Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4583

Appeal MA21-00477

The Regional Municipality of Halton

October 23, 2024

Summary: An individual made a request to the Regional Municipality of Halton (the municipality) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to their entire disability management file. The municipality granted partial access to the responsive records. Some of the records were not provided because the municipality claims they are excluded from the *Act* under the employment or labour relations exclusion (section 52(3)3)). In this order, the adjudicator upholds the municipality's exclusion claim and finds that it conducted a reasonable search for responsive records.

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

Orders Considered: Order PO-4368.

OVERVIEW:

[1] An individual, who is employed by the Halton Regional Police Service (HRPS), made a request to the Regional Municipality of Halton (the municipality) under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to their own disability management file. While the HRPS is the individual's employer, the municipality was under contract to process the disability claims of the HRPS employees. The individual specifically requested the following:

> A complete copy of the employee's entire disability management file from October 2018 to present inclusive of reports, memos, meeting minutes, correspondence to and from any involved agency and/or person and any other records that is part of the file not already specified.

[2] The municipality granted partial access to the responsive records. It withheld some information claiming that it is excluded from the scope of the *Act* under section 52(3)3 (employment or labour relations). Information was also withheld under the discretionary personal privacy exemption at section 38(b) of the *Act*.

[3] The appellant appealed the municipality's decision to the Information and Privacy Commissioner of Ontario (IPC), and a mediator was appointed to explore resolution.

[4] During mediation, the municipality conducted a second search and provided the appellant with a search explanation, additional information, and an updated Index of Records.

[5] The appellant advised that he believes further records responsive to his request should exist. The appellant also advised that he seeks access to the information the ministry excluded under section 52(3)3 of the *Act*.[1]

[6] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced an inquiry in which I sought and received representations from the parties about the issues in the appeal.[2]

[7] In this order, I uphold the municipality's claim that the exclusion at section 52(3)3 applies. I also find that it conducted a reasonable search for responsive records.

RECORDS:

[8] The records at issue[3] in this appeal consists of the withheld emails and case management notes related to the appellant's disability management file. Specifically, records #2, 4, 6-10, 12, 13, 16, 18, and 21 as described in the municipality's updated Index of Records.

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[1] The information withheld under section 38(b) is no longer at issue in this appeal.
[2] I have reviewed all the representations of the parties, but I will only outline the most relevant non-confidential portions below.
[3] The municipality disclosed portions of some of these records. However, the IPC uses a "whole record" approach in determining whether an exclusion applies. Despite claiming an exclusion, nothing precludes the municipality from disclosing the records outside of the *Act*.

ISSUES:

A. Does the section 52(3)3 exclusion for records relating to labour relations or employment matters apply to the records?

B. Did the municipality conduct a reasonable search for records?

DISCUSSION:

Issue A: Does the section 52(3)3 exclusion for records relating to labour relations or employment matters apply to the records?

[9] Section 52(3) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in the *Act*, although the institution may choose to disclose it outside of the *Act*'s access scheme.[4]

[10] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.[5]

[11] 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:
>
> > 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[12] If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies,[6] the records are excluded from the scope of the *Act*. If section 52(3) applied at the time the record was collected, prepared, maintained or used, it does not stop

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[4] Order PO-2639.
[5] *Ontario* (*Ministry of Community and Social Services*) *v. John Doe*, 2015 ONCA 107 (CanLII).
[6] Section 52(4) states that the *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 matter.
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.

applying at a later date.[7]

What types of records are covered by this exclusion?

[13] 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.[8]

[14] Section 52(3) does not exclude all records concerning the actions or inactions of an employee of the institution simply because their conduct could give rise to a civil action in which the institution could be held vicariously liable for its employees' actions.[9]

"In relation to"

[15] For the collection, preparation, maintenance or use of a record to be "in relation to" one of the three subjects mentioned in this section, there must be "some connection" between them.[10]

[16] The "some connection" standard must, however, involve a connection relevant to the scheme and purpose of the *Act*, understood in their proper context. For example, given that accountability for public expenditures is a core focus of freedom of information legislation, accounting documents that detail an institution's expenditures on legal and other services in collective bargaining negotiations do not have "some connection" to labour relations.[11]

"Labour relations"

[17] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to similar relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.[12]

"Employment of a person"

