

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4697

Appeal MA23-00815

Township of Killaloe, Hagarty and Richards

September 26, 2025

Summary: The appellants made a request under the *Municipal Freedom of Information and Protection of Privacy Act* for closed meeting minutes of a township council's discussions of a Code of Conduct complaint against a township employee. The township denied access to the records on the basis that they were excluded from the application of the *Act* under the employment or labour relations exclusion in section 52(3)3.

In this order, the adjudicator upholds the township's decision that the records relate to labour relations or employment matters and are excluded from the scope of the *Act* under section 52(3)3. The adjudicator 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] This order considers whether closed meeting minutes of a township council's discussions of a Code of Conduct complaint against a township employee are excluded from the application of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The Township of Killaloe, Hagarty and Richards (the township) received the following 5-part request for information under the *Act*:

1. Record of inspection by the Building Official applying section 9.14.6.1 to our neighbour's property and considering the impact on our adjacent property, including [description of specific records] ...
2. Interpretational guidance for the application of the Building Code provided by the Ministry of Municipal Affairs and Housing, confirming that application of section 9.14.6.1 [requirements of this section] ...
3. [The township's] policies or guidelines, established as per section 7(3) of the Building Code, to be used when responding to allegations that the Code of Conduct has been breached, including how allegations of failure to apply a relevant section of the Building Code should be reviewed;
4. Detailed documentation applying those policies and guidelines to the analysis of our complaint; and
5. Any personal information related to [the requesters].

[3] The township issued a decision letter addressing access to records responsive to parts 2, 3 and 4 of the request. In that decision letter, the township requested clarification from the appellant about part 5 of the request.

[4] Following clarification from the appellant about part 5 of the request, the township issued a decision granting partial access to the records responsive to part 5, with severances made pursuant to the exemptions in sections 12 (solicitor-client privilege), and 14(1) (personal privacy), and denying access to certain records under the exclusion in section 52(3) (employment or labour relations records) of the *Act*.

[5] Subsequently, the township issued a third decision, regarding part 1 of the request, granting partial access to the responsive records with severances made pursuant to section 14(1) of the *Act*.

[6] The requesters, now the appellants, appealed the township's decisions in response to their request to the Information and Privacy Commissioner (the IPC).

[7] During mediation, the appellants confirmed that they are not pursuing access to a number of records. However, they stated that they believe additional records responsive to their request should exist, including:

- A garage construction plan,
- Documentation of Council's review of their complaint, and
- The neighbour's variance request and related information/decisions

[8] The township issued a revised decision granting partial access to additional

records. The township claimed that some records fell outside of the scope of the *Act* pursuant to the exclