

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-4659

Appeal MA23-00039

Municipality of Chatham-Kent

May 30, 2025

**Summary:** The appellant is a union who asked the Municipality of Chatham-Kent for the names and email addresses of two employees who had forwarded to senior management a union email urging employees not to come to work on a particular day.

The municipality refused to give the appellant this information because it claimed that it is in labour relations or employment records that are excluded from the *Municipal Freedom of Information and Protection of Privacy Act* by section 52(3)3.

In this order, the adjudicator concludes that the emails containing the names and email addresses of the two employees are excluded from the *Act* by section 52(3)3. He dismisses the appeal.

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

### OVERVIEW:

[1] On November 6, 2022, a union representing employees of the Municipality of Chatham-Kent (the municipality) sent emails to its members asking them to take work action to show solidarity with another union involved in a labour dispute with the provincial government. The union encouraged its members to take a personal or sick day on November 7, 2022, and to come to a demonstration instead of going to work.

[2] A number of municipal employees failed to show up for work on November 7,

2022, which eventually resulted in disciplinary action against some of them.

[3] The union later became aware that two employees had forwarded to senior management its emails urging work action. It then submitted an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the municipality for the following information:

Name of individual and content of email that forwarded an email from cupelocal12@gmail.com titled "CUPE Protest" that is dated November 6, 2022 to a Municipality of Chatham-Kent email.

Name of individual and content of email that forwarded an email from cupelocal12@gmail.com titled "Union Solidarity" that is dated November 6, 2022 to a Municipality of Chatham-Kent email.

[4] In response, the municipality located responsive records, which are emails chains that include the emails of the two employees that forwarded the union's original emails to senior management and the original emails themselves. The municipality then sent a decision letter to the appellant advising that it was providing it with partial access to these records. The municipality disclosed most of the union's original emails but withheld the emails forwarded by the two employees and claimed that they are excluded from the *Act* by section 52(3) (labour relations or employment records). The municipality also withheld some information in the emails under the mandatory personal privacy exemption in section 14(1) of the *Act*.

[5] The appellant appealed the municipality's decision to the Information and Privacy Commissioner of Ontario (IPC), which assigned a mediator to assist the parties in resolving the issues in dispute.

[6] During mediation, the appellant specified that it is only seeking access to the names and email addresses of the two employees who forwarded the union's original emails to senior management at the municipality. The municipality then contacted the two employees to ask them whether they would consent to their names and email addresses being disclosed to the appellant. It did not obtain their consent.

[7] This appeal was not resolved during mediation and was moved to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry under the *Act*. The adjudicator initially assigned to this appeal decided to conduct an inquiry and sought and received representations from the municipality and the appellant on the issues to be resolved.<sup>1</sup> This appeal was then transferred to me to complete the inquiry. I determined that it was not necessary to seek additional information from the parties before making my decision.

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<sup>1</sup> The parties' representations were shared in accordance with Practice Direction 7 of the IPC's *Code of Procedure*.

[8] In this order, I find that the emails containing the names and email addresses of the two employees are excluded from the *Act* by section 52(3)3. I uphold the municipality's decision not to disclose them.

## **RECORDS:**

[9] The records at issue in this appeal are two emails that were sent by two employees to senior management at the municipality. The appellant is seeking the names and email addresses of the two employees, which are found in these emails.

## **DISCUSSION:**

[10] The sole issue to be determined in this appeal is whether the section 52(3) exclusion for records relating to labour relations or employment matters applies to the emails at issue.

[11] 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*.<sup>2</sup>

[12] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.<sup>3</sup> If section 52(3) applies to a record, and none of the exceptions found in section 52(4) applies, the record is 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.<sup>4</sup>

[13] The municipality claims that the emails containing the names and email addresses of the two employees are excluded from the *Act* by section 52(3)3, which 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.

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<sup>2</sup> Order PO-2639.

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

<sup>4</sup> *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.

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

1. the emails containing the names and email addresses of the two employees were 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 are about labour relations or employment-related matters in which the municipality has an interest.

[15] For the collection, preparation, maintenance or use of a record to be “in relation to” the subject matter of the subsequent wording of section 52(3)3, there must be “some connection” between them.<sup>5</sup>

[16] The term “labour relations” in section 52(3)3 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.<sup>6</sup>

[17] The phrase “in which the institution has an interest” means more than a “mere curiosity or concern,” and refers to matters involving the institution’s own workforce.<sup>7</sup>

## **Summary of the parties’ representations**

### ***Municipality***

[18] The municipality claims that all three parts of the section 52(3)3 test are met with respect to the emails containing the names and email addresses of the two employees who forwarded the union’s emails to senior management. It submits that:

1. The emails were collected, maintained and used by the municipality as the basis for subsequent actions taken in relation to what it considered illegal strike actions by the union, and disciplinary actions against employees.
2. The emails were collected, maintained and used in relation to internal discussions between managers, communications and discussions with the municipality’s legal counsel, and communications and discussions with the union.
3. The discussions and communications concerned a labour dispute with the union and the disciplining of certain employees. The illegal strike action of the

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<sup>5</sup> Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

<sup>6</sup> *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.

<sup>7</sup> *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

municipality's employees taken by the union clearly falls into the category of a "labour relations matter" in which the municipality has an interest. Likewise, the disciplining of employees for unexcused absences from work is an "employment-related matter" in which the municipality has an interest.

