



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2434**

**Appeal PA-050115-1**

**Ministry of Community Safety and Correctional Services**



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## **NATURE OF THE APPEAL:**

The Ministry of Community Safety and Correctional Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records maintained by the Ontario Provincial Police (O.P.P.) detachments in Alexandria, Lancaster & Long Sault for the period August 2000 to March 2005, including any:

- police reports and files
- officers notes
- witness statements
- statements given to the O.P.P. by the requester

The Ministry located a number of responsive records and took the position that they fall outside the jurisdiction of the *Act* due to the operation of the exclusionary provision in section 65(6) of the *Act*. The requester (now the appellant) appealed the Ministry's decision.

During the mediation stage of the appeal, the appellant acknowledged that section 65(6) of the *Act* may apply to records relating to her complaints with the O.P.P. Professional Standards Bureau against two officers. According to the appellant, these two complaints cover the period from February 21, 2005 to March 1, 2005. As a result, the parties to the appeal have agreed to remove records relating directly to those complaints from the scope of the appeal. However, the appellant takes the position that the other responsive records identified by the Police do not fall within the scope of section 65(6).

As further mediation was not possible, the matter was moved to the adjudication stage of the appeal process. I sought and received the representations of the Ministry, initially. A complete copy of the Ministry's representations was shared with the appellant, who also provided me with submissions.

## **RECORDS:**

The records remaining at issue consist of General Occurrence Reports, Occurrence Summaries, Supplementary Occurrence Reports, a Victim Report, an Arrest Report, an Interview Report and officers' notebook entries.

## **DISCUSSION:**

The Ministry takes the position that the records at issue fall within the ambit of the exclusionary provisions in sections 65(6)1 and 3, which state:

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.

3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*. The term “in relation to” in section 65(6) means “for the purpose of, as a result of, or substantially connected to” [Order P-1223]. The term “labour relations” refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships [Order PO-2157, *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.)]. The term “employment of a person” refers to the relationship between an employer and an employee. The term “employment-related matters” refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship [Order PO-2157].

If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date [*Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507].

While the Ministry has applied both sections 65(6)1 and 3 to the records, I will address the possible application of section 65(6)3 initially.

### **Section 65(6)3: matters in which the institution has an interest**

#### ***General principles***

For section 65(6)3 to apply, the Ministry must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
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 phrase “labour relations or employment-related matters” has been found to apply in the context of:

- a job competition [Orders M-830, PO-2123]
- an employee's dismissal [Order MO-1654-I]
- a grievance under a collective agreement [Orders M-832, PO-1769]
- disciplinary proceedings under the *Police Services Act* [Order MO-1433-F]
- a "voluntary exit program" [Order M-1074]
- a review of "workload and working relationships" [Order PO-2057]
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act* [*Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*], [2003] O.J. No. 4123 (C.A.)]

The phrase "labour relations or employment-related matters" has been found *not* to apply in the context of:

- an organizational or operational review [Orders M-941, P-1369]
- litigation in which the institution may be found vicariously liable for the actions of its employee [Orders PO-1722, PO-1905]

The phrase "in which the institution has an interest" means more than a "mere curiosity or concern", and refers to matters involving the institution's own workforce [*Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*].

### ***Representations of the parties on section 65(6)3***

The Ministry submits that initially, the appellant asked the O.P.P. Professional Standards Bureau to review all of her contacts with the O.P.P., including incidents where she was "a person of interest" rather than a complainant. The Ministry concludes that on that basis, all of the responsive records are covered by section 65(6) of the *Act*. In addition, it notes that the appellant commenced another complaint under section 56(1) of the *Police Services Act* (the *PSA*) against an officer with the O.P.P. Professional Standards Bureau (the PSB) in September of this year respecting the involvement of a member of the PSB in the processing of the appellant's initial request under the *Act*.

The Ministry also indicates that an earlier complaint under section 56(1) of the *Act* against two officers was dismissed by the Bureau Commander of the PSB, and that the appellant has asked for a review of that decision by the Ontario Civilian Commission on Policing Services (OCCPS) pursuant to section 64(6) of the *PSA*. This review remains ongoing. Accordingly, the Ministry

argues that all of the records relate to the two *PSA* proceedings and that they are, accordingly, subject to the exclusionary provision in section 65(6)3.

With respect to the three-part test articulated above for section 65(6)3, the Ministry submits:

. . . the records at issue are being maintained and/or used by Ministry staff in relation to meetings, consultations, discussions and communications in relation to the appellant's complaints relating to OPP service calls and, particularly, in relation to the most recent *PSA* complaint filed by the appellant that is currently being reviewed by the OPP Professional Standards Bureau. These are matters in which the Ministry has an interest.

It then goes on to add that:

. . . Order PO-1618 . . . concerned a request [under the *Act*] submitted to the Ministry by an individual seeking access to records relating to a complaint against OPP officers filed under the *PSA*.

Additionally, the Ministry submits that Orders M-931, M-962, MO-1346 and MO-1656 support the Ministry's position that section 65(6)3 applies to the information remaining at issue. These orders all concluded that records respecting complaints filed pursuant to the *PSA* were excluded labour relations and employment-related records.

Based on the foregoing, the Ministry is of the view that the records at issue are being maintained and/or used for meetings, consultations, discussions and communications relating to labour relations and employment-related matters in which the Ministry, as an employer, has an interest.

