

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-3385

Appeal MA16-62

The Corporation of the Municipality of St. Charles

November 30, 2016

Summary: The appellant requested a copy of an investigation report regarding a workplace harassment complaint from the Municipality of St. Charles under the *Municipal Freedom of Information and Protection of Privacy Act*. Section 52(3) of the *Act*, which excludes certain records related to labour relations or employment matters from the scope of the *Act* applies to the investigation report. The Municipality's decision is upheld and the appeal is dismissed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 52(3).

OVERVIEW:

[1] The Corporation of the Municipality of St. Charles (the municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

1. Complaints under the municipality's *Respect in the Workplace* policy involving the requester.
2. Documents relating to the complaint investigation including a copy of the investigator's report.
3. Correspondence between the municipality, its legal advisors and the complaint investigator.

4. Copies of legal invoices, lawyer's time recordings and correspondence relating to the investigation.

[2] The municipality issued a decision disclosing some legal invoice information, and withholding all other responsive records under sections 6(1)(b) (closed meeting), 10(1) (third party information), and 12 (solicitor-client privilege).

[3] The requester (now the appellant) appealed the municipality's decision.

[4] During mediation, the municipality issued a revised decision to the appellant affirming its reliance on sections 6(1)(b), 10(1) and 12 and advising that for some of the records responsive to the request it was also relying on section 52(3) of the *Act*, which excludes certain records relating to employment or labour relations matters from the scope of the *Act*.

[5] The appellant narrowed her request to seeking a copy of the investigator's report. However, no further mediation was possible, so the file was moved to the adjudication stage, where an inquiry is conducted.

[6] During the inquiry the parties were invited to, and provided, representations. The parties' representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[7] This order finds that the investigation report is excluded from the scope of the *Act* under section 52(3). Given this finding, the appeal is dismissed without considering the application of the exemptions the municipality also relied on to withhold the investigation report.

RECORD:

[8] The record at issue is an investigation report arising from complaints of workplace harassment (pages 3-24 of the records).

DISCUSSION:

A. Does section 52(3) exclude the investigation report from the scope of the *Act*?

[9] Section 52(3) states in part:

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:

...

3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[10] If section 52(3) applies to the investigation report, and none of the exceptions in section 52(4) apply, the investigation report is excluded from the scope of the *Act*.

[11] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in paragraph 3 of section 52(3), it must be reasonable to conclude that there is "some connection" between them.¹

[12] The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.² The type of records excluded from the *Act* by section 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.³

[13] If section 52(3) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date.⁴

Section 52(3)3: matters in which the municipality has an interest

[14] For section 52(3)3 to apply, the municipality must establish that:

1. the investigation report was collected, prepared, maintained or used by an institution or on its behalf;
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.

¹ Order MO-2589; see also *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991.

² Order PO-2157.

³ *Ontario (Ministry of Correctional Services) v. Goodis*, 2008 CanLII 2603 (ON SCDC).

⁴ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, 2001 CanLII 8582 (ON CA), application for leave to appeal to the Supreme Court of Canada dismissed June 13, 2002 (Gonthier, Major and LeBel JJ.). S.C.C. File No. 28853. S.C.C. Bulletin, 2002, p. 781.

Part 1 and 2: collected, prepared, maintained or used in relation to meetings, consultations, discussions or communications

[15] I am satisfied that the municipality used the investigation report for discussions at a meeting. In particular, it was used by the General Government Committee at a closed meeting to inform its decisions regarding the complaints. Therefore, Parts 1 and 2 of the section 52(3) test are met.

Part 3: labour relations or employment-related matters in which the institution has an interest

[16] As noted above, the term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.⁵ The type of records excluded from the *Act* by section 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.

[17] The phrase "in which the institution has an interest" means more than a "mere curiosity or concern", and refers to matters involving the institution's own workforce.⁶ The records collected, prepared, maintained or used by the institution are excluded only if the meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.⁷

[18] The appellant characterizes the complaints and investigation as being about municipal councilor conduct, and refers to a previous Order (MO-1264) that found that there was no employee-employer relationship between a municipality and its councilors, to support the appellant's argument that the records are not employment-related for the purpose of section 52(3)3.

[19] I am satisfied that the discussion at the meeting was about an employment-related matter in which the institution had an interest. The investigation report is employment-related for the purposes of section 52(3)3 because it is about the employee's complaints and the subject of the complaints and resulting investigation report was the employee's work environment. The records may contain information about the conduct of municipal councilors. However, the investigation report was triggered by an employee's complaint of workplace harassment, which the employee alleged was contrary to the municipality's *Respect in the Workplace* policy. This is an employment-related matter because it is part of the municipality's responsibilities as an employer to investigate complaints of workplace harassment, which directly relate to the employment relationship. The investigation report arises out of the municipality's

⁵ Order PO-2157.

⁶ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

⁷ *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

employment relationship with its employee.

[20] Finally, the municipality clearly had an interest in this matter because the complainant was a municipal employee and the complaint and resulting investigation report related to the municipality's workplace. Part 3, and consequently, all three parts of the section 52(3) test, are therefore met for the investigation report.

[21] The *Act* still applies to the investigation report if it falls within any of the exceptions in section 52(4). However, the parties did not raise the section 52(4) exceptions, and none arise from my review of the investigation report.

[22] Accordingly, I find that section 52(3) applies to the investigation report, with the effect that it is outside the scope of the *Act*. Given this finding, I do not need to consider any of the exemptions in the *Act* the municipality also relied on to withhold the investigation report.

ORDER:

I uphold the municipality's decision that section 52(3) applies to exclude the investigation report from the scope of the *Act* and dismiss the appeal.

Original Signed by: _____
Hamish Flanagan
Adjudicator

November 30, 2016