 65(7) 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:

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.

In order to fall within the scope of paragraph 3 of section 65(6), an institution must establish that:

1. the records were collected, prepared, maintained or used by the institution 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 institution has an interest.

The Ministry states that:

The records at issue were central to a comparison of the suitability of candidates for an advertised job opening within the Ministry. The hiring committee systematically recorded, held meetings, and communicated with management

about the employment potential of the appellant in relation to the other candidates and the appellant's interview performance before the hiring committee in comparison to the other applicants for the job opening. This was done in keeping with the Ministry's practice regarding using hiring committees where there is a reasonable prospect of a decision related to an offer of employment.

...

[T]hese records relate to the meetings, discussion and communications about employment-related and labour relations matters pertaining to a collective bargaining position; namely, to determine which of the applicants interviewed for the job opening was suitably qualified to carry out the work responsibilities of the advertised vacant position in an appropriate manner.

...

[T]he job competition process involves certain legal obligations which an employer must meet under the *Public Service Act*, in addition to general common law principles regarding employer/employee relations.

In addition, the Ministry has an interest in the records as any allegations involving unionized employees could result in grievance proceedings. Therefore, the Ministry asserts that the records of its job opening committees and their meetings, discussion and communications are about labour relations or employment-related matters in which it has an interest.

A collective agreement imposes binding legal obligations on the Ministry as employer. There exists a reasonable expectation of proceedings arising under the Ministry's obligations as an employer under the *Public Service Act*, the *Crown Employees Collective Bargaining Act* and the Collective Agreement between Management Board of Cabinet and the Ontario Public Service Employees Union (OPSEU). Given both the appellant's dissatisfaction with the Ministry's attempts to provide feedback, and the failure of informal mediation through the IPC, there remains a reasonable expectation that a future proceeding pertaining to these records in relation to an employment-related matter in which the Ministry has a direct interest may be commenced.

The appellant has expressed and maintained his previous concern, despite Ministry efforts, that he is being denied information that should be available to him under the *Act*.

The Ministry notes further that the Director of Court Operations, East Region (the Director) has invited the appellant to schedule an appointment with him to discuss this matter.

Earlier in the appeal, the Ministry had provided copies of correspondence between the Director and the appellant following the competition, which confirms both the Director's invitation and the appellant's expression of dissatisfaction with respect to the results of the competition.

Requirements 1 and 2

Previous orders of this office have consistently found that, in the context of a job competition, an employment interview is a meeting and that deliberations about the results of a competition among a panel or hiring committee are meetings, discussions or communications (Orders M-861 and P-1258, for example).

In Order P-1223, Assistant Commissioner Tom Mitchinson held that if the preparation (or collection, maintenance, or use) of a record was for the purpose of, as a result of, or substantially connected to an activity listed in sections 65(6)1, 2 or 3, it would be found to be "in relation to" that activity. I agree with this approach.

The above-noted orders have found, in accordance with the approach in Order P-1223, that the records collected, prepared, maintained or used with respect to such meetings, discussions or communications are "in relation to" them

Similar to the findings in previous orders, I find that the records were collected, prepared, maintained and/or used by the Ministry in relation to meetings, discussions or communications about the job competition, thus satisfying requirements one and two.

Requirement 3

Previous orders of this office have also found that generally speaking, job competitions are employment or labour relations matters in which an institution has an interest (see, for example, Order M-830). In the circumstances of this appeal, it is apparent that the appellant was dissatisfied with the results of the competition. The correspondence between the appellant and the Director reflects his dissatisfaction and disappointment in the results of the competition. In his request he is seeking information that would justify or explain why he was considered unsuitable for the position.

Based on all of the evidence before me, I find that the appellant has demonstrated a continued dissatisfaction with the results of the competition and the Ministry's process in its debriefing of unsuccessful candidates. As an employee of the government of Ontario, the appellant is in a position to pursue his dissatisfaction, thus further engaging the Ministry's interests in the matter. Accordingly, I find that the third requirement has been established.

Based on the above, I find that section 65(6)3 applies to the records at issue in this appeal. Since none of the exceptions in section 65(7) applies, the records fall outside the scope of the *Act*.

ORDER:

I uphold the Ministry's decision that the *Act* does not apply to the records.

Laurel Cropley
Adjudicator

September 20, 2001