

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4666

Appeal PA22-00212

Human Rights Tribunal of Ontario

June 12, 2025

Summary: An individual made a request to the Human Rights Tribunal of Ontario (HRTO) under the *Freedom of Information and Protection of Privacy Act* for all records related to the appointment of a tribunal member and any public facing documents regarding the HRTO appointment process. The HRTO issued a decision denying access to the requested information, stating that it was excluded from the application of the *Act* under section 65(6)3 because it was related to employment or labour relations. It added that there was no public facing information about the appointment process.

In this order, the adjudicator finds that records responsive to the request are excluded by section 65(6)3 and dismisses the appeal.

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

Order Considered: Order PO-2952.

OVERVIEW:

[1] The Human Rights Tribunal of Ontario (HRTO) received a multi-part request under the *Act* for access to the following information relating to the appointment of HRTO members generally, and to a named HRTO member specifically:

1. Any and all policies related to the selection and/or securing of individuals for the member position at the HRTO.

2. Any notes, emails, letters, applications or references made to the Lieutenant Governor related to [named member] by any party.
3. Any application or recommendation that was made for [named member], by [named member] or any other party.
4. Any information on how these selections are made by the Lieutenant Governor in Council including policy related to same.
5. Does the Lieutenant Governor in Council's office make any investigation related to parties recommended or by application for the member position at the HRTTO?
6. If an investigation is commenced is there a policy on how the investigation is conducted?
7. If an investigation of any sort was conducted, then the investigation report or any records for this appointment or related to this appointment. Any notes, emails or communications by any party involved in this selection process.
8. Any notes maintained or held by the Lieutenant Governor in Council related to the appointment of [named member].
9. Any emails, notes or records held, maintained or stored by the Lieutenant Governor in Council or her office or from persons within her office or outside of her office pertaining to this appointment of [named member].
10. All records, written or contained in emails or records with respect to the appointment of [named member].
11. Any documentation or information by any party assisting the Lieutenant Governor in Council for the appointment of [named member].
12. Any documentation submitted and/or possessed by any persons involved in any investigation or for the appointment of [named member] through any means that resulted in her securing this position.
13. Any and all documents, emails, notes, records, recordings for the appointment of [named member] to the HRTTO as a member.

[2] The HRTTO issued a decision relying on the exclusion at section 65(6)3 (labour relations or employment) to deny access to the requested information. The decision letter also advised the requester that the final step in the process of appointing an individual to a Government of Ontario agency is to seek the Lieutenant Governor's formal approval of the appointment by signing an Order-in-Council (OIC). The letter also stated that records responsive to the request may exist at the Ministry of the Attorney General.

[3] The requester (now the appellant) appealed the HRTO's decision to the Information and Privacy Commissioner of Ontario (IPC). During mediation, the appellant challenged the reasonableness of the HRTO's search for records relating to general hiring policies or public facing documents that provide information about the process by which HRTO adjudicators are appointed. The HRTO conducted a search and issued a supplementary decision stating there are no Tribunals Ontario or HRTO general policies, or public facing documents that provide information regarding the process by which HRTO adjudicators are appointed.

[4] The supplementary decision also advised that candidates for appointment to Ontario tribunals must meet certain legislative requirements, as outlined in section 14(1) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*¹, as well as section 32 of the *Human Rights Code*.² It stated that "beyond pointing out these legislative requirements, there are no general policies or public documents to release." The appellant maintained her position that the HRTO did not conduct a reasonable search for responsive records and that the section 65(6)3 exclusion did not apply.

[5] No further mediation was possible, and the appeal was moved to the adjudication stage of the appeals process. The adjudicator initially assigned to the appeal conducted an inquiry where he sought and received representations from the HRTO and the appellant. The appeal was then assigned to me to complete the inquiry. I reviewed the representations of the parties and determined that I did not need to seek additional representations.

[6] For the reasons that follow, I uphold the decision of the HRTO and dismiss the appeal.

RECORDS:

[7] The records at issue relate to the appointment of the HRTO member and HRTO members generally.

DISCUSSION:

[8] The sole issue in this appeal is whether the records identified as responsive by the HRTO are excluded from the *Act* by section 65(6)3. Section 65(6) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in the

¹ S.O., 2009, c.33.

² R.S.O. 1990, c. H.19.

Act, although the institution may choose to disclose it outside of the *Act's* access scheme.³

[9] 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.

[10] 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*. Additionally, if section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not stop applying at a later date.⁴ The type of records excluded from the *Act* by section 65(6) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.⁵

[11] For section 65(6)3 to apply, the HRTO 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.

Representations, analysis, and finding

Part 1: collected, prepared, maintained or used

[12] The HRTO submits that it and Tribunals Ontario are responsible for interviewing OIC candidates and making recommendations about which candidates should be appointed. It states that, in doing so, Tribunals Ontario and the HRTO collect, prepare, maintain, and use records related to the OIC candidates in a manner similar to that of an employer seeking to fill a position. It further states that Tribunals Ontario also collects, prepares, and maintains internal records that are used for evaluating candidates as they relate to the requirements of the appointment.

³ Order PO-2639.

⁴ *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. 509.

⁵ *Ontario (Ministry of Correctional Services) v. Goodis*, 2008 CanLII 2603 (ON SCDC).

