



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-954

Appeal M_9700057

Lambton County Board of Education



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On June 12, 1997, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

NATURE OF THE APPEAL:

The Lambton County Board of Education (the Board) received a request for access to “all materials related to the appointment of supervisory officers to the Lambton County Board of Education in the spring of 1996.”

In its decision letter, the Board claimed that the records relating to the job competition process for these positions fell outside the scope of the Municipal Freedom of Information and Protection of Privacy Act (the Act) pursuant to section 52(3). The requester (now the appellant) appealed this decision to the Commissioner’s office.

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

DISCUSSION:

JURISDICTION

The sole issue in this appeal is whether the requested records fall within the scope of section 52(3) of the Act. If so, they would be excluded from the scope of the Act unless they are records described in section 52(4). Section 52(4) lists exceptions to the exclusions established in section 52(3).

The interpretation of sections 52(3) and (4) is a preliminary issue which goes to the jurisdiction of the Commissioner or her delegates to continue an inquiry.

These sections state:

- (3) Subject to subsection (4), 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 labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.

3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.
- (4) 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.

Section 52(3) 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 52(4) are present, then the record is excluded from the scope of the Act and not subject to the Commissioner's jurisdiction.

The records at issue in this appeal consist of:

- Reports to a Committee of the Whole relating to the job competition process
- A chart listing the candidates, their qualifications, experience, references, present positions
- An outline of the process to be followed
- Evaluation sheets and blank evaluation charts
- Interview questions and a question for written response
- Interview schedules
- Interview notes
- Summary of scores of all candidates and each interviewer's score chart for all candidates

The Board made representations solely on the application of paragraph 3 of section 52(3).
Section 52(3)3

In Order P-1242, former Assistant Commissioner Tom Mitchinson held that in order for a record to fall within the scope of paragraph 3 of section 65(6) of the Freedom of Information and

Protection of Privacy Act, which is the provincial equivalent to section 52(3)3 of the Act, an institution must establish that:

1. the record was 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.

Requirement 1

In its representations, the Board states the reports and other material in this matter were prepared, maintained or collected to be used by the Board. In my view, it is clear that all of the records were either prepared, maintained or used by the Board. Therefore, Requirement 1 has been established.

Requirement 2

The Board states the material was used for meetings held in relation to the job competitions.

In Order P-1223, former Assistant Commissioner Mitchinson stated 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 52(3)1, 2, or 3]”, it would be “in relation to” that activity.

Previous orders have 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 the panel are “meetings, discussions or communications” (Orders M-861, P-1258). I agree with this assessment and adopt it for the purposes of this appeal. In my view, reports to the Committee of the Whole on the progress of the job competitions and the final recommendations also constitute “communications” within the meaning of the second requirement.

Orders M-861 and P-1258 also established that the records collected, prepared, maintained or used with respect to such meetings, discussions or communications are “in relation to” them as defined by former Assistant Commissioner Mitchinson in Order P_1223.

In the circumstances of this appeal, I find that the Board prepared, maintained or used all the records “in relation to” meetings, consultations, discussions or communications which took place around the job competition process. Therefore, Requirement 2 has been met.

Requirement 3

In order to satisfy the third requirement, the Board must establish that these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which it has an interest.

The Board states that the meetings were about an employment-related matter, namely job competitions, and that the Board "has an interest as set out by legislation pertaining to its legal obligations."

I find that a job competition is an employment-related or labour relations matter.

In Order M-830, former Assistant Commissioner Mitchinson found that job competitions are matters in which an institution "has an interest" because the job competition process involves certain legal obligations which an employer must meet under the Ontario Human Rights Code, for example, a duty not to discriminate in selecting an employee in a job competition.

I agree with this conclusion and find that in the circumstances of this appeal, the Board "has an interest" in the job competitions which are the subject of the records in this appeal. Therefore, Requirement 3 has been established.

Accordingly, all of the requirements of section 52(3)3 of the Act have been established by the Board. Since none of the exceptions contained in section 52(4) are present in the circumstances of this appeal, I find that the records fall within the parameters of section 52(3)3. Therefore, they are excluded from the scope of the Act.

ORDER:

I uphold the decision of the Board.

Original signed by: _____
Marianne Miller
Inquiry Officer

June 25, 1997