

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER PO-4192

Appeal PA19-00412

Ministry of the Solicitor General

September 28, 2021

**Summary:** The issue in this appeal is whether records related to the Ministry of the Solicitor General's (the ministry's) decision to eliminate its Offender Transportation Operations Unit are excluded from the application of the *Freedom of Information and Protection of Privacy Act* (the *Act*) by reason of the labour relations and employment exclusion in section 65(6)3 of the *Act*.

In this order, the adjudicator does not uphold the ministry's decision that the responsive records are excluded from the *Act* by reason of section 65(6)3. She orders the ministry to conduct a search for the responsive records and to issue an access decision.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 24 and 65(6)3.

**Orders Considered:** Orders MO-2439 and MO-3294-I.

### OVERVIEW:

[1] This appeal is about whether records related to the Ministry of the Solicitor General's (the ministry's) decision to eliminate its Offender Transportation Operations Unit (the Unit)<sup>1</sup> are not accessible under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) because the exclusion in section 65(6)3 applies to them. The records sought by the request were created in order to implement a change of the

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<sup>1</sup> Also referred to as the Offender Transportation Unit in this order.

responsibility for transportation of offenders from the Unit to the ministry's correctional institutions.

[2] The requester's request to the ministry specifically sought:

All information between all individuals within Ministry of Solicitor General, Ontario Public Service [Employees] Union [the union], and any other ministries regarding decision(s) to eliminate the Offender Transportation Operations Unit.

[3] The ministry issued a decision to extend the time for processing the request for an additional 60 days. The ministry advised that the reason for the extension was due to the volume of records.

[4] The requester (now the appellant), appealed the ministry's time extension decision to the Information and Privacy Commissioner of Ontario (the IPC), and Appeal PA19- 00387 was opened and a mediator was appointed to explore the possibility of resolving the issues.

[5] During mediation, the ministry issued a decision to the appellant advising that access to the requested information was being denied in accordance with the labour relations and employment records exclusion in section 65(6)3 of the *Act*. Appeal PA19- 00387 was subsequently closed as the matter of the time extension was resolved.

[6] The appellant advised the IPC that he was appealing the ministry's access decision, and the IPC opened Appeal PA19-00412 to deal with the matter. A mediator was appointed to explore the possibility of resolving the issues in this appeal too.

[7] During mediation, the appellant confirmed his position that the records responsive to his request do not fall under the exclusion. The ministry confirmed its position that all of the records responsive to this request fall under the exclusion of section 65(6)3 of the *Act*.

[8] No further mediation was possible and the file proceeded to adjudication, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry.

[9] Besides the issue of the application of the exclusion in section 65(6)3, I sought representations from the ministry and the appellant on the scope of the request and whether the ministry had conducted a reasonable search for responsive records.<sup>2</sup>

[10] In this order, I do not uphold the ministry's decision that all of the responsive records are excluded from the *Act* by reason of section 65(6)3. I order the ministry to

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<sup>2</sup> The ministry's representations were shared with the appellant and I sought the appellant's representations in response. The appellant did not provide representations, but did indicate that he was interested in pursuing this appeal.

conduct a search for the responsive records and to issue an access decision.

## **RECORDS:**

[11] The ministry did not provide the IPC with copies of the responsive records. The ministry advised the IPC that it has not collected the records, as its position is that the records are employment-related records that are outside the scope of the *Act*. The ministry has indicated that the following seven general categories of records would be responsive to the request:

1. Emails: communication related to the changes to the Offender Transportation Unit.
2. Briefing notes: briefing materials related to the changes to the Offender Transportation Unit.
3. Slide decks: briefing materials related to the changes to the Offender Transportation Unit.
4. Letters to staff: communications inform[ing] staff of the upcoming changes.<sup>3</sup>
5. Disclosure chart: overview of the impacted employees and the relevant changes for disclosure to union.
6. WEAR forms: human resources forms to process the employment changes as a result of the decision.
7. MERC: communicating upcoming changes to the ministry employee relations committee.

## **PRELIMINARY ISSUES:**

### **The Burden of Proof**

[12] In this case, the ministry has claimed that the exclusion in section 65(6)3 applies to all records that would be responsive to the request.

