

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4633

Appeal MA22-00161

Waterloo Regional Police Services Board

March 5, 2025

Summary: An individual made a request to the Waterloo Regional Police Services Board under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to policies and records related to an investigation about a complaint against a member of the police. The police granted access to the policies but withheld the complaint records because they claim the complaint records are excluded from the *Act* under the employment or labour relations exclusion (section 52(3)3). The individual believes more records should exist.

In this order, the adjudicator upholds the police's claim that the labour relations exclusion applies. She also finds that the police conducted a reasonable search for responsive records and dismisses the appeal.

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

OVERVIEW:

[1] The Waterloo Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records, including policies, related to an investigation into a complaint against a Victims Services Counsellor (counsellor) employed by the police. The original request was amended to the following:

A copy of the WPS Regulations and Procedures Manual for Employees of the WPS.

Specifically, I am requesting access to the following policies: (Incidents and Occurrences, Interpreters, Member Conduct, Expectations and Duty to Report, Paid Duties, Promotions Sergeant and Staff Sergeant, Protection of Personal Information and Privacy Breaches, Relationships in the Workplace.)

I am also requesting any policies or procedures concerning the complaint process regarding employees/members of the Police Service.

Any CPIC communications between [specified individual] and/or WPS Victim Services and Guelph Police Service from April 2021 to Present (Specifically with [specified Constable]), involving myself.

[2] The police issued a decision stating there are no records responsive to the “WRPS Regulations and Procedures Manual for Employees” portion of the appellant’s request. The police granted full access to the “Member Conduct, Expectations and Duty to Report” procedures. The police claimed that the other requested procedures were outside the scope of the request and therefore not responsive. The police claimed that there were no records responsive to the CPIC communications portion of the request.

[3] The police’s decision letter also references a previous version of the request where the requester had asked for all emails and documentation relating to the investigation into his complaint. The police denied access to records responsive to this request under section 52(3) (employment or labour relations) of the *Act*, because they claim that these records are excluded from the scope of the *Act*.

[4] The appellant appealed the police’s decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[5] During mediation, the police issued a supplementary decision granting access to audio recordings of the appellant’s interviews with the police about his complaint.

[6] The appellant advised he is pursuing access to the records the police claim are non-responsive and the records withheld under the section 52(3) exclusion. The appellant also indicated that he believes additional records responsive to the police’s policy for complaints about civilian employees should exist.

[7] As a mediated resolution was not reached, 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.¹

[8] During the inquiry, the police issued a revised decision releasing all the police policies at issue in full to the appellant. The appellant advised that he is satisfied with the police's response with respect to the scope of his request. Accordingly, these records and the issue of scope are no longer at issue in this appeal. However, the appellant still believes that further records responsive to his request should exist, specifically policies about the complaint process against a member of the police.

[9] In this order, I uphold the police's decision that certain investigation records are excluded from the scope of the *Act* due to the application of section 52(3). I also uphold the police's search for responsive records as reasonable. I dismiss the appeal.

RECORDS:

[10] The records remaining at issue in this appeal consist of investigation documents and emails (investigation records) related to the appellant's complaint.

[11] During the inquiry, the police were asked to provide a copy of the investigation records. The police did not provide the investigation records, but they provided an affidavit from their Access to Information Analyst in the police's Access of Information Office.

ISSUES:

- A. Does the section 52(3)3 exclusion for records relating to labour relations or employment matters apply to the investigation records?
- B. Did the police conduct a reasonable search for records responsive to the appellant's request?

DISCUSSION:

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

[12] 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

¹ Portions of the police's representations were withheld in accordance with the confidentiality criteria in IPC Practice Direction 7 and section 7 of the IPC's *Code of Procedure*.

it outside of the *Act's* access scheme.²

[13] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.³

[14] The police argue that sections 52(3)1 and 3 apply to the records at issue. Since I find below that section 52(3)3 applies to the withheld records, I will not refer to section 52(3)1.

[15] 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.

[16] If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies,⁴ 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 applying at a later date.⁵

What types of records are covered by this exclusion?

[17] 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.⁶

² Order PO-2639.

³ *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107 (CanLII).

⁴ 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.

⁵ *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.

⁶ *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)."