[18] The term "employment of a person" refers to the relationship between an employer and an employee. The term "employment-related matters" refers to human

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[7] *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. 509.
[8] *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)."
[9] *Ministry of Correctional Services*, cited above.
[10] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).
[11] Order MO-3664, *Brockville* (*City*) *v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div Ct.).
[12] *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.

resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.[13]

Section 52(3)3: labour relations or employment-related matters in which the institution has an interest

[19] 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 use 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 of the municipality

[20] The municipality submits that the exclusion found at section 52(3)3 applies to all records requested by the appellant. It submits that the appellant requested records contained in and related to his disability management file, all of which are "employment and human resource-related" documents. The municipality submits that disability management records are created, maintained, and used for the purpose of ensuring compliance with the *Workplace Safety and Insurance Act* (*WSIA*), which is clearly an employment requirement of workplaces. It further submits that none of the responsive records fall within the exceptions to this exclusion found at section 52(4).

[21] The municipality submits that these records meet all three parts of the test in section 52(3)3 for the exclusion to apply. It submits that all records have been collected, prepared, maintained, and used by both the municipality and the appellant's direct employer, the HRPS, for the purposes of managing the appellant's disability claim. The municipality, which is a regional municipality, is acting under contract to process the disability claims of the HRPS employees.

[22] The municipality submits that all records contained in the appellant's file document consultations, discussion and communications with various stakeholders regarding the management of the appellant's disability claim, including the appellant's employer (HRPS), the Workplace Safety and Insurance Board (WSIB), and medical professionals.

[23] The municipality submits that both it and the HRPS have an employment interest in the records as the records have been created to uphold obligations under the *WSIA*. The municipality submits that it and the HRPS work collaboratively to ensure disability claims are managed appropriately and in accordance with the *WSIA*, and that all the

[13] Order PO-2157.

records requested by the appellant are those that the municipality and the HRPS have a direct interest in as an employer.

[24] The municipality submits that the appellant is confusing exemptions with exclusions under the *Act*. It submits that it agrees that exemptions to access are limited and specific and tests often must be applied to each record to ensure an exemption has been appropriately claimed. It submits, however, that an exclusion serves to exclude the requirements of the *Act* to an entire category of records.

[25] The municipality submits that the appellant's access request was for his entire disability management file and reiterates that disability management is an employment requirement under *WSIA*. It submits that it would be unreasonable to assume that certain records contained in a disability management file are not employment-related and not subject to the exclusion.

Representations of the appellant

[26] The appellant submits that the municipality is not his employer and that he is employed by the HRPS. He acknowledges that his employer "outsourced some administrative responsibilities" to the municipality, but this relationship has since ended. He submits that since the municipality is not his employer, he questions whether it can claim the section 52(3) exclusion.

[27] The appellant appears to argue that since the HRPS is no longer outsourcing administrative responsibilities to the municipality, the municipality should not be able to withhold the records under the section 52(3) exclusion.

[28] The appellant submits that his employer (HRPS) advised him to seek information from the municipality related to his injury, but the municipality has refused to disclose the information requested. He questions whether the employer's advice (that he seek information from the municipality) overrides the exemptions claimed by the municipality. He submits that it is unclear who has "jurisdiction" over the records and the right to exercise the exemption: the municipality that collected the records or the appellant's employer whose authority authorized the collection of the records. He submits that it is unclear whether the withheld information meets the purpose of the exclusion "to protect some confidential aspects of labour relations."

[29] The appellant submits that the municipality is using the labour relations exclusion as a blanket to withhold records, when the *Act* states that the exemptions from the right of access should be limited and specific. He states that the IPC has acknowledged that the "purpose of exemptions are to ensure the privacy and safety of individuals." He states that it is unclear how granting access to the collection, interpretation, and directives of personal health information would cause any impact to the privacy and safety of any individual other than the person requesting the records.

Analysis and findings

[30] Based on my review of the records and the parties' representations, I find that section 52(3)3 applies to exclude the appellant's disability management file from the scope of the *Act*.

[31] Before moving on to my analysis of the three-part test for section 52(3)3, I acknowledge that the appellant is correct that "exemptions from the right of access should be limited and specific." However, I note that section 52(3)3 is an exclusion, not an exemption. Once section 52(3)3 is found to apply, the records are excluded from the *Act* and there is no further analysis or balancing of privacy interests. Therefore, I will not consider the appellant's argument on this.

