



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

ORDER M-1057

Appeal M-9700296

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

The Metropolitan Toronto Police Services Board (the Police) received a request from a police officer under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to a copy of a report of the investigation conducted by another officer into a complaint made by the requester.

The Police denied access to the record, claiming that pursuant to section 52(3), the Act does not apply to the record. The requester (now the appellant) appealed the decision of the Police.

This office sent a Notice of Inquiry to the Police and the appellant. Representations were received from both parties.

DISCUSSION:

JURISDICTION

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. If the requested 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 records described in section 52(4). Section 52(4) 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 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 record at issue in this appeal is the "report" with appendices.

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]

The Police state the report was collected, prepared, maintained and used by the institution in relation to consultations and discussions about labour relations and employment-related matters in which they have an interest.

Requirement 1

I have examined the report and I am satisfied that it was prepared on behalf of the Police by the officer who conducted the investigation and was used and maintained by the Police, thereby meeting Requirement 1.

Requirement 2

In Order P-1223, 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:

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)

The Police submit that the report was used “in relation to” consultations and communications in that it was the manner in which the results of the investigation were communicated to the Police.

I find that the report was prepared by the investigating police officer for the purpose of or “in relation to” consultations and communications. Therefore, Requirement 2 has been established.

Requirement 3

I must now determine whether the communication is about an employment-related or labour relations matter in which the Police have an interest.

The appellant devotes a large portion of his representations to arguments which relate to the process surrounding the investigation of his behaviour and his complaint by the Police. In the appellant’s view, the Police should have conducted a criminal, rather than an internal, investigation. Therefore, the appellant argues, the records relate to criminal offences, not to labour relations.

The Police state that the Professional Standards Review Committee has a mandate to carry out the obligations of the Chief which are discussed below. The Police state that the Committee has two components, criminal review and discipline review. The Committee then makes recommendations with respect to the appropriate action.

In my view, the appellant’s arguments with respect to process are not relevant to the application of section 52(3) of the Act to the requested report. This is not the proper forum for any complaints he may have about the actions of the Police in investigating his complaint.

I find that because of the nature of the investigation conducted by the police officer, the resulting consultations and communications are about employment-related or labour relations matters.

The phrase “has an interest” has been defined as more than mere curiosity or concern. An “interest” must be a legal interest in the sense that the matter in which the institution has an interest must have the capacity to affect the institution’s legal rights or obligations (Orders M-835, M-899, M-922, M-962 and P-1242).

The Police state that they have a legal interest in maintaining proper policing standards and ensuring that members of the force are adequately trained to ensure public confidence in the police services. According to the Police, they have a legal obligation to ensure that proper policing procedures are followed. The Police state that through the Chief, the Police have a legal obligation to investigate complaints involving any member of the police services within its jurisdiction. The Police submit that a failure to maintain adequate policing could affect their legal rights or obligations. The Police direct my attention to a number of sections of the Police Services Act which spell out the responsibilities and potential liabilities of the Police in this regard.

It is clear that the Police have a legal responsibility to monitor the actions of the members of the force. Therefore, in my view, the Police have “an interest” in the consultations and communications which are reflected in the report and Requirement 3 is met.

Since all three requirements have been met, I find that section 52(3) applies to the record. As this is not a record to which section 52(4) applies, it is excluded from the scope of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Marianne Miller
Inquiry Officer

_____ December 31, 1997