[18] 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.⁷

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 police

[20] The police submit that the records at issue are all emails and documentation concerning an investigation by an Internal Investigator (investigator) into a Victim Services Counsellor (counsellor) in his capacity as an employee of the police, that began after the appellant issued a formal complaint in September 2021. They submit that the emails are internal emails between the investigator and the counsellor, the investigator and the Human Resources (HR) Department, and the investigator and the Legal Department. They submit that the records were created by members of the police in response to the appellant's complaint about the counsellor employed by them.

[21] The police submit that they prepared the investigation records and used them in relation to various meetings and discussions about the appellant's complaint about the counsellor employed by them. The police submit that these meetings, consultations, discussions or communications were about labour relations or employment related matters in which they have an interest. The police submit that Orders MO-2694 and MO-4308 support their position.

[22] The police submit that in Order MO-2694, the IPC found that the collection, preparation, maintenance or use of the records at issue, including materials collected by the investigator in that appeal were considered employment-related matters in which the institution has an interest.

[23] The police submit that in Order MO-4308, the IPC found that the complaint as a whole relates to communications about an employment-related matter in which the

⁷ *Ministry of Correctional Services*, cited above.

institution had an interest as an employer.

Representations of the appellant

[24] The appellant submits that the records at issue are emails and documentation related to an investigation by the Internal Investigator involving a Victim Services Counsellor in their capacity as an employee of the police. He submits that section 52(3)3 does not apply to the investigation records.

[25] The appellant submits that matters related to the actions of employees, for which an institution may be responsible, are not employment-related matters for the purpose of section 52(3)3. He further submits that section 52(3)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.

[26] The appellant submits that since this matter concerns the actions of an employee in the capacity as a Victim Services Counsellor of the police, and that the police could potentially be responsible, the investigation records requested should not be considered "employment-related matters" under section 52(3)3. He submits, therefore, the emails and documentation concerning the investigation into the conduct of the counsellor should not be excluded and should be disclosed under the *Act*.

Analysis and findings

[27] Based on the parties' representations, I find that section 52(3)3 applies to exclude the investigation records from the *Act*.

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

1. the investigation records were collected, prepared, maintained or used by the police or on their 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 police have an interest.

[29] In order 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

[30] After reviewing the representations of the parties and the circumstances of this

appeal, I am satisfied that the investigation records were collected, prepared, maintained or used by the police in their capacity as the counsellor's employer. I accept that the investigation records at issue would include the allegations about the counsellor, as well as the police's investigation into those allegations, including emails between the counsellor, his supervisors, and the police's HR and legal departments. I accept that these types of records are collected, prepared, maintained or used by an employer as part of an employee's file. Accordingly, I find that part 1 of the test under section 52(3)3 has been met.

[31] I am also satisfied that the investigation records were collected, prepared, maintained or used in relation to meetings, consultations, discussions or communications by the police with or in relation to the counsellor, in connection with their investigation into the allegations made in the appellant's complaint against the counsellor. 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

[32] 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.⁸

"In relation to"

[33] 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.⁹

[34] 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.¹⁰

"Labour relations"

[35] The term "labour relations" refers to the collective bargaining relationship between

⁸ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

⁹ Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

¹⁰ Order MO-3664, *Brockville (City) v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div. Ct.).

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.¹¹

“Employment of a person”

[36] 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.¹²

[37] Examples of when the IPC has found the phrase “labour relations or employment-related matters” applicable include a job competition¹³, an employee’s dismissal¹⁴, and a grievance under a collective agreement¹⁵.

[38] In addition, previous IPC orders have found that an employment-related nexus is not established simply because an institution is called upon to address a complaint about one of its employees, simply on the basis that a complaint *might* result in a disciplinary matter.¹⁶

[39] Based on the parties’ representations and the nature of the records, I find that the investigation records were collected, prepared, maintained or used by the police in relation to meetings, consultations, discussions or communications about labour relations or employment related matters in which the police have an interest.

[40] The appellant specifically seeks access to records created during the investigation into the complaint he made against the counsellor employed by the police. The appellant alleged that the counsellor’s actions as an employee of the police violated the police’s policy.¹⁷ The appellant argues that matters related to the actions of employees, for which an institution may be responsible, are not employment-related matters for the purpose of section 52(3)3.

[41] The appellant is partially correct. Matters related to the actions of employees, for which an institution may be responsible, are not employment-related matters for the purpose of section 52(3)3, *unless* the meetings, consultations, discussions or communications are about labour relations or “employment-related” matters in which the institution has an interest. Whether a record is excluded from the *Act* under section 52(3)

¹¹ *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.

¹² Order PO-2157.

¹³ Orders M-830 and PO-2123.

