



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

ORDER M-967

Appeal M_9700059

County of Renfrew



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the County of Renfrew (the County). The request was for access to copies of a memorandum and a nursing report relating to an incident which allegedly occurred at his wife's place of employment, a long-term care facility.

The County informed the appellant that the requested records fall outside the scope of the Act by virtue of section 52(3). This section provides that certain employment and labour relations related information are not subject to the Act. The appellant appealed this decision.

A Notice of Inquiry was sent to the County and the appellant. Representations were received from both parties.

The records identified by the County consist of a one-page memo dated September 5, 1995 [sic], an eight-page nursing report dated September 5, 1996, and a two-page "Medical Record of Resident" relating to the period September 4-6, 1996.

The sole issue being addressed in this order is whether the records fall outside the scope of the Act (and therefore outside my jurisdiction) under section 52(3).

DISCUSSION:

JURISDICTION

If the records fall within the scope of section 52(3) of the Act, they would be excluded from the scope of the Act unless they are the type of records described in section 52(4), which lists exceptions to the exclusions established in section 52(3).

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 65(6)3

In order for the records to fall within the scope of paragraph 3 of section 52(3), the County must establish the following:

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

The County submits that all of the records were collected, prepared, maintained and used by it to carry out the investigation of the incident, assist in the decision to discipline an employee and to respond to the grievance and anticipated grievance hearing. Based on my review of the records, I agree with the County's position and the first requirement of section 52(3) has been established. Under the second requirement, I find that the records are substantially connected to, and therefore, "in relation to" the investigation and deliberations regarding discipline and the grievance filed by the appellant's wife, all of which qualify as meetings, discussions or communications (Order P-1258).

Under the third requirement, the appellant's wife is a member of the Canadian Union of Public Employees (CUPE), which has a collective agreement with the County. According to submissions and documentation supplied by the County, the appellant's wife filed a grievance pursuant to Article 10 of the collective agreement, alleging that the County violated the conditions of the agreement with respect to her suspension from work. It is clear that a grievance was filed by the appellant's wife pursuant to the procedures contained in the collective agreement between CUPE and the County. I find that the grievance relates to "labour relations" and that the investigation of abuse and disciplinary action are employment-related matters. Therefore, these meetings, discussions or communications were "about" labour relations or employment-related matters within the meaning of section 52(3).

In my view, the investigation of an incident and the resulting discipline of an employee has the potential to affect the legal rights or obligations of the County and means that the County "has an interest" in the matter.

Accordingly, all of the requirements of section 52(3)3 of the Act have been established. As none of the exceptions contained in section 52(4) are present, I find that the records are excluded from the scope of the Act.

ORDER:

I uphold the County's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

July 16, 1997