



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

ORDER M-980

Appeal M_9700090

Metropolitan Toronto Police Services Board



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>

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 Metropolitan Toronto Police Services Board (the Police) received a six-part request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for information concerning a particular occurrence and the investigation of two public complaint files.

The requester filed complaints against a number of Police Officers under Part VI of the Police Services Act (the PSA). The complaints arose from an incident in which the requester had been involved. Parts 1 and 2 of the request relate to the incident. Parts 3-6 of the request relate to the investigation of the complaints.

The complaints were initially investigated by the Public Complaints Investigation Bureau of the Police, which concluded that no action was required. The requester asked for a review of both decisions by the Police Complaints Commissioner, who concluded that no further action was warranted.

The Police denied access to the records responsive to parts 3-6 of the request on the basis that section 52(3) prevents the Act from applying to those records. This section provides that certain employment and labour relations-related information is not subject to the Act.

The requester (now the appellant) appealed the decision of the Police with respect to parts 3-6 of the request. This office sent a Notice of Inquiry to the Police and the appellant. Representations were received from the Police 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 materials which the Public Complaints Investigation Bureau of the Police assembled in connection with their investigation of the appellant's complaints.

I will first address the potential application of section 52(3)3. In order to fall within the scope of paragraph 3 of section 52(3), the Police must establish that:

1. the record was collected, prepared, maintained or used by the Police on their 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 Police have an interest.

[Orders M-835, M-899, M-922, M-962 and P-1242]

Requirement 1

The Police state that under section 76(1) of the PSA (which appears in Part VI of that statute), the Chief of Police is obliged to establish and maintain a Public Complaints Investigation Bureau within the police service to investigate public complaints against police officers. During the course of these investigations, information is gathered and stored.

I am satisfied that the records at issue in this file were collected, used and maintained by the Public Complaints Investigation Bureau of the Police, thereby meeting requirement 1.

Requirement 2

The Police submit that when each investigation has been completed, the information is used “in relation to” the preparation of a report for the Chief of Police, who will then make a decision as to the disposition of the complaint under section 90(3) of the PSA. By means of the final report, the investigating officers communicate the results of their investigation into a public complaint to the Chief of Police.

In Order P-1223, former Assistant Commissioner Tom Mitchinson made the following comments regarding the interpretation of the phrase “in relation to” in section 65(6) of the provincial Act, the equivalent to section 52(3) of the Act:

In the context of section 65(6), I am of the view 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 65(6)1, 2 or 3, it would be “in relation to” that activity. (emphasis added)

I am satisfied that the records at issue were used to prepare the final reports on the results of the investigations, and that the final reports are the means of communicating these results to the Chief of Police. Therefore, the records were used by the investigating police officers for the purpose of or “in relation to” a communication and requirement 2 has been established.

Requirement 3

I must now determine whether the communication to the Chief of Police is about an employment-related matter in which the Police have an interest. In my view, the report or communication is about the investigation under Part VI of the PSA.

In Order M-931, Inquiry Officer Donald Hale concluded that such investigations are an employment-related matter, and because of the statutory requirements imposed on the Police in Part VI of the PSA to investigate public complaints, he found that the Police have an interest in such investigations within the meaning of section 52(3)3. I agree with this conclusion which, in my view, applies equally in this case. Accordingly, requirement 3 has also been met.

Since all three requirements have been met, I find that section 52(3) applies to the records. As these are not records to which section 52(4) applies, they are excluded from the scope of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____ July 29, 1997
Marianne Miller
Inquiry Officer