



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-990

Appeals M_9700107 and M-9700108

Municipality of Metropolitan Toronto



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NATURE OF THE APPEALS:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Municipality of Metropolitan Toronto (the Municipality). The request was for access to records relating to all details of an investigation of a 1993 Metro Transportation workplace complaint relating to the appellant.

The Municipality denied the appellant access to 127 pages of responsive records located in two of its departments on the basis that pursuant to section 52(3), the Act does not apply to the records.

The appellant appealed the decision of the Municipality. This office sent a Notice of Inquiry to the Municipality and the appellant. Representations were received from the Municipality only.

DISCUSSION:

JURISDICTION

The sole issue in these appeals 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 delegate to continue an inquiry.

The Municipality relies on sections 52(3)1 and 52(3)3 of the Act to exclude the records in their entirety in both appeals. In order to fall within the scope of section 52(3)1, the Municipality must establish that:

1. the record was collected, prepared, maintained or used by the Municipality or on its behalf; **and**
2. this collection, preparation, maintenance or usage was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity; **and**
3. Those proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the institution.

[Orders M_830, P-1223, P-1255 and P-1258]

Requirement 1

The Municipality states that the records consist of correspondence, handwritten notes, report forms, memoranda and grievance documentation all directly related to the internal workplace complaint investigation conducted by the Municipality. The Municipality submits that in response to the appellant's complaint, its Transportation and Legal Departments collected information relative to the incidents complained about, prepared formal internal responses and maintained these records in an active workplace complaint file. I accept the Municipality's submission that, collectively, the records document the history of the complaint and provide evidence of the Municipality's human resource process. I find that the records were collected, prepared and maintained by the Municipality or on its behalf and Requirement 1 has been met.

Requirements 2 and 3

The Municipality submits that the appellant has filed a human rights complaint with the Ontario Human Rights Commission. The complaint cites issues relating to the July 1993 incidents which are the subject of these appeals, as well as other employment related matters. The Municipality submits that its Legal Department relies on correspondence generated during the course of an employment-related investigation (i.e. the records at issue in these appeals) to prepare its representation of the Municipality's interests in such a proceeding. I am satisfied that the collection, preparation, maintenance or usage of the records was in relation to proceedings or anticipated proceedings before the Ontario Human Rights Commission, which is a court, tribunal or other entity, and that those proceedings relate to the employment of a person by the Municipality. Accordingly, I find that Requirements 2 and 3 have 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 Municipality's decision.

Original signed by: _____

Holly Big Canoe
Inquiry Officer

_____ August 27, 1997