[13] In her representations, the appellant raises general concerns about the HRTO member appointment process but does not dispute that the records at issue would have been collected, prepared, maintained or used by the HRTO or on its behalf.

[14] Considering the information before me, I accept the HRTO's representations. I agree that the records would by their nature have been collected, prepared, maintained, or used by the HRTO or on its behalf. I find that part one of the test has been met.

Part 2: meetings, consultations, discussions or communications

[15] The HRTO submits that administrative and adjudicative personnel involved in the appointment process discuss the records and communicate about them in meetings and consultations. It states that these communications relate to the OIC candidates' qualifications, skills, experience, and ability to do the required work. The appellant does not dispute this and does not provide specific representations on this part of the test.

[16] I agree with the HRTO's submissions. I find that the records would have been used in relation to meetings and consultations, and part two of the test is therefore met.

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

[17] The HRTO submits that ensuring qualified candidates are appointed to the HRTO is a matter of significant interest to the HRTO and Tribunals Ontario. It explains that HRTO members are the organization's decision-makers and play a critical role in the resolution of applications to the HRTO, which is its primary mandate. It states that records related to OIC candidates include criteria to evaluate qualifications, skills and experience as they relate to the requirements of the appointment.

[18] Referencing Orders PO-2952 and PO-3071, the HRTO submits that the IPC has previously found that the relationship between OIC appointees and the Ontario board or tribunal to which they are appointed is employment-like and falls within the scope of section 65(6)3 of the *Act*. It states that this is true, even though the board members are political appointees, as long as the records relate to the HRTO's role as an employer.

[19] The appellant submits that the records are not employment records. She states that her request is for information related to a political appointment as a member of the HRTO, rather than an adjudicator position. She explains that the final step in the process of appointing an individual is the signing of an OIC, and she states that the Lieutenant Governor is not involved prior to this step. She submits that she requires this information to determine how the HRTO can adjudicate matters fairly and impartially with the existence of potential conflicts of interest.

[20] I accept the HRTO's submissions on part three, that the appointment of HRTO members is an employment related matter in which the HRTO has an interest. I also accept that the records, relating to the appointment of HRTO members, were used by it

in communications about this employment related matter. As the HRTO submits, the IPC has previously found that the interest tribunals have in OIC appointments is employment related within the meaning of section 65(6)3. Order PO-2952 found that labour relations or employment related records involving an OIC appointment were excluded under section 65(6)3.⁶ I adopt the same approach here. I am satisfied that the HRTO has an employment related interest in the records in satisfaction of part 3 of the section 65(6)3 test.

[21] While I understand the appellant's submission that the appointments have a political component, I agree with the HRTO's submission that the appointment of qualified candidates is of significant interest to the HRTO, and the records related to this process, in the custody or control of the HRTO, would necessarily be employment related within the meaning of section 65(6)3. The existence of a political component in the appointment process does not void the HRTO's employment related interest or change its employment related nature. With respect to the appellant's concerns about the last step of the appointment process involving the Lieutenant Governor, I agree with the HRTO's submission that records related to this aspect of the process specifically would not be within the custody or control of the HRTO.⁷

Exceptions to section 65(6)

[22] If the records fall within any of the exceptions in section 65(7), the records are not excluded from the application of the *Act*. These exceptions include agreements between the institution and a trade union or employee, and employee expense accounts. The HRTO submits that none of these exceptions apply. The appellant does not provide specific representations on the exceptions. Based on the nature of the records being requested, I find that the none of the section 65(7) exceptions apply.

Reasonable search

[23] The appellant also raises concerns about the lack of public facing policy documents related to the hiring of HRTO members. However, she does not provide specific representations on the HRTO's search efforts. The HRTO submits that the business analyst who authored the representations spoke to the executive advisor to the executive chair of Tribunals Ontario about whether public records relating to the appointment process for HRTO members exist, and the executive advisor advised that they do not. The HRTO submits that the executive advisor is the best placed individual at Tribunals Ontario to address the existence of records that the appellant seeks. The HRTO adds that a public appointments advisor, who was also consulted about the existence of the records, said she was not aware of any.

⁶ See also, for example, Orders PO-3071 and PO-2501, which addressed similar employment related interests in similar contexts.

⁷ Prior to the inquiry, the HRTO referred the appellant to the Ministry of the Attorney General for records related to this process.

[24] The HRTO states that while no public facing records exist, the appellant was provided with information about the legislative requirements for HRTO appointments as set out in the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* and in the *Human Rights Code*. It confirms that no further records exist.

[25] I accept the HRTO's confirmation that no public records responsive to the appellant's request exist. I am also satisfied that if any other responsive records exist, they would necessarily be employment related and therefore excluded under section 65(6) for the reasons above. Accordingly, I find there is no useful purpose in ordering the HRTO to conduct another search.⁸ In any event, I find that the HRTO has adequately explained its search efforts for records responsive to the request.

ORDER:

I dismiss the appeal.

Original Signed by: _____

Chris Anzenberger
Adjudicator

June 12, 2025

⁸ See, for example, Order PO-3194 where the adjudicator came to the same conclusion for a search for an employment contract. Similarly, in Order PO-2952 the adjudicator found that there would be no useful purpose in examining the Landlord and Tenant Board's searches for employment-related records.