Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3537

Appeal MA16-255

Toronto Parking Authority

December 12, 2017

Summary: The Toronto Parking Authority (TPA) received a request for access to the names and salaries of the employees working for the TPA making over $100,000 per year in 2015. The TPA created a responsive record listing the names and salaries, but stated that because this information was taken from data stored in its Human Resource IT system, the information was excluded from the scope of the *Act* under section 52(3) (employment related matters). In this order, the adjudicator confirms that information taken from Human Resource sources is excluded from the *Act*, but finds that the TPA interpreted the request too narrowly, and orders it to search for other responsive records (some of which may not be excluded), and to issue an access decision regarding those records.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 17, 52(3), 52(4).

Orders and Investigation Reports Considered: Orders P-134, P-880, PO-1897-I, and PO-2248.

OVERVIEW:

[1] The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the names and salaries of the employees working for the Toronto Parking Authority (TPA) making over $100,000 per year, for the last fiscal year (which was 2015).

[2] The city responded by advising the requester that the records requested are in the custody and control of the TPA which is designated as a separate institution under

the *Act*. The city then transferred the request to the TPA.

[3] The TPA issued a decision in response to the request. The decision reads:

> We are writing to respond to your [2016] freedom of information request for the following:
>
> > The names and salaries of the employees working for the Toronto Parking Authority making over $100,000 per year. I am requesting information from the last fiscal year.
>
> We have interpreted your request as a request for information about salary paid to employees in the last fiscal year. This information is exclusively contained in employment-related records that are excluded from [the *Act*] under section 52(3). We therefore deny your request.

[4] The requester, now the appellant, appealed the decision. In her appeal letter the appellant stated:

> The [TPA] is a city agency funded by city-owned parking meters and lots. It is a matter of pubic interest that the salaries of [those employees] who make more than $100,000 per year be available to the public like the salaries of hundreds of other civil servants are.

[5] During mediation the appellant confirmed her view that there is a compelling public interest in disclosure of the records, and that section 16 of the *Act* therefore applied. However, as the TPA has claimed that the record at issue is excluded from the scope of the *Act* pursuant to section 52(3), the question of whether the compelling public interest applied to the record was not added as an issue at that time.

[6] Mediation did not resolve this appeal, and this file was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*.

[7] I sent a Notice of Inquiry to the TPA, initially. I invited the TPA to address the issue of whether the records fit within the exclusion in section 52(3). I also invited the TPA to address the possible application of the exceptions to the exclusion, set out in section 52(4) - in particular - whether salary information is contained in contracts or agreements which are not covered by the exclusion in section 52(3) because of the operation of the exception in section 52(4). The TPA provided representations in response.

[8] In its representations, the TPA confirms that the record identified as responsive to the request is a one-page list titled "Names and salaries over $100,000 in 2015." It lists 24 employees by name, job title and exact salary amount for 2015, and includes the same type of information as is found in salary information required to be disclosed under the *Public Sector Salary Disclosure Act, 1996* (PSSDA). The TPA identifies that the 24 employees listed in the record include 4 unionized employees and 20 non-union

employees.

[9] I then sent a Notice of Inquiry, along with a complete copy of the TPA's representations and the non-confidential portions of a supporting affidavit, to the appellant, who also provided representations. In her representations the appellant argues that the exclusion ought not to apply to the records, but also takes the position that the TPA interpreted her request too narrowly. I then invited reply representations from the TPA, and also asked the TPA to address the issue of the scope of the request, which it did.

[10] In this order, I find that the information contained in the record created by the TPA is excluded from the scope of the *Act*. I also find that the TPA interpreted the request too narrowly, and order it to search for other responsive records (some of which may not be excluded), and to issue an access decision regarding those records.

RECORDS:

[11] The request is for the names and salaries of the employees working for the TPA making over $100,000 per year, for 2015.

[12] In its decision letter, the TPA stated that this information is "exclusively contained in employment-related records that are excluded from [the Act] under section 52(3)."

[13] In response to this office's request for copies of responsive records, the TPA created a one-page record titled "Names and Salaries over $100,000 in 2015."

PRELIMINARY MATTERS

[14] I note that the appellant raises as a consideration the fact that she is asking for salary information about employees making over $100,000 per year, and she notes that the salaries of other civil servants making over this amount are disclosed every year under the PSSDA. She then states that this information for the TPA ought to be disclosed in the public interest.

