



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

# **ORDER MO-1177**

**Appeal MA-980165-1**

**Regional Municipality of Haldimand-Norfolk**



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

## **NATURE OF THE APPEAL:**

The Regional Municipality of Haldimand-Norfolk (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester, a member of the media, sought access to the attendance records of the Chief of the Haldimand-Norfolk Regional Police Service for the period September 18, 1997 to the date of the request. Specifically, the requester asked for a breakdown of the days the Chief has been absent due to sick leave, vacation, disability, time off in lieu of overtime, banked sick days, personal leave or some other reason. Finally, the requester also sought access to any records which would indicate whether any mileage expenses were incurred by the Chief on those days, either in a personal or a Regional Police vehicle.

The Municipality advised the requester that no records exist with respect to the mileage expense portion of the request and advised the requester that the Chief has available a Regional Police vehicle for his own use, which is also used by other Police personnel.

With respect to that portion of the request dealing with the Chief's attendance, the Municipality indicated to the requester that any records responsive to that portion of the request fall outside the ambit of the Act, because of the operation of section 52(3) of the Act.

The requester, now the appellant, appealed the Municipality's decision. The appellant has also raised the possible application of the "public interest override" in section 16 of the Act. I note, however, that if the record falls within the ambit of the jurisdiction-limiting provision in section 52(3), it is not subject to any of the provisions of the Act, including section 16. As such, if I find that the record falls within section 52(3), I have no jurisdiction to make a determination that it ought to be disclosed under section 16.

A Notice of Inquiry was provided to the appellant and the Municipality. Representations were received from both parties. The sole record responsive to the request is a two-page attendance record indicating the Chief's absences, and the reason for those absences, during the period September 1997 to the end of July 1998.

## **DISCUSSION:**

### **JURISDICTION**

#### **Section 52(3)3**

The Municipality submits that the information contained in the record is excluded from the ambit of the Act by virtue of the operation of section 52(3)3. In order to fall within the scope of paragraph 3 of section 52(3), the Municipality must establish that:

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

The Municipality submits that the information contained in the record was relied upon in the context of various discussions which occurred concerning the appropriate compensation for the Chief during the period of his leave, and as part of his termination agreement. It submits that these discussions, which have yet to be finalized, involved the Haldimand-Norfolk Police Services Board (the Board), the Municipality's insurance carrier and the Chief's solicitor. It further indicates that the Municipality has an interest in these employment-related matters as it has "legal obligations to compensate the Chief appropriately".

The appellant notes that the Chief was an employee of the Board, which was disbanded on December 15, 1998, and not the Municipality. Accordingly, the appellant argues that "the records are unlikely to be the subject of any legal proceedings and are not matters in which the [Police] force or the [Municipality] has a legal interest".

### **Parts One and Two of the Test**

On its face, it is clear that the record contains information which was collected, prepared, maintained and used by the Board, as well as the Municipality (through its insurance carrier), from whom the Board receives its funding. I also accept that the information contained in the record was used in relation to discussions between the Board, the Municipality's insurance carrier (on behalf of the Municipality) and the Chief with respect to the determination of the Chief's entitlement to payment during his absences and certain benefits which may be due to the Chief as part of his termination agreement with the Board.

Accordingly, I find that the first two parts of the section 52(3)3 test have been met.

### **Part Three of the Test**

The question which must now be answered is whether the **Municipality** has a **legal interest** in the matters addressed in this record. Previous orders have held that an "interest" for the purposes of section 52(2)3 must be more than a mere curiosity or concern. An "interest" must be a legal interest in the sense that the matter in which the Municipality has an interest must have the capacity to affect its legal rights or obligations (Order P-1242).

The Municipality has not provided me with any information as to how its legal interests were engaged in the course of the discussions which took place between the Board, the Chief and its insurance carrier with respect to payments made to the Chief during his absences or on the subject of payments due to him as part of his termination agreement. I have not been provided with any evidence as to the nature and extent of any legal obligation which the Municipality may owe to the Chief; rather, the submissions of the Municipality only

indicate that such an obligation exists. Accordingly, based on the information which has been provided to me, I find that I have not been provided with sufficient evidence to demonstrate that the Municipality has the requisite "legal interest" in the matters addressed in the record for the purposes of section 52(2)3.

I am satisfied, however, that the Chief was an employee of the Board. I also find that the record was prepared by the Board and that it pertains to discussions concerning certain matters involving the Chief's employment by the Board, which is also an institution under the Act. Accordingly, I find that the subject matter of the record qualifies as an "employment-related matter" for the purposes of section 52(2)3.

In my view, because the Chief was an employee of the now-disbanded Board, any legal proceedings or other action which he may consider concerning the recovery of payments due to him prior to and following the termination of his employment as Chief would be initiated against the Board. I have not been provided with any evidence which would indicate that the Municipality would also share any potential liability to the Chief should he initiate such legal proceedings. Accordingly, I find that the Board, as the Chief's former employer, but not the Municipality, has the requisite "legal interest" in the employment-related matter which is reflected in the information contained in the record.

In conclusion, I find that the record falls outside the jurisdiction of the Act because the Board has a legal interest in the information contained therein within the meaning of section 52(3)3.

**ORDER:**

I uphold the Municipality's decision to deny access to the record.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ December 23, 1998