¹⁴ Order MO-1654-I.

¹⁵ Orders M-832 and PO-1769.

¹⁶ Orders PO-4223 and PO-3861.

¹⁷ The Member Conduct, Expectations and Duty to Report Policy.

is record-specific and fact-specific.

[42] In this case, the appellant specifically requested the investigation records into his complaint against the counsellor, including internal emails related to the police's investigation into his complaint. These records were created and maintained as part of the police's role as the counsellor's employer. The investigation was conducted to assess the counsellor's professional conduct in his capacity as the police's employee. Discussions and communications about the professional conduct and potential discipline of an employee are matters in which the police have an interest as the counsellor's employer.

[43] I am satisfied that the investigation records meet the requirement that they be about employment-related matters, because they relate to the counsellor's employment with the police and consist of records, including internal emails, that relate to the police's investigation into the counsellor's employment and conduct as an employee of the police. This is not simply a matter of a complaint from a member of the public that may or may not have led to discipline: the evidence before me satisfies me that the police in this case were acting as an employer in relation to the investigation records.

[44] I am satisfied in this case that the police's interest in the communications in the investigation records is as an employer. Accordingly, I find that part 3 of the test under section 52(3)3 is met.

[45] Neither party has argued that the exceptions in section 52(4) apply to the investigation records, and I find that none of the exceptions in section 52(4) apply.

[46] 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 investigation records are excluded from the scope of the *Act*. Therefore, the appellant has no right of access to them under the *Act*.

Issue B: Did the police conduct a reasonable search for records responsive to the appellant's request?

[47] 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 17.¹⁸ If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the police's decision. If I am not satisfied, I may order further searches.

[48] 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.¹⁹ A reasonable search is one in which an experienced employee knowledgeable in the subject

¹⁸ Orders P-85, P-221 and PO-1954-I.

¹⁹ Orders P-624 and PO-2559.

matter of the request expends a reasonable effort to locate records which are reasonably related (responsive) to the request.²⁰

[49] 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.²¹

Representations, analysis and findings

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

[51] The police submit that they conducted a reasonable search for responsive records. They submit that they sought and received initial clarification about the request from the appellant. The police submit that an experienced member of their Access to Information (ATI) Unit, a Sergeant from the Strategic Services Branch, Policies and Procedures Development, their Legal Department, as well as their Human Resources Branch completed the search. They submit that they searched for policies or procedures related to secondary employment, and their Regulations and Procedures Manual for their employees, but no such records exist. They also submit that the appellant has not provided a reasonable basis for concluding that further responsive records exist. In support of their position, the police submitted an affidavit from an ATI Analyst from their ATI Office, which reiterated their representations.

[52] The police have described the staff involved in the search, where they searched, and the results of the search. I am satisfied that the police carried out a search involving experienced employees knowledgeable in the subject matter of the request and that those employees expended a reasonable effort to locate records which are reasonably related to the request.²² I am satisfied that the police have provided sufficient evidence to establish the reasonableness of their search efforts.

[53] 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 submits that he continues to seek policies or procedures related to the complaint process. His representations do not address the police's search efforts. However, he believes given the police's size and the number of staff they employ who interact with the public, it is reasonable to conclude that they would have a policy or procedure for complaints made against their employees from members of the public. The appellant submits that given that the police is a public institution, it is reasonable to conclude further records in the

²⁰ Orders M-909, PO-2469 and PO-2592.

²¹ Order MO-2246.

²² Orders M-909, PO-2469 and PO-2592.

²³ Order MO-2246.

form of policies and procedures exist.

[54] Based on my review of the representations of the parties, I find that there is insufficient evidence before me to establish a reasonable basis to conclude that these specific policies and procedures the appellant believes should exist, exist in the police's record holdings but have not yet been located through their search. The police have confirmed that these policies and procedures do not exist, and I am not persuaded that were I to order them to conduct another search they would locate them. Even if I found the police did not conduct a reasonable search, which I do not, I can only order the police to conduct a further search. I cannot order them to produce specific records.

[55] The *Act* does not require the police to prove with absolute certainty that further records do not exist. However, the police must provide sufficient evidence to show they have made a reasonable effort to identify and locate responsive records, and I find that they have done so.²⁴

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

ORDER:

I uphold the police's exclusion claim and their search, and I dismiss the appeal.

Original Signed by: _____

Anna Truong
Adjudicator

March 5, 2025

²⁴ Orders P-624 and PO-2559.