[15] The Legislature has not included the TPA as a body covered by the PSSDA. Furthermore, the issue before me in this appeal is whether the records are excluded from the scope of the *Act* under section 52(3). In these circumstances, where the issue of this office's jurisdiction is raised, I cannot consider the possible public interest in the information at issue. It may well be that the public interest override would apply to records containing the requested information;[1] however, that issue is not before me. I do note, however, that (1) if records are excluded from the scope of the *Act*, that simply means that the *Act* does not apply to them; it does not mean that the records

[1] See Order MO-2563, upheld in *York (Police Services Board) v. (Ontario) Information and Privacy Commissioner*, 2012 ONSC 6175.

cannot be disclosed;[2] and (2) although the *Act* specifies that salary information constitutes personal information,[3] the *Act* also confirms that disclosure of certain entitlements given to employees (such as their salary range and benefits) does not constitute an unjustified invasion of their privacy.[4]

ISSUES:

A. Does section 52(3) exclude from the scope of the *Act* the record at issue, which was created by the TPA for the purpose of this appeal?

B. What is the scope of the request? What records are responsive to the request?

DISCUSSION:

LABOUR RELATIONS AND EMPLOYMENT RECORDS

Issue A: Does section 52(3) exclude from the scope of the Act the record at issue, which was created by the TPA for the purpose of this appeal?

General Principles

[16] The TPA's representations on the application of the exclusion in section 52(3) appear to focus on section 52(3)3, which reads:

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

[17] If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*.

[18] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in paragraph 3 of this section, it must be reasonable to conclude that there is "some connection" between them.[5]

[19] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining

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[2] See Orders MO-2242, MO-2822 and PO-3519.
[3] See section 2(1) of the *Act*.
[4] See section 14(4) of the *Act*.
[5] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

legislation, or to analogous relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.[6]

[20] The term "employment of a person" refers to the relationship between an employer and an employee. 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.[7]

[21] 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.[8]

[22] 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.[9]

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

Introduction

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

1. the records were 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.

Representations

[24] The TPA submits that the information in the record was extracted from payroll and human resource records. In a supporting affidavit, the Interim Head of Human Resources states:

> The record at issue reveals salary data that is stored exclusively in our payroll and human resources information system – a system called ADP Workforce Now [hereafter referred to as HRIS]. [The TPA uses] this system on a routine basis to administer payroll, employee scheduling and attendance and to support our compensation analysis and planning.

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[6] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.); see also Order PO-2157.
[7] Order PO-2157.
[8] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507.
[9] *Ministry of Correctional Services*, cited above.

[25] The TPA also states:

> The records in the HRIS system are maintained for the purpose of routine human resources administration. You may readily infer that they support a wide variety of "meetings, consultations, discussions or communications" about the employment of TPA employees. Consider, for example, the use of HRIS data in "meetings" about annual compensation increases. Pay statements (which TPA must provide to employees to comply with the Employment Standards Act) are also "communications" supported by HRIS data. TPA has an interest in these kinds of meetings and communications – an interest in effective workforce management and human resources administration.

[26] The TPA then states:

> The records in the HRIS system are the kind of records that the IPC has excluded as related to "standard personnel management practices." Order PO-2248 was about a one-page record summarizing overtime hours and amounts paid to OPP officers who accompanied the Premier on trips to the United States. Adjudicator Liang held that the record, which was created from payroll system data to conveniently answer the request, was excluded. She said:
>
> > The recording of information about overtime worked for scheduling and payment purposes is so clearly a part of standard personnel management practices that it hardly requires any more specific an explanation of why such information was so collected, prepared, maintained or used.
>
> The IPC reached a similar conclusion in Order MO-3291 (regarding hours worked by police officers as derived from work schedules) and Order PO-2791 (regarding records containing information about hours worked and shift premium payments).

[27] The appellant provides representations in support of her position that the records are not excluded under section 52(3). She states:

> Section 52(3) does not apply in this instance because I am only asking for the names and salaries of each employee making over $100,000 in 2015. I am not asking for any "meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest."
>
> The argument advanced by [the TPA] appears to be a very technical argument …. The TPA seems to be arguing that the information should not be released because it resides in a software system called "HRIS." And that because this system is used for the purpose of human resources than

> all records in that system should be excluded from [the *Act*] under section 52(3).
>
> My submission is that the nature of the information requested, not the system in which it is held should be at issue here.