[32] For me to find that section 52(3)3 applies, I must be satisfied that:

1. the record was collected, prepared, maintained or used by the municipality or on its behalf;

2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and,

3. these meetings, consultations, discussions or communications were about labour relations or employment-related matters in which the municipality has an interest.

[33] For section 52(3)3 to apply, all three parts of the test set out above must be met.

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

[34] After reviewing the representations of the parties and the circumstances of this appeal, I am satisfied that the appellant's disability management file was collected, prepared, maintained or used by the municipality in its capacity as the contracted agent of the appellant's employer, the HRPS, to manage disability claims on the HRPS' behalf. The records at issue are emails and case management notes contained in the appellant's disability management file, which sets out the appellant's injury and documents the municipality's management of his disability. I accept that these types of records are typically collected, prepared, maintained or used by an employer as part of an employee's file when an employee has a workplace injury. Accordingly, I find that part 1 of the test under section 52(3)3 has been met.

[35] I am also satisfied that the records in the appellant's disability management file were collected, prepared, maintained or used in relation to meetings, consultations, discussions or communications with various stakeholders for the purpose of managing the appellant's disability claim. These various stakeholders include the municipality, the appellant's employer (HRPS), the WSIB, and medical professionals. Therefore, I find that part 2 of the test has been met.

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

[36] The records 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. 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.[14]

[37] The IPC has found that the institution that claims the provincial equivalent of the section 52(3) exclusion must be the same institution that has the interest in the records as employer.[15]

[38] Based on the representations of the municipality and the nature of the records, I find that the appellant's disability management file was collected, prepared, maintained or used by the municipality in relation to meetings, consultations, discussions or communications about labour relations or employment related matters in which the municipality has an interest.

[39] Distilled down to its core, the appellant's position is that the municipality does not have an interest in the labour relations or employment-related matters that the meetings, consultations, discussions or communications are about because the municipality is not the appellant's employer.

[40] Previous IPC orders have touched on whether an institution can claim the section 52(3)[16] exclusion when another institution is the employer. Some previous IPC orders[17] found that an institution could, while more recent orders[18] rejected the reasoning in those orders.

[41] In Order PO-4368, the appellant in that appeal, requested certain records created by an investigator of the Professional Standards Bureau (PSB) of the Ontario Provincial Police (OPP) during an investigation into allegations of officer misconduct. The ministry sought to claim the employment or labour relations exclusion over the requested records based on the interest of a municipal police service whose officers were the subjects of the investigation. The adjudicator found that the records at issue were about the conduct of the municipal police officers only and the ministry did not have the necessary interest as an employer to establish the exclusion over the requested records.

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[14] *Ontario* (*Solicitor General*) *v. Ontario* (*Assistant Information and Privacy Commissioner*), cited above.
[15] See Orders PO-4204 and PO-4368. But see also Orders P-1560 and PO-2106, which found that section 65(6)3 may apply where the institution that claims the exclusion is not the same institution that originally "collected, prepared, maintained or used" the records. Order PO-4368 explicitly rejected the reasoning in Order P-1560.
[16] Or section 65(6), its provincial equivalent.
[17] See orders P-1560 and PO-2106.
[18] See orders PO-4204, PO-4368, and MO-3981.

[42] In coming to that decision, the adjudicator in Order PO-4368, went through previous IPC orders dealing with situations in which the labour exclusion was claimed by an institution that was not the same institution that originally "collected, prepared, maintained or used" the records. The adjudicator rejected the reasoning in Order P-1560, on which the previous orders that allowed the exclusion relied.

[43] Order P-1560 held that the exclusion at section 65(6)3 of the *Freedom of Information and Protection of Privacy Act* (the provincial equivalent of the exclusion at section 52(3) of the *Act*) may apply where the institution that claims the employment or labour relations exclusion is not the same institution that originally "collected, prepared, maintained or used" the records. In rejecting this proposition, the adjudicator in Order PO-4368, found that the reasoning in Order P-1560 has been "superseded by the reasoning applied in more recent decisions of the IPC and the courts, and is no longer good law." She states at paragraph 89:

> [89] The IPC's approach to the section 65(6) exclusions has been refined significantly in the time since the release of Orders P-1560 (in 1998) and PO-2615 (in 2007). As noted in Order PO-4204 (released in 2021), Order P-1560 was issued before the release of several significant and binding court decisions addressing the interpretation of section 65(6). In *Ontario (Solicitor General) v. Mitchinson*, the Court of Appeal concluded that both a plain reading and a purposive interpretation of the phrase "in which the institution has an interest" in section 65(6) of *FIPPA* supports limiting the exclusion to records relating to an institution's own workforce. The Court of Appeal's reasoning was adopted in subsequent decisions of the Divisional Court, which applied the same narrow interpretation to the analogous exclusion in *MFIPPA*, and reiterated the importance of a fact-specific and record-specific approach to the application of the exclusions. In orders post-dating Order PO-2615, the IPC has adopted these principles, interpreting and applying a narrow construction of the exclusions in order not to extend their reach beyond what is necessary to accomplish the Legislature's aim of protecting certain information relating to an institution's relations with its own workforce.

[44] In rejecting the ministry's argument, the adjudicator in Order PO-4368, agreed with the reasoning in Orders PO-4204 and MO-3981, in which the IPC rejected the exclusion claims of impartial oversight bodies whose roles were inconsistent with the claim of an interest as an employer. The adjudicator acknowledged that "the Court of Appeal and Divisional Court did not explicitly examine the question of whether the exclusions in section 65(6) apply only to records concerning the respondent institution's own workforce or employees."

[45] At paragraph 102 of Order PO-4368, the adjudicator summarizes the IPC's approach to the application of the employment or labour relations exclusions. She states:

> [102] The IPC's approach to the application of the exclusions is record-specific and fact- specific, and thus requires consideration of the particular records at issue within the factual context of the appeal. A key part of the relevant factual context in an appeal is the identity of the institution to which the access request is made. Among other things, the identity of the institution will determine the applicable statute, and issues around custody or control, all of which are relevant to determining the very scope of the records responsive to the request.

[46] I agree with the adjudicator's reasoning and analysis of the IPC's jurisprudence and adopt it in this appeal. I find that my determination that the municipality has an interest in the appellant's disability management file is consistent with the evolution of the IPC's jurisprudence on this issue and the adjudicator's finding in Order PO-4368. The underlying principle of these appeals is that determining whether a record is excluded from the *Act* under section 52(3) is record-specific and fact-specific.

[47] In Order PO-4368, the issue before the adjudicator and the orders accepted by her, dealt with situations where the IPC rejected the exclusion claims of impartial oversight bodies whose roles were inconsistent with the claim of an interest as an employer. That is not the same as the case before me. As the adjudicator stated in Order PO-4368, the identity of the institution to which the access request is made to is a key part of the relevant factual context in an appeal and the courts did not explicitly examine the question of whether the exclusions in section 65(6) apply only to records concerning the respondent institution's own workforce or employees.

[48] In this appeal, the municipality is not an impartial oversight body of the HRPS, the appellant's employer. The municipality was contracted by the HRPS to manage disability claims on behalf of the HRPS. This created an agency relationship between the HRPS and the municipality with the municipality acting as the HRPS' agent.

[49] Based on the evidence before me, I find that the records at issue in the appellant's disability management file meet the requirement that they be about employment-related matters, because they relate to the municipality's management of the appellant's workplace injury and resulting disability. I am satisfied that the municipality was acting as the appellant's employer on behalf of the HRPS in relation to the records at issue contained in the appellant's disability management file.

[50] The appellant argues that the exclusion should no longer apply because the municipality is no longer contracted by the HRPS to deal with the HRPS' disability claims. I am not persuaded by the appellant's argument, because at the time the records contained in the appellant's disability management file were created, the municipality was still under contract with the HRPS to manage his disability file.

[51] In conclusion, I am satisfied in this case that the municipality has an interest in the communications in the records as an employer, on behalf of the HRPS. Accordingly,

I find that part 3 of the test under section 52(3)3 is met.

[52] Neither party has argued that the exceptions in section 52(4) apply to the records at issue in the appellant's disability management file, and I find, that none of the exceptions in section 52(4) apply.

[53] Since all three parts of the section 52(3)3 test have been met and none of the exceptions in section 52(4) apply, I find that the records at issue in the appellant's disability file are excluded from the scope of the *Act*. Therefore, the appellant has no right of access to them under the *Act*. This does not preclude the appellant from obtaining these records through other legislative schemes outside of the *Act*.

Issue B: Did the municipality conduct a reasonable search for records?

[54] The appellant claims that additional records responsive to his request should exist. Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[19] If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the municipality's decision. If I am not satisfied, I may order further searches.

[55] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.[20] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related (responsive) to the request.[21]

[56] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.[22]

Representations of the municipality

[57] The municipality submits that it conducted a reasonable search for responsive records. It acknowledges that its initial access decision in response to the appellant's request did not identify case management notes as being responsive to the request. It submits, however, that the case management notes were flagged as existing after a secondary discussion with the municipality's Manager of Health, Safety and Wellness. The municipality submits that since the notes are contained in its disability management system and "clearly fall within the employment-related exclusion," and access to them

[19] Orders P-85, P-221 and PO-1954-I.
[20] Orders P-624 and PO-2559.
[21] Orders M-909, PO-2469 and PO-2592.
[22] Order MO-2246.

was being denied, they were not indexed.

[58] The municipality submits that its initial response to the appellant's access report included all records contained in the appellant's paper file. It submits that the human resources division (HR) produced the paper-based file in a scanned format and that the paper file contained a mixture of forms and emails that were placed into the appellant's physical file prior to the access request because they were deemed relevant.

[59] The municipality submits that its second search conducted was of the electronic disability management system, which HR acknowledged that it did not search initially. It submits that several case notes and documents were identified in the second search but given the volume of the records and the labour exclusion was being claimed over most of them, the case notes and documents were not indexed, nor compared against the paper file for duplication. It submits that only records that appeared to answer what the appellant advised he was attempting to ascertain through his access request were reproduced and indexed after the second search.

[60] The municipality submits that it opted to withhold various records from the appellant, some of which may touch on the employment matters noted in the appellant's representations. It submits that providing an index of records that explains the contents of all records is not a reasonable expectation, particularly where the records are being withheld under the employment-related exclusion.

[61] The municipality submits that despite the exclusion, it granted the appellant access to several records contained primarily in the paper file, and these records were indexed; although for email records the index only listed the date at the top of an email trail, not all conversation dates within the trail. The municipality submits that this may partially explain why certain content appears to have not been located to the appellant.

[62] The municipality submits that the notes and documents contained in the disability management system were easily located but it claimed the labour exclusion to withhold all these records (except for one case note). The municipality submits that the disability management system contains a large portion of the information relating to the appellant's disability management claim, including conversation notes with external parties, assessment notes, etc. It further submits that a basic index of the information contained in the system will not provide the appellant with enough details to determine whether the specific content noted in his representations exists.

[63] The municipality submits that the appellant's access request was for his entire disability management file, and as mentioned previously, disability management is an employment requirement under the *WSIA*. It submits that it would be unreasonable to assume that certain records contained in a disability management file are not employment-related and not subject to the exclusion. The municipality further submits that it is not reasonable to expect that a description of the content of every telephone and email conversation, and every assessment note located within the disability

management system be described in an index of records, particularly where the information is being withheld under an exclusion.

Representations of the appellant

[64] The appellant submits that further records responsive to his request should exist and that the municipality has not provided any information on its manner of search.

[65] The appellant submits that the municipality has not acknowledged the existence of other paper records when it issued its response to his access request even though in its initial response, the municipality stated that most of the records were in paper form.

[66] The appellant submits that he discovered that the municipality had requested his medical documentation directly from his medical provider without informing him on several occasions. He acknowledges that these records were ultimately produced but given the "sporadic pattern" of the dates, he suspects there may be more medical documentation obtained without his knowledge. The appellant is seeking a complete list of all medical documentation collected without his knowledge, including the details of any phone interviews or in-person meetings the municipality had with his healthcare providers. The appellant submits that the municipality has had at least one in-person meeting with one of the appellant's healthcare providers without his knowledge, and he has not been provided the details of that meeting.

[67] The appellant submits that communications from the WSIB were not located by the municipality. He states that a letter dated August 6, 2020 was sent to him by the WSIB and copied to the municipality, and this letter was not identified as a responsive record. He states another letter dated May 9, 2019 was sent by the municipality to the WSIB, and this letter was not listed as a responsive record by the municipality.