The appellant argues that her first complaint relates only to two specific officers arising from specific incidents in February 2005. She indicates that she is only seeking access to those records which do not 'have to do with the complaint involving these two officers'. The appellant also submits that the second complaint pertains only to a memorandum sent by the subject officer to the Ministry's Freedom of Information unit containing what the appellant feels is inaccurate information regarding the scope of her request.

### ***Findings with respect to section 65(6)3***

The scope of the request, as initially framed, was broadly worded, intending to encompass officers' notes, police reports and files, witness statements and the requester's own statements for a period from August 2000 to March 2005. During the mediation stage of the appeal, the appellant identified and removed from the scope of the appeal those records that related solely to the February 2005 incidents which gave rise to her complaints against the two officers, now the subject of the OCCPS investigation. As a result of discussions with the IPC Mediator and the

Ministry, the appellant agreed to remove from the scope of this appeal Records 15 to 18, 21, 36 to 41, 50 to 53, 54, 55, 56, 57, 58 and 59 as they pertain directly to the subject matter of the first complaint against the two officers. I find that the remaining records pertain only to events other than those involving the February 2005 incidents that gave rise to the *PSA* and subsequent OCCPS complaints. I also find that none of the records relate to the appellant's complaint against the staff member with the PSB that was filed in September of this year.

I agree with the Ministry that the records were collected, prepared, maintained and used by it in relation to certain discussions and communications, thereby satisfying the first two parts of the test under section 65(6)3. However, I cannot agree that the discussions or communications that may have taken place with respect to *these records*, which do not relate to the subject matter of the appellant's complaints, are "about labour relations or employment-related matters". Rather, in my view, the records relate to the law enforcement investigations described therein that were undertaken by O.P.P. personnel as a result of complaints made by or against the appellant.

I specifically find that these records do not relate to any potential or existing disciplinary proceedings under the *PSA*, as was the case in Order MO-1433-F and the other cases referred to by the Ministry. The records remaining at issue do not relate to any incidents or individuals whose conduct is the subject of either an OCCPS or *PSA* investigation.

As a result, I find that section 65(6)3 has no application to the records that are identified as remaining at issue in this appeal.

### **Section 65(6)1: court or tribunal proceedings**

#### ***General principles***

For section 65(6)1 to apply, the Ministry must establish that:

1. the record was collected, prepared, maintained or used by an institution or on its behalf;
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 institution.

The word "proceedings" means a dispute or complaint resolution process conducted by a court, tribunal or other entity which has the power, by law, binding agreement or mutual consent, to decide the matters at issue [Orders P-1223, PO-2105-F]. For proceedings to be "anticipated", they must be more than a vague or theoretical possibility. There must be a reasonable prospect

of such proceedings at the time the record was collected, prepared, maintained or used [Orders P-1223, PO-2105-F].

A “tribunal” is a body that has a statutory mandate to adjudicate and resolve conflicts between parties and render a decision that affects the parties’ legal rights or obligations [Order M-815]. “Other entity” means a body or person that presides over proceedings distinct from, but in the same class as, those before a court or tribunal. To qualify as an “other entity”, the body or person must have the authority to conduct proceedings and the power, by law, binding agreement or mutual consent, to decide the matters at issue [Order M-815].

***Representations of the parties on section 65(6)1***

The Ministry argues that all of the records identified as responsive to the request are “being maintained and/or used by the Ministry in relation to the most recent complaint the appellant has filed”, which is “currently being reviewed by the OPP Professional Standards Bureau.” It also states that this maintenance and use of the records is “in relation to proceedings or anticipated proceedings”, before an “other entity”, as was the case in Orders PO-1797 and M-835.

The appellant’s arguments against the application of section 65(6)3 are equally applicable to section 65(6)1.

***Findings with respect to section 65(6)1***

As was the case with my analysis of section 65(6)3, I find that the records at issue were collected, prepared, maintained and used by the Ministry. However, I cannot agree that this collection, preparation, maintenance and use by the Ministry “was in relation to” proceedings or anticipated proceedings before an “other entity”, as submitted by the Ministry.

I find that the appellant carefully removed from the scope of her appeal any records that might relate to the two officers complained of as a result of several incidents in February 2005. Further, the records remaining at issue do not relate to the subject matter of the complaint against the PSB staff person, which is the other ongoing proceeding involving these parties. The records instead relate to contacts between the appellant and other identifiable individuals and various investigations undertaken by the O.P.P. during the time frame identified by the appellant.

In my view, the responsive records remaining at issue do not relate to the ongoing *PSA* complaint as stated by the Ministry. Instead, they relate to other occurrences involving the appellant and the O.P.P. Because the records are not maintained or used in relation to proceedings or anticipated proceedings before a court, tribunal or other entity, I find that they are not subject to the exclusionary provision in section 65(6)1.

Accordingly, I find that sections 65(6)1 and 3 have no application to the records at issue in this appeal and they fall within the ambit of the *Act*.

**ORDER:**

1. I order the Ministry to provide the appellant with a decision letter respecting access to the records identified as responsive to the request in accordance with the requirements of sections 26 and 29 of the *Act* and without recourse to the time extension provisions in section 27 of the *Act*, using the date of this order as the date of the request.
2. In order to verify compliance with the terms of Order Provision 1, I reserve the right to require the Ministry to provide me with a copy of the decision letter referred to therein.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

December 15, 2005 \_\_\_\_\_