[28] The appellant then refers to decisions by this office which support the view that the goals of transparency and accountability require the identification of parties who receive substantial payments from the public purse. She then states:

> The TPA also argues in its representations that a previous appeal to obtain overtime for police officers was upheld. I would like to note that I am not requesting overtime compensation. Also, that the base salaries for police officers making over $100,000 is already readily available on the province's sunshine list.

[29] Lastly, the appellant argues that because the TPA created a record in response to her access request, that record itself ought not to be excluded from the scope of the *Act*.

[30] The TPA provided reply representations. In response to the requester's submission that "the information requested, not the system in which it is held should be the issue here," the TPA states:

> (a) The right of access in section 4 of [the Act] applies to "records" and "parts of records" and the exclusion from that right (and the Act as a whole) in section 52 … applies to "records."
>
> (b) Based on the plain language of these provisions, the exclusion analysis requires one to identify the record or records in which information is contained and then assess whether those records are "collected, maintained or used" in relation to employment related matters (and the broad list of associated [employment-related] activities).

[31] In response to the appellant's concern that the record created to respond to the request may not be excluded from the scope of the *Act*, the TPA refers to the affidavit of the Interim Head of Human Resources which confirms that the record reveals salary data that is stored exclusively in the HRIS. TPA also states:

> Just like the record in Order PO-2248, the record at issue reproduces information stored in the HRIS system. As such, it is excluded as was the record in Order PO-2248.

Analysis and findings

[32] On my review of the record at issue and the nature of the information contained therein (exact amounts paid to employees for a given calendar year), as well as the representations of the TPA, I am satisfied that the information in the record was

collected, prepared, maintained or used by the TPA in relation to discussions and communications with respect to employment-related matters in which the TPA, as an employer, has an interest.

[33] Information about exact amounts paid to employees is an integral part of the responsibilities of the TPA as an employer. As noted in Order PO-2248, "the recording of information about overtime worked for scheduling and payment purposes is so clearly a part of standard personnel management practices that it hardly requires any more specific an explanation of why such information was so collected, prepared, maintained or used." Although in this appeal the appellant argues that she is not asking for "overtime compensation", the exact information contained in the record created by the TPA in response to the request is taken from the TPA's "payroll and human resources information system". I am satisfied that this would include information relating to possible overtime, sick time, paid leave, etc. In any event, information taken from the records in the Human Resource Information System are, almost by definition, maintained for the purpose of routine human resources administration. In these circumstances, I am satisfied that this information, as contained in the created record, is covered by the provisions of section 52(3)3.[10]

[34] I have also considered the appellant's position that, because the record was created for the purposes of responding to a request, and not for employment related purposes, it ought to be treated as a separate record and not covered by section 52(3) even if the information contained in it was compiled from records which are excluded.

[35] This exact argument was before the adjudicator in Order PO-2248. In that order she stated:

> … it is significant that the Ministry created the record solely for the purpose of responding to the request under the *Act*, as a convenient means of isolating the specific information sought by the appellant. The record was not created for any other purpose, nor has it been used for any other purpose. The information taken from the source records has not been incorporated with other types of information, nor been made part of a larger document used for non-labour relations or employment purposes. In a sense, the record before me is merely a vehicle for the presentation of the information which the appellant seeks. In such circumstances, I find that there is no purpose under the *Act* to be served by making a distinction between the *record* and the *information* contained in it. On the facts before me, the record has no independent purpose or status apart from the presentation of responsive information.
>
> I acknowledge the appellant's submission that [the equivalent to section 52(3)] refers to "records" rather than "information". However, I do not agree with the appellant that this wording prevents the application of

[10] See Orders PO-2248, PO-2791 and MO-3291.

> [section 52(3)] to a record existing solely for the purpose of responding to a request under the *Act*. …
>
> … I am satisfied that the Ministry has established the requirements for the application of [section 52(3)3] to the record at issue in this appeal. The record is accordingly excluded from the *Act*.

[36] I agree with and adopt the analysis taken in Order PO-2248 and apply it to the record at issue in this appeal. The record at issue in this appeal was created by the TPA for the purpose of responding to an access request for information, and has no independent purpose or status apart from the presentation of the responsive information. In these circumstances, there is no purpose served under the *Act* by making a distinction between the *record* and the *information* contained in it.