[13] The burden of proof in cases where an institution relies on an exclusion under the *Act* has been considered in previous orders. For example, in Order MO-3294-I, the adjudicator stated:

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<sup>3</sup> Item 4 refers to "communications information staff of the upcoming changes." I assume that this should read, "communications inform[ing] staff of the upcoming changes."

Previous orders have considered the issue of who bears the burden of proof in circumstances where an exemption claim is not at issue. Generally, this office has established that the onus of proof for a proposition lies with the party who is advancing it. This was considered and found by former Senior Adjudicator John Higgins in Order MO-2439. In that appeal, former Senior Adjudicator Higgins determined whether the confidentiality provision in section 181 of the *City of Toronto Act, 2006* applied and prevailed over the *Act*. He states:

In my view, section 42<sup>4</sup> indicates an intention on the part of the Legislature that, where a record is in the custody or under the control of an institution such as the City, the onus of proving non-accessibility under the *Act* rests with the institution. This is consistent with the purpose of the *Act* in section 1(a)(i) to "provide a right of access to information under the control of institutions in accordance with the principle[ ] that ... information should be available to the public."

The former senior adjudicator goes on to examine section 4(1)<sup>5</sup> of [MFIPPA] which stipulates that "[e]very person has a right of access to a record or part of a record under the custody or control of an institution unless..." the record is exempt under sections 6 to 15 or the request is frivolous or vexatious. He also points to section 52,<sup>6</sup> which sets out other limited instances where the *Act* does not apply, as well as section 53,<sup>7</sup> which allows for circumstances where records are not accessible because of a prevailing confidentiality provision.

In Order MO-2439, former Senior Adjudicator Higgins states that section 4(1) of the *Act* establishes a positive right of access on which members of the public are entitled to rely, and found that if an institution wishes to remove a record from that positive right, the law of evidentiary burdens would place the onus of proof to accomplish that object on the institution. He states that failure by the institution to establish the application of a provision that removes a record from that positive right will have the result that the institution does not succeed on that point, and the *Act* will be found to apply. In coming to that conclusion, the former senior adjudicator relied on *The Law of Evidence in Canada*.<sup>8</sup>

[14] I agree with this statement. Therefore, relying on Order MO-3294-I, and the orders referred to therein, I find that the burden of proof lies upon the ministry to

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<sup>4</sup> Section 42 of *MFIPPA*, the equivalent to section 53 of *FIPPA*.

<sup>5</sup> The equivalent to section 10(1) of *FIPPA*.

<sup>6</sup> The equivalent to section 65 of *FIPPA*.

<sup>7</sup> The equivalent to section 67 of *FIPPA*.

<sup>8</sup> John Sopinka, Sidney N. Lederman and Allan W. Bryant (Markham: Butterworths, 1992) at pg. 57.

establish that the exclusion applies to any responsive records, including the seven general categories of records it has categorized as responsive to the appellant's request.

### **The Requirement to Conduct a Search**

[15] In his access request, the appellant specifically sought:

All information between all individuals within Ministry of Solicitor General, Ontario Public Service Union, and any other ministries regarding decision(s) to eliminate the Offender Transportation Operations Unit.

[16] When informing the IPC of the seven general categories of responsive records, the ministry did not indicate that it had conducted a search for the records.

[17] Therefore, I added the issues of scope of the request and reasonable search to the Notice of Inquiry (the NOI) under the following headings, respectively:

- **What is the scope of the request and how are each of the [seven] categories of records identified by the ministry responsive to the request?**
- **What searches were done by the ministry to identify each of the [seven] categories of the records and to identify any other responsive records that may not be excluded from the Act? [Emphasis in the original].**

[18] The ministry objected to the scope and search issues being added to the NOI, as it claimed that the IPC has no jurisdiction to require it to provide representations as to whether it conducted a reasonable search for responsive records. It states that:

...The sole substantive issue in this appeal is whether the records are excluded from *FIPPA* as a result of the labour and employment records exclusion. If the records are excluded, which is what we have claimed, and which we submit is self-evident based on the wording of the request, then it is irrelevant whether we conducted a reasonable search for the records. The records are, de facto, outside the scope of the *Act*..

...We acknowledge that we have not provided records [to the IPC], but there is no explanation as to why we have not, which is because the IPC has no jurisdiction over the records. We take issue with the implied suggestion that we should provide records to the IPC which are *prima facie* excluded from the scope of the *Act*. We note that we did provide a list of 7 categories of records that would be responsive if they were not excluded from the *Act*. We contend that this list of 7 categories of records

was a list we were not required to provide, but we did so to assist the IPC...

We also are unsure as to how we are supposed to identify records that may not be excluded when we have claimed that all the records are excluded.

[19] This office has consistently taken the position that the application of section 65(6)<sup>9</sup> is record-specific and fact-specific. This means that when determining whether the exclusion applies, the record is examined as a whole rather than by individual pages, paragraphs, sentences or words. This whole record method of analysis has also been described as the "record by record approach".<sup>10</sup>

[20] I disagree with the ministry that is not required to conduct a search for records responsive to the appellant's request on the basis of the ministry's position that the records are excluded under section 65(6). As I noted above, determining whether records are excluded is a record-specific exercise. The IPC is entitled to order an institution to provide copies of records claimed to be excluded so that the IPC can determine whether the exclusion applies.<sup>11</sup>

[21] Moreover, and as I elaborate on below, it is not self-evident from the request itself that any responsive records would be excluded under section 65(6). Nor is this evident from the seven categories of records listed by the ministry. Without conducting a search for these records, the ministry has not identified responsive records that the appellant may be entitled to access to.

[22] When providing the IPC with the list of the seven general categories of records, the ministry indicated that it had not collected the records. The ministry also did not indicate in its representations that it had conducted a search for the responsive records when specifically asked this question in the NOI. Based on my review of the ministry's statement of the records not having been collected and the ministry's representations, I find that the ministry has not conducted a search for responsive records.

[23] As well, by identifying only seven general categories of records and not searching for any specific records, the ministry has denied the appellant an access decision on the actual responsive records, in response to which the records located can be reviewed by the IPC.

[24] Based on my review of the wording of the request, I am of the view that there may be responsive records that would not be excluded under section 65(6)3 (more

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<sup>9</sup> And its municipal counterpart in section 52(3) of *MFIPPA*.

<sup>10</sup> See, for example, Orders M -352, MO-3798-I, MO-3927, MO-3947, MO-4071, PO-3642 and PO-3893-I.

<sup>11</sup> Order P-623, upheld on judicial review in *Ontario (Minister of Health) v. Big Canoe*, 1995 O.J. No. 1277 (Ont. C.A.)

particularly described in this order).<sup>12</sup> In light of the requirement that the application of this exclusion is determined on a-record by-record basis, I find that the ministry is required to conduct a search for responsive records. Therefore, I will order the ministry to conduct a search for responsive records and to issue a new access decision once it has done so.

## **DISCUSSION:**

### **Does the labour relations and employment records exclusion in section 65(6)3 exclude the responsive records from the Act?**

[25] Section 65(6)3 states:

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.

[26] 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 *Act*.

[27] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in paragraph 1, 2 or 3 of this section, it must be reasonable to conclude that there is "some connection" between them.<sup>13</sup>

[28] The "some connection" standard must involve a connection that is relevant to the statutory scheme and purpose understood in their proper context. For example, the relationship between labour relations and accounting documents that detail an institution's expenditures on legal and other services in collective bargaining negotiations is not enough to meet the "some connection" standard.<sup>14</sup>

[29] 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. The meaning of "labour relations" is not

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<sup>12</sup> See below, *Part 3: labour relations or employment-related matters in which the institution has an interests*

<sup>13</sup> Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

<sup>14</sup> Order MO-3664, *Brockville (City) v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div. Ct.).

restricted to employer- employee relationships.<sup>15</sup>

[30] 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.<sup>16</sup>

[31] 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.<sup>17</sup>

[32] The exclusion in section 65(6) does not exclude all records concerning the actions or inactions of an employee simply because this conduct may give rise to a civil action in which the Crown may be held vicariously liable for torts caused by its employees.<sup>18</sup>

[33] The type of records excluded from the *Act* by section 65(6) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees’ actions.<sup>19</sup>

[34] For section 65(6)3 to apply, the institution 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 use 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.

