

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4495

Appeal MA21-00649

Toronto Police Services Board

February 29, 2024

**Summary:** The appellant submitted a request to the Toronto Police Services Board (the police) under the *Act* for access to records relating to herself. The responsive records identified by the police all relate to her attempts to be recruited and hired as a police constable. The police denied access to most of the records because they are excluded from the *Act* by section 52(3) (labour relations or employment records). In this order, the adjudicator finds that section 52(3)3 applies to all of the records at issue. He decides to exercise his discretion under section 41(1)(b) not to conduct an inquiry to review the police's access decision because the appeal has no reasonable prospect of success. The appeal is dismissed.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 41(1)(b) and 52(3)3.

### OVERVIEW:

[1] The appellant submitted a request to Toronto Police Services Board (the police) under the *Act* for access to the following records:

... [A]ny and all correspondence including emails, memos, telephone communications involving myself, both to the Toronto Police Service and affiliates (Board) and from as well inter-office memos regarding myself.

[2] The police located more than 2,000 pages of responsive records, which document the appellant's attempts to be recruited and hired as a police constable. The police

decided to disclose some records to the appellant. However, they decided that the remainder of the records are excluded from the *Act* by section 52(3) and therefore not subject to the access scheme in the *Act*.<sup>1</sup>

[3] The appellant appealed the police's access decision to the IPC, which assigned a mediator to assist the parties in resolving the issues in dispute. This appeal was not resolved during mediation and was moved to adjudication.

[4] In this order, I find that the records at issue are clearly excluded from the *Act* by section 52(3)3, because they were collected, prepared, maintained or used by the police in relation to discussions or communications about "employment-related matters" in which the police have an interest. I decide to exercise my discretion under section 41(1)(b) of the *Act* not to conduct an inquiry to review the police's access decision because the appeal has no reasonable prospect of success.

## **DISCUSSION:**

### **Preliminary assessment not to conduct an inquiry under the *Act***

[5] Section 41(1)(b) of the *Act* states:

The Commissioner may conduct an inquiry to review the head's decision if,

...

the Commissioner has authorized a mediator to conduct an investigation under section 40 but no settlement has been effected.

[6] In short, this section of the *Act* provides an adjudicator, as a delegated decision-maker of the Commissioner, with the discretion to decide whether to conduct an inquiry to review a head's access decision in an appeal that has not been resolved during the mediation stage of the appeal process.

[7] Upon receiving this appeal, I reviewed the records at issue, which include numerous emails, attachments and other records. The senders and recipients of the emails include staff in the police's "Employment Unit," staff in the police's human resources management division, labour relations analysts, and the police's legal counsel specializing in employment law. The substance of the discussions and communications in these emails relate to the appellant's attempts to be recruited and hired as a police

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<sup>1</sup> The police also claimed that some information in the records is exempt from disclosure under the discretionary exemption in section 38(a) (discretion to refuse access to requester's own personal information), read with sections 9 (relations with other governments) and 12 (solicitor-client privilege). The police also claimed that some information is not responsive to the appellant's access request. As a result of my finding below that section 52(3)3 applies, it is not necessary for me to consider these claims.

constable.

[8] The exclusion in section 52(3)3 states:

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.

[emphasis added]

[9] The type of records excluded from the *Act* by section 52(3) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.<sup>2</sup> The phrase “employment-related matters” in section 52(3)3 has been found to apply in the context of a job competition.<sup>3</sup>

[10] I advised the appellant in writing that it was my preliminary view that her appeal had no reasonable prospect of success because the records at issue are clearly excluded from the *Act* by section 52(3)3. I further advised her that I was inclined to exercise my discretion under section 41(1)(b) of the *Act* not to conduct an inquiry to review the police’s access decision. I invited her to submit representations by a specified date if she disagreed and wished to make arguments to me as to why I should conduct an inquiry to review the police’s access decision. I also provided her with a document that summarizes previous IPC orders and court decisions that have interpreted the scope and meaning of the section 52(3) exclusion.

[11] In response, the appellant submitted a brief email in which she does not dispute that the records are excluded from the *Act* by section 52(3)3 but states that she is disappointed with the length of time taken by the police and the IPC’s inability to help her get the answers to her questions. She asserts that the police have only provided her with an incomplete “meagre olive branch” in response to her access request.

### **Decision not to conduct an inquiry under the *Act***

[12] I recognize that the appellant wishes to access the records at issue in order to scrutinize the hiring process and other related matters with respect to her attempts to be

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<sup>2</sup> *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.). The CanLII citation is “2008 CanLII 2603 (ON SCDC).”

<sup>3</sup> Orders M-830 and PO-2123.

recruited and hired as a police constable. However, the records she is seeking, which all relate to her attempts to be recruited and hired as a police constable, are clearly excluded from the *Act* by section 52(3)3, because they were collected, prepared, maintained or used by the police in relation to discussions or communications about “employment-related matters” in which the police have an interest. This means that these records are not covered by the access scheme in the *Act*.

[13] I have decided to exercise my discretion under section 41(1)(b) of the *Act* not to conduct an inquiry to review the police’s access decision because the appeal before me has no reasonable prospect of success.

**NO INQUIRY:**

For the reasons set out above, an inquiry to review the police’s access decision will not be conducted. The appeal is dismissed.

Original Signed By: \_\_\_\_\_  
Colin Bhattacharjee  
Adjudicator

February 29, 2024 \_\_\_\_\_