[37] I have also considered the exceptions to the exclusion, which are found in section 52(4). This section reads:

> 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.

[38] Based on my review of the information in the record and the TPA's representations, I am satisfied that the exceptions listed in section 52(4) do not apply to the information contained in the record created by the TPA and sourced from the HRIS. As a result, I find that the record created by the TPA is excluded from the scope of the *Act*.

Issue B: What is the scope of the request? What records are responsive to the request?

[39] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; …
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[40] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.[11]

[41] In Order P-880, Adjudicator Anita Fineberg determined that records must "reasonably relate" to the request in order to be considered "responsive." She went on to state:

> ... the purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request. If an institution has any doubts about the interpretation to be given to a request, it has an obligation pursuant to [section 17(2) of the *Act*] to assist the requester in reformulating it. As stated in Order 38, an institution may in no way unilaterally limit the scope of its search for records.

[42] In Order 134, former Commissioner Sidney B. Linden also commented on the proper interpretation of section 17(2) of the *Act*, stating, among other things:

> ...the appellant and the institution had different interpretations as to what this meant: the institution felt that the files were outside the scope of the original request and should be the subject of a new one; and the appellant thought he was seeking information which he expected to receive in response to his initial request. While I can appreciate that there is some ambiguity on this point, in my view, the spirit of the *Act* compels me to resolve this ambiguity in favour of the appellant. The institution has an obligation to seek clarification regarding the scope of the request and, if it fails to discharge this responsibility, in my view, it cannot rely on a narrow interpretation of the scope of the request on appeal.

[43] In Order PO-1897-I, commenting on the above orders, the adjudicator noted

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[11] Orders P-134 and P-880.

that in the appeal under consideration in Order 134, the request was somewhat vague, and that the institution had genuine difficulty in interpreting the scope of the request. She pointed out, however, that "even there, the former Commissioner resolved the ambiguity in favour of the appellant's view of the request."

[44] In this appeal, the appellant's request was for "the names and salaries of the employees working for the Toronto Parking Authority (TPA) making over $100,000 per year." The request then stated "I am requesting the information for the last fiscal year."

[45] The decision by the TPA in response to the request read:

> We have interpreted your request as a request for information about salary paid to employees in the last fiscal year. This information is exclusively contained in employment related records that are excluded from [the *Act*] under section 52(3). We therefore deny your request.

[46] This appeal proceeded on the question of whether or not the record created by the TPA in response to the request, which sets out the exact 2015 salary of the 24 employees as calculated from the HR materials, is excluded from the scope of the *Act*. I have found that this specific information is excluded.

[47] However, in the Notice of Inquiry I sent to the TPA, I asked the TPA whether responsive information is contained in records that are not excluded from the scope of the *Act*. Specifically, I identified section 52(4) of the *Act*, set out above, which establishes exceptions to the section 52(3) exclusions, including exceptions for various types of agreements entered into between an institution and an employee. I then invited the TPA to address the following questions:

> Do the records fall within any of the exceptions listed in section 52(4)? Please explain.
>
> In addition to addressing the issues set out above, the TPA is asked to specifically identify whether the requested salary information is contained in contracts or agreements which are listed in any of the exceptions to the exclusion in section 52(4).
>
> The TPA is asked to provide as much information as possible regarding this question including:
>
> - whether the salary amounts paid to these individuals are contained in agreements resulting from negotiations about employment-related matters between the institution and the employee, employees or trade union;
>
> - whether the salary amounts paid to these individuals can be calculated from information contained in any such agreements; and

> • whether any such agreements (which are not covered by the exclusion) contain information which would be responsive to the appellant's request, or to any portion of the appellant's request.