***Part 1: collected, prepared, maintained or used***

[35] The ministry states that the Offender Transportation Operations Unit was a part of the ministry and its dedicated purpose was to provide transportation to offenders. The ministry states that it decided to reorganize offender transportation, which resulted in the Unit ceasing to exist.

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<sup>15</sup> *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.); see also Order PO-2157.

<sup>16</sup> Order PO-2157.

<sup>17</sup> *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.

<sup>18</sup> *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

<sup>19</sup> *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.



[36] The ministry further states that as a result of this decision, records were created to develop a plan to implement this decision, to communicate with staff, and to reassign staff elsewhere as required. Now that this has happened, staff members within each correctional institution are trained to perform this same role of offender transportation, instead of relying on the Unit.

*Analysis/Findings re part 1*

[37] Based on my review of the ministry's representations and the nature of the request, I find that any responsive records would have been prepared by the ministry to disband the Offender Transportation Operations Unit, in order to allow offender transportation to be performed by the ministry's correctional institutions.

[38] Therefore, I find that part 1 of the test has been met.

***Part 2: meetings, consultations, discussions or communications***

[39] The ministry submits that the records were created solely to be used for, and to document the disbanding of the Unit. It states that some of the communications that occurred were between the ministry and staff and others between the ministry and the union.

*Analysis/Findings re part 2*

[40] While the ministry does not refer specifically to meetings, consultations, discussions, it refers to communications.

[41] Based on my review of the ministry's representations, the wording of the request, and the categories of records at issue, I find that the responsive records would have been used in relation to communications.

[42] Therefore, as I have found that the responsive records would have been used in relation to communications about the disbanding of the Unit, part 2 of the test has been met.

***Part 3: labour relations or employment-related matters in which the institution has an interest***

[43] I will now determine whether the ministry has established that all of the responsive records would be communications *about labour relations or employment-related matters in which the ministry has an interest*.

***Representations***

[44] The ministry states that it decided to reorganize offender transportation by disbanding the Offender Transportation Operations Unit. It submits that the decision to

reorganize offender transportation, to redeploy the workforce, and to have offender transportation provided by staff in each correctional institution as opposed to by a dedicated unit is a workforce management issue.

[45] The ministry submits that the purpose of section 65(6)3 is to restrict the categories of excluded records to those records relating to the institutions' own workforce.

[46] The ministry submits that its position is supported by the following facts:

- a. The request specifically references communications with the union that represents ministry staff who worked at the Unit. The ministry communicates with the union for labour and employment-related purpose, and is unlikely to do so otherwise;
- b. The categories of records listed include records that are expressly created for labour and employment purposes (e.g., human resources forms and communications with staff). These records would not have been created for any other purpose; and,
- c. [N]one of the records relate to an organizational or operational review or litigation. ...[T]he records do not have a purpose broader than to reorganize the workforce, and therefore the exclusion applies.

[47] The ministry submits that the exceptions in section 65(7) do not apply to remove the records from the scope of the section 65(6) exclusion. It states that there are no agreements or expense accounts that it has identified as responsive to the request.

### *Analysis/Findings*

[48] The phrase "labour relations or employment-related matters" has been found to apply in the context of:

- a job competition<sup>20</sup>
- an employee's dismissal<sup>21</sup>
- a grievance under a collective agreement<sup>22</sup>
- disciplinary proceedings under the *Police Services Act*<sup>23</sup>
- a "voluntary exit program"<sup>24</sup>

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<sup>20</sup> Orders M-830 and PO-2123.

<sup>21</sup> Order MO-1654-I.

<sup>22</sup> Orders M-832 and PO-1769.

<sup>23</sup> Order MO-1433-F.