[68] The appellant submits that the municipality and the WSIB often communicated by telephone about him, and records related to these telephone calls have not been identified. He states that the WSIB mentioned a teleconference held with the municipality, but no records have been identified related to this teleconference. He provided a WSIB case management note that details a call from the municipality as an example of another call without related records identified.

[69] The appellant submits that the municipality routinely communicated with the WSIB via "electronic memos," but the municipality has only acknowledged the existence of a single WSIB memo when he has at least two more memos. He argues that this proves that the municipality has failed to locate this type of record.

[70] The appellant submits the municipality did not locate any records relating to correspondence with the Ontario Municipal Employees Retirement System (OMERS), which is responsible for overseeing injured workers' pension plan. He submits that email correspondence indicates that there have been discussions between the municipality and OMERS.

[71] The appellant submits that in its initial response to his request, the municipality excluded electronic case management records, which it subsequently disclosed as a single entry. He submits that it is not reasonable to conclude that this is the only electronic case management record. He also submits that he received lots of telephone calls from the municipality, but it has not located any records related to these communications.

[72] The appellant submits that the municipality scheduled and participated in "Return to Work" meetings and that its representative attended with handwritten notes and made handwritten notes during the meeting, but these handwritten notes have not been located as responsive records.

[73] The appellant submits that the municipality held monthly meetings with his employer and members of his Association to discuss his medical information, and these meetings referenced various records and created new records that have not been located as responsive records by the municipality.

[74] The appellant submits that the examples above all satisfy his burden to show that there is a reasonable basis to believe that more records responsive to his request exist. He submits that the municipality is relying on the labour relations exclusion to withhold records, but it is not a blanket "exemption" to deny the existence of records. He further submits that the municipality still has the discretion to disclose the records under the *Act*. The appellant submits that the municipality should provide a comprehensive index of the responsive records in keeping with the principles of transparency under the *Act*.

Analysis and findings

[75] Based on the parties' representations, I am satisfied that the municipality conducted a reasonable search for responsive records.

[76] The appellant takes the position that additional records responsive to his request should exist. The appellant also seeks to have the municipality provide a comprehensive index of all responsive records.

[77] In response to the appellant's request for an index of records, I note that the *Act* does not require that the municipality produce an index of all records responsive to his request. It must only provide sufficient detail, so the appellant understands what records are being denied.

[78] As noted above, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.[23] The appellant's representations detail several types of records that he believes should have been located by the municipality's search.

[23] Order MO-2246.

[79] The municipality acknowledges that there was an error in its initial access decision in response to the appellant's request and it did not identify the case management notes as being responsive to his request, but it later did so after a discussion with the relevant manager. The municipality explains that the disability management system contains a large portion of the information relating to the appellant's disability claim, including conversation notes with "external parties, assessment notes, etc. and it is not reasonable for every record in the system to be described in an index of records. The municipality submits that it did not index every record responsive to the appellant's request, especially if it claimed an exclusion over them.

[80] Based on the representations of the parties, I find that the appellant has not established a reasonable basis for concluding that additional records responsive to his request may exist outside of the types of records the municipality has already located. I accept that some of the types of records the appellant alleges the municipality has not located are contained in the withheld case management notes. For example, the case management notes contain details about calls made and received, correspondence from the WSIB, and memos. The *Act* does not require the municipality to prove with absolute certainty that further records do not exist. However, it must provide sufficient evidence to show they have made a reasonable effort to identify and locate responsive records, and I find that it has done so.[24]

[81] The municipality has described where it searched, the staff consulted, and the results of the search. I am satisfied that the municipality carried out a search involving experienced employees knowledgeable in the subject matter of the request and that it expended a reasonable effort to locate records which are reasonably related to the request.[25]

[82] Furthermore, the appellant's request is for his "entire disability management file," and I have found that these records are excluded from the *Act*. Even if I were to order the municipality to conduct another search, any records located as responsive to the appellant's request would similarly be excluded from the *Act* based on the wording of his request. Therefore, I am not persuaded that ordering the municipality to conduct another search will locate further records responsive to the appellant's request.

[83] For the reasons above, I find that the municipality conducted a reasonable search for responsive records.

ORDER:

I uphold the municipality's decision and dismiss the appeal.

Original Signed by: October 23, 2024

[24] Orders P-624 and PO-2559.
[25] Orders M-909, PO-2469 and PO-2592.

Anna Truong
Adjudicator