[48] In response, the TPA confirmed that the record it created reveals salary data that is stored exclusively in its payroll and human resources information system, used to administer payroll, employee scheduling and attendance, and to support its compensation analysis and planning. Regarding whether other non-excluded records would contain this information, the TPA confirms that the 24 employees listed in the record include 20 non-unionized employees (who would presumably have entered the employment of the TPA under an employment contract) and 4 unionized employees (whose employment would be governed by a collective agreement). In her affidavit, the Interim Head of Human Resources states:

> *20 non-union employees listed*
>
> There are 20 non-unionized employees who are identified on the record at issue. I examined a sampling of these employees' personnel files in preparing to swear this affidavit. A number of the non-unionized employees' files contained no hire letters or employment contracts at all. Many of the other files contained letters that set out terms of employment that are quite old.
>
> For example, the file for [Individual A] contains a letter from March 2008, the file for [Individual B] contains a letter from April 2012 and the file for [Individual C] contains a letter from December 2009. The salary entitlement in each of these letters differs from the salary actually paid to each employee in 2015. [Individual A's] salary entitlement as of March 2008 did not exceed $100,000 and [Individual C's] entitlement as of December 2009 differs from his listed 2015 salary payment by over $60,000.)
>
> There is also no information in these letters that suggests what [Individuals A, B and C] were actually paid in salary in 2015. The [Individual A] letter, for example, simply states, "Your starting salary will be at the rate of $[redacted] per annum. Salary adjustments will be made on January 1 of each year commencing in 2009, and will be based on an annual performance review." The [Individuals B and C] letters have similar wording, though the [Individual B] letter does identify a salary range.
>
> *Four unionized employees listed*
>
> There are four full-time unionized employees who are identified on the record at issue. These employees do not have individual employment contracts, but are provided with wages and benefits under a collective agreement that is publicly available.

[49] In response, the appellant confirmed that she was seeking information such as that contained in the PSSDA. However, she also stated:

> Section 52(3) does not apply in this instance because I am only asking for the names and salaries of each employee making over $100,000 in 2015.…
>
> My submission is that the nature of the information requested, not the system in which it is held should be at issue here. …
>
> I also note that the TPA's representations discuss the existence of several contracts "that speak to salary entitlements" for many of the 24 employees in question. This information would help me to answer my initial request for "access to the names and salaries of employees working for the Toronto Parking Authority making over $100,000." The TPA has interpreted my request too narrowly. l am looking for any documents available that would help me report on employees at the agency who receive more than $100,000 in compensation annually. And contracts that include salary entitlements would help me achieve this goal. ….

[50] In response to the appellant's position that "the information requested, not the system in which it is held should be the issue here," The TPA states:

> (a) The right of access in section 4 of [the Act] applies to "records" and "parts of records" and the exclusion from that right (and the *Act* as a whole) in section 52 of [the Act] applies to "records."
>
> (b) Based on the plain language of these provisions, the exclusion analysis requires one to identify the record or records in which information is contained and then assess whether those records are "collected, maintained or used" in relation to employment related matters (and the broad list of associated [employment-related] activities).

[51] Regarding the appellant's position that the TPA "interpreted her request too narrowly," the TPA states:

> (a) The request is clearly for information about salary actually paid to employees in 2015 and not for salary entitlements granted in contracts dated at various other points in time.
>
> (b) The request is for the "names and salaries of all employees at the Toronto Parking Authority making more than $100,000 for the 2015 fiscal year."
>
> (c) The requester wants "salaries ... for the 2015 fiscal year." She made the request in March 2016, after the fiscal year ending December 31, 2016. She makes no reference to "contracts" or "legal entitlements"

> nor can one reasonably read the request as seeking contractual entitlements given contracts [are] not records that are issued by employers on an annual basis.
>
> (d) The requester's submission also makes the narrow intent of her request clear. She twice contrasts the information available from TPA to the information available from other public sector institutions under the PSSDA, making it clear that she wrote her request to demand the equivalent information. Information in contracts, the requester admits, would only "be helpful" to her goals. She now wants this information "as well" as what she originally requested.
>
> (e) Finally, the TPA stated in its April 2016 decision letter, "We have interpreted your request as a request for information about salary paid to employees in the last fiscal year." The requester did not dispute this interpretation until after receiving the TPA's initial representations despite the passage of significant time and despite engaging in case management with the IPC. The requester accepted the TPA's interpretation because [it] is the only reasonable interpretation and because it identified the information she sought.
>
> (f) As explained in the Affidavit of [the Interim Head of Human Resources], information in employment contracts in the [TPA's] custody or control is different than the information in the responsive record. The requester did not request it.

Analysis and Findings

[52] To begin, I note that the appellant's request is specifically for "the names and salaries of the employees working for the [TPA] making over $100,000 per year." The request then confirms that the requested information relates to "the last fiscal year," which is 2015.