- a review of “workload and working relationships”<sup>25</sup>
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.<sup>26</sup>

[49] The phrase “labour relations or employment-related matters” has been found *not* to apply in the context of:

- an organizational or operational review<sup>27</sup>
- litigation in which the institution may be found vicariously liable for the actions of its employee.<sup>28</sup>

[50] 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.<sup>29</sup>

[51] Under part 3 of the test for section 65(6)3, the records collected, prepared maintained or used by the institution are excluded only if the meetings, consultations, discussions or communications are about labour relations or “employment-related” matters in which the institution has an interest. Employment-related matters are separate and distinct from matters related to employees’ actions.<sup>30</sup>

[52] The appellant has sought records about the ministry’s decision to eliminate its Offender Transportation Operations Unit. The ministry has indicated that responsive records were created to develop a plan to implement the decision to eliminate the Unit and to reassign staff elsewhere as required.

[53] As set out above, the ministry has indicated that the following seven general categories of records would be responsive to the request:

1. Emails: communication related to the changes to the Offender Transportation Unit.
2. Briefing notes: briefing materials related to the changes to the Offender Transportation Unit.

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<sup>24</sup> Order M-1074.

<sup>25</sup> Order PO-2057.

<sup>26</sup> *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.).

<sup>27</sup> Orders M-941 and P-1369.

<sup>28</sup> Orders PO-1722, PO-1905 and *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

<sup>29</sup> *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

<sup>30</sup> *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

3. Slide decks: briefing materials related to the changes to the Offender Transportation Unit.
4. Letters to staff: communications inform[ing] staff of the upcoming changes.
5. Disclosure chart: overview of the impacted employees and the relevant changes for disclosure to union.
6. WEAR forms: human resources forms to process the employment changes as a result of the decision.
7. MERC: communicating upcoming changes to the ministry employee relations committee.

[54] The ministry has indicated that the records were created solely to be used for, and to document, the disbanding of the Offender Transportation Operations Unit. It submits that the elimination of the Unit is a workforce management issue.

[55] I find that the ministry has not established that all of the responsive records would be about labour relations or employment-related matters. In my view, the following submission of the ministry refers to only some of the records, as opposed to all of the responsive records:

Some of the communications that occurred were between the ministry and staff and others between the ministry and the union. [Emphasis added by me].

[56] In addition, I find that other records, such as the following records, may be responsive to the appellant's request and have not been identified as such in the ministry's access decision, its seven general categories of records, or in its representations:

- Communications referred to in the request as being between the Ministry of Solicitor General and other ministries regarding decision(s) to eliminate the Unit; and,
- Non-staffing related communications regarding decision(s) to eliminate the Unit as to why the Unit was to be eliminated. [Emphasis added by me].

[57] Without prejudging any specific records that may come before me, I find that these specific types records would typically not be excluded from the *Act* by reason of section 65(6)3.

[58] As well, if responsive records include records about a program delivery review of the operation of the Offender Transportation Operations Unit, then these types of records may not be excluded under section 65(6)3. Again, without prejudging any

record that may come before me, I note that record relating to these types of reviews are generally considered to be too remote to employment-related matters to fall within this exclusion. These are generally regarded as evaluations of an entire operation rather than in relation to labour relations or employment matters.<sup>31</sup>

[59] Without having had the opportunity to review the records, and based on my review of the request and the seven general categories of records and the ministry's representations, I find that the responsive records could include records about a program delivery review, namely a review of the entire operation of the Offender Transportation Operations Unit. These types of records may not be excluded under section 65(6).

[60] Furthermore, I find that not all of the seven general categories of records identified by the ministry, by definition contain only records about labour relations or employment-related matters in which the ministry has an interest.

[61] I do not agree with the ministry that all aspects of the decision to reorganize offender transportation, to redeploy the workforce, and to have offender transportation provided by staff in each correctional institution as opposed to by a dedicated unit are necessarily workforce management issues. There may be other matters that are contained in responsive records, including within the seven general categories of records identified by the ministry.

