



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1064

Appeal M-9700274

City of Toronto
[formerly Municipality of Metropolitan Toronto]



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

NATURE OF THE APPEAL:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the City of Toronto (the City), formerly the Municipality of Metropolitan Toronto. The request was for access to a copy of the final report of an independent investigator hired by the City to investigate the workplace concerns raised by the appellant, an employee of the City.

The City identified a responsive record but is of the view that section 52(3) of the Act removes the record from the jurisdiction of the Act.

The appellant appealed the City's decision. A Notice of Inquiry was sent to the City and the appellant. Representations were received from both parties.

RECORDS:

The record at issue consists of a two-page report located in the Labour Relations and Compensation Division of the City's Corporate and Human Resources Department. The City indicates that its reference to a one-page attachment to the report in its decision letter was in error, and the parties have agreed that it will not be at issue in this appeal.

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 the type of 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 City indicates that during a period of time when the appellant was seconded into an acting position with the City, an employee he supervised filed numerous grievances against him. In an effort to mediate or resolve the matters related to workplace concerns raised by the appellant, including the grievances filed by the other employee, the City's Labour Relations Division proposed that the workplace issues be investigated by an independent investigator. The appellant subsequently filed a complaint with the Ontario Human Rights Commission, which has not yet been resolved. The appellant has also filed a complaint with the Ontario Labour Relations Board which is also currently active.

Section 52(3)3

In order to fall within the scope of paragraph 3 of section 52(3), the City must establish that:

1. the record was collected, prepared, maintained or used by the City 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 City has an interest.

The City states that the record was prepared by a neutral facilitator in response to the outstanding workplace concerns of the appellant and grievances filed by other employees. The City submits that it has maintained the record as part of the body of documents it will rely on with respect to the ongoing employment-related matters involving the appellant. I am satisfied that the record is being maintained by the City, and the first requirement of section 52(3)3 has been met.

The City submits that the record was created in response to events involving the appellant's performance during an acting appointment and from grievances arising from these events. The City indicates that the record was prepared in response to meetings with staff involved in the events and to discussions with its Labour Relations Division. The City states that the preparation and maintenance of this record was in relation to meetings, discussions and communications about grievances involving the appellant and the staff he supervised during his acting appointment. I find that the record was maintained in relation to meetings, consultations, discussions or communications, and that the second requirement has also been met.

Turning to the third requirement, 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 City submits that failure to respond to a volatile workplace situation from which numerous grievances had resulted according to established policies and procedures, can reasonably be expected to affect the legal rights and obligations of the City. Similarly, it identifies that the findings of both the Ontario Human Rights Commission and the Ontario Labour Relations Board may affect its legal rights and obligations.

The appellant has submitted arguments which relate to the appropriateness or adequacy of the process surrounding the investigation of his behaviour. In my view, these submissions are not relevant to the application of section 52(3) of the Act to the requested report. This is not the proper forum for the complaints he has about the actions of the City in addressing his concerns.

Having reviewed the record and the representations, I am satisfied that the City has an interest in the employment-related matters reflected in the record, and the third requirement of section 52(3)3 has also been 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 dismiss this appeal.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

January 15, 1998