[53] Because of the nature of the information requested and the reference to the PSSDA, the TPA chose to access its payroll and human resources information system, compile the information from that system and create the one-page list. It then stated that the list was excluded from the scope of the *Act*.

[54] Ordinarily, an institution is to be commended for compiling information from other records and creating a record responsive to a request, as it is not necessarily obliged to do so under the *Act*.[12] Furthermore, it is clear to me that the created record contains the information sought by the appellant and, if disclosed to her, would satisfy the request.

[55] However, by choosing this method of compiling the information and creating the

[12] See, for example, Orders 50, MO-1422, PO-2237, Order MO-2996 and MO-3268.

record, the TPA created a record that is excluded from the scope of the *Act* and, by doing so, effectively denied the appellant access to the information she sought.

[56] In these circumstances, and because the result of the TPA's decision on how it chose to respond to the request resulted in the complete denial of access to the record and the creation of a resulting record that is excluded from the scope of the *Act*, I will review the request in detail to ensure that the TPA properly responded to the request in keeping with the spirit of the *Act*,[13] and that any ambiguity is resolved in favour of the appellant.[14]

[57] The request is specifically for:

> The names and salaries of the employees working for [the TPA] making over $100,000 per year. I am requesting information from the last fiscal year.

[58] The request is not for the exact amounts paid to these individuals as reflected from their HR files (i.e.: payroll amounts), which would be excluded from the scope of the *Act* because of section 52(3). The request is also not for employment contracts which confirm which employees make over $100,000 per annum, which would be contained in responsive records which are specifically *not* excluded from the scope of the *Act*.

[59] In these circumstances, it is not sufficient for an institution to interpret the request in such a way as to, by definition, exclude any responsive records from the scope of the *Act*. In my view the wording of the request is sufficiently broad ("the names and salaries of the employees working for the TPA making over $100,000 per year") that the TPA ought to have at the very least indicated to the requester that other, non-excluded records may exist. In doing so, it could have indicted some of the drawbacks to accessing the information in that manner (for example, by noting that some of the employees may not have contracts which identify this information, some contracts may not contain exact amounts or may contain older information for previous years, etc.).

[60] As a result, I find that the TPA's interpretation of the request to include only the information in the record which it created from the HR files is an overly narrow and restrictive interpretation of the request. A liberal interpretation of the request, in keeping with the purpose and spirit of freedom of information legislation, would interpret the request in such a way as to include records which are not excluded from the scope of the *Act*. I find that, by interpreting the request in the way it did, the TPA, which is the party that knows where its records are located and how its information is stored, unilaterally limited the scope of the request. In these circumstances, at the very least, the TPA ought to have contacted the requester to clarify what was being

[13] See section 1 of the *Act*, which identifies that one of the purposes of the *Act* is to provide a right of access to information under the control of institutions.
[14] See Orders P-134 and P-880.

requested,[15] and to advise the requester that other responsive records which may contain some responsive information and which would not be excluded from the scope of the *Act* may also exist.

[61] I find that any employment contracts which would identify employees whose salaries are over $100,000 for 2015, including any contracts from which this information could reasonably be calculated, "reasonably relate" to the request. I will therefore order the TPA to search for such records and issue an access decision on them.[16]

[62] As a final matter, given the circumstances of this appeal and my findings above, I specifically reject the TPA's argument that the appellant is precluded from objecting to how the TPA interpreted the request because she did not do so immediately upon receiving the TPA's response. As noted, the TPA had knowledge of its record-holdings, and chose to interpret the request in a way as to result in denial of access.

ORDER:

1. I uphold the TPA's decision that section 52(3) excludes the record at issue from the scope of the *Act*.

2. I order the TPA to conduct further searches for any additional records which may contain responsive information, including employment contracts. I order the TPA to provide a decision letter to the appellant regarding the records requested in accordance with sections 19, 22 and 23 of the *Act*, treating the date of this order as the date of the request.

3. I order that a copy of the decision letter referred to in Provision 2 be provided to me.

Original signed by
Frank DeVries
Senior Adjudicator

December 12, 2017

[15] See section 17(2) of the *Act*.
[16] I have restricted my review to any possible contracts, as these are specifically not excluded from the scope of the *Act*. Clearly the TPA must also consider whether the requested information may be contained in other records in its record-holdings which would also not be excluded from the scope of the *Act* (i.e.: press releases, summary documents created for non-employment related purposes, etc.).