[62] In my view, certain categories of records could clearly include records that are not about labour relations or employment-related matters issues but are about other matters related to the decision(s) to eliminate the Unit, such as policy, financial or logistical information related to the decision(s) to eliminate the Unit. These records could be included in all seven general categories of records, but specifically could be included in the following categories, which appear to encompass a wide range of records:

1. Emails: communication related to the changes to the Offender Transportation Unit.
2. Briefing notes: briefing materials related to the changes to the Offender Transportation Unit.
3. Slide decks: briefing materials related to the changes to the Offender Transportation Unit.
4. Letters to staff: communications inform[ing] staff of the upcoming changes.
7. MERC: communicating upcoming changes to the ministry employee relations committee.

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<sup>31</sup> Order PO-2331.

[63] I find that these five general categories of records, in particular, may include records collected, prepared maintained or used by the ministry that are not about labour relations or "employment-related" matters in which the ministry has an interest.

[64] In deciding whether responsive records may be excluded from the *Act*, I also need to consider whether the exceptions to section 65(6) found in section 65(7) could apply. If records fall within any of the exceptions in section 65(7), the *Act* applies to them.

[65] Section 65(7) states:

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.<sup>32</sup>
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.

[66] I find that there may exist other responsive records that may not be excluded under section 65(6)3 and are subject to the *Act*, by reason of section 65(7).

[67] I note that the appellant's request specifically seeks communications between the ministry and the union and also those within the ministry. This request concerns employment or labour relations issues about eliminating a program and redistributing staff to provide offender transportation.

[68] I find that there may exist as responsive to the appellant's request, the following agreements that would not be excluded from the *Act* by reason of sections 65(7)1 and 65(7)3:

- An agreement between the ministry and the union agreeing to the elimination of staff positions within the ministry's Offender Transportation Operations Unit;

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<sup>32</sup> In making this finding, and other findings related to section 65(7), I recognize that the ministry indicated that the records are not subject to this section and are not about litigation. However, the ministry has not specifically addressed what the union's and the non-union staff's response was to the elimination of the unit and any responsive records that may contain this response.

- An agreement between the ministry and the union agreeing to the assignment of staff to transport offenders within correctional institutions;
- An agreement between the ministry and one or more employees resulting from negotiations about the elimination of their positions within the Unit; and,
- An agreement between the ministry and one or more employees resulting from negotiations about their assignment to a position to transport offenders within a correctional institution.

*Conclusion re part 3*

[69] Without having reviewed the records, and based on my review of the wording of the request and the ministry's representations, I have found that I do not have sufficient evidence to conclude that the responsive records are excluded from the *Act* by reason of part 3 of the test under section 65(6)3. Therefore, as noted above, I will order the ministry to search for responsive records and to issue an access decision about them, in accordance with the terms of this order.

[70] Besides a search for the records included in the seven general categories of records identified by the ministry, this search should include a search for the following responsive records:

- Records about a program delivery review.
- Communications between the Ministry of Solicitor General and other ministries regarding decision(s) to eliminate the Unit.
- Non-staffing related communications regarding decision(s) to eliminate the Unit as to why the Unit was to be eliminated.
- Records that are not about labour relations or employment-related matters issues but are about other matters related to the request, such as policy, financial or logistical information related to the decision(s) to eliminate the Unit.
- Any agreement between the ministry and the union agreeing to the elimination of staff positions within the ministry's Offender Transportation Operations Unit;
- Any agreement between the ministry and the union agreeing to the assignment of staff to transport offenders within correctional institutions;
- Any agreement between the ministry and one or more employees resulting from negotiations about the elimination of their positions within the Unit; and,

- Any agreement between the ministry and one or more employees resulting from negotiations about their assignment to a position to transport offenders within a correctional institution.

[71] This list is not exhaustive and the ministry should search for any records that are responsive to the request. It is open to the ministry to charge a fee for access, according to the terms of section 57 of the *Act*.

**ORDER:**

1. I order the ministry to conduct a search for responsive records in response to the appellant's request. This search should also include a search for the potentially responsive records identified in this order.
2. I order the ministry to issue an access decision to the appellant in accordance with the requirements of the *Act*, treating the date of this order as the date of the request.
3. I reserve the right to require the ministry to provide me with a copy of the access decision and any information it discloses to the appellant in accordance with this order.

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ September 28, 2021