### ***Appellant***

[19] The appellant submits that with respect to section 52(3)3, a distinction must be drawn between the original emails sent from union, and the sender information in the forwarding emails, which is the names and email addresses of the two employees. It submits that the latter information is at issue and it is not excluded from the *Act* by section 52(3)3.

[20] The appellant also claims that there is not "some connection" between the collection and maintenance of the two employees' names and email addresses and any labour relations matters that took place. It submits that this information relates to an internal union matter, not labour/employment relations between the union and the employer.

[21] Finally, the appellant claims that the section 52(3)3 exclusion should be interpreted narrowly. It submits that the municipality's "interest" as an employer is limited to the content of the original emails sent by the appellant, not who shared that information. Any contemplation of a labour dispute and litigation against the appellant would have been pursuant to the content of the original emails.

### **Analysis and findings**

[22] I have considered the parties' representations and reviewed the emails that contain the names and email addresses of the two employees who forwarded the union's original emails calling for work action to senior managers at the municipality.

[23] At the outset, I would point out that the IPC has consistently taken the position that when determining whether the exclusions in the *Act* apply, including section 52(3), one must examine the record as a whole rather than looking at individual pages, paragraphs, sentences or words.<sup>8</sup> In Order MO-3798-I, the adjudicator cited a previous order that she had issued and stated:

I observed in Order PO-3642 that this whole-record-based approach is consonant with the language of the exclusions, which applies to "records" that meet the relevant criteria. It also corresponds to the legislature's decision not to incorporate into the public sector freedom-of-information statutes a requirement for the severance of excluded records, in contrast to their treatment of records subject to exemptions.<sup>9</sup> If the legislature had

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<sup>8</sup> See, for example, Orders M-797, P-1575, PO-2531, PO-3572 and PO-3642.

<sup>9</sup> Section 4(2) of *MFIPPA* and section 10(2) of *FIPPA*.

intended that the exclusions in the *Act* be applicable to records in part, it could have said so explicitly, as it did in its health sector-specific privacy and access legislation.<sup>10</sup>

[24] In the circumstances of this appeal, the appellant is only seeking the names and email addresses of the two employees who forwarded to senior management the union's original emails urging the municipality's employees to engage in work action. However, these two names and email addresses appear in the forwarding emails. As a matter of statutory interpretation with respect to the section 52(3) exclusion, I find that this information cannot be simply extracted or severed from the forwarding emails and considered in isolation. Instead, based on the whole records approach that the IPC has taken with respect to section 52(3), the two names and email addresses must be considered in the context of records in which they appear, which are the emails that forwarded the union's emails urging work action.

[25] In my view, the municipality has provided sufficient evidence to show that the forwarding emails, which contain the names and email address of the two employees, were collected and maintained by the municipality in relation to discussions and communications about labour relations matters in which the municipality has an interest, as required by the section 52(3)3 exclusion.

[26] The municipality collected and maintained the two employees' forwarding emails. These emails had the effect of notifying the municipality about the union's call to its members to engage in work action. The municipality then had discussions and communications both internally with its own staff and legal counsel and externally with the union about the work action.

[27] Communications and discussions about a union's call for work action are related to the collective bargaining relationship between the municipality and its employees, as governed by collective bargaining legislation. I am satisfied, therefore, that these discussions and communications were about "labour relations matters." Moreover, as the employer, the municipality clearly had "an interest" in these discussions and communications about labour relations matters because they involved its own workforce.

[28] I am not persuaded by the appellant's argument that the names and email addresses of the two employees who forwarded the union emails to senior management are not excluded by section 52(3)3 because there is not "some connection" between the municipality's collection and maintenance of the forwarding emails and any discussions and communications about labour relations matters that took place. I am also not persuaded by its argument that the municipality's "interest" as an employer is limited to the content of the original emails sent by the appellant, not who shared that information.

[29] It is important to reiterate that in assessing whether the section 52(3)3 exclusion

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<sup>10</sup> Section 51(2) of the *Personal Health Information Protection Act, 2004*.

applies, one must examine the records as a whole (i.e., the forwarding emails), and not simply the names and email addresses that appear in those emails.<sup>11</sup> In addition, in my view, the appellant's arguments are based on creating an artificial barrier between the original emails sent from union, and the forwarding emails that contain the names and email addresses of the two employees. I find that the forwarding emails cannot be considered in isolation from the original emails sent by the union. Although the two employees simply forwarded the union's emails to senior management, their decision to do so had the effect of notifying the municipality about the union's call to its members to engage in work action.

[30] In these circumstances, I find that there is clearly "some connection" between the municipality's collection and maintenance of the forwarding emails and the discussions and communications about labour relations matters that took place. Moreover, I find that the forwarding emails were a factor in triggering the discussions and communications about labour relations matters in which the municipality clearly has "an interest," because they involved its own workforce.

[31] In short, I find that the forwarding emails containing the names and email addresses of the two employees are excluded from the *Act* by section 52(3)3.<sup>12</sup> In these circumstances, it is not necessary to consider whether this information is also exempt from disclosure under the personal privacy exemption in section 14(1) of the *Act*.

## **ORDER:**

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

Original Signed by: \_\_\_\_\_

Colin Bhattacharjee  
Adjudicator

\_\_\_\_\_  
May 30, 2025

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<sup>11</sup> *Supra* para. 23.

<sup>12</sup> There is no evidence before me to show that any of the exceptions to the section 52(3) exclusion in section 52(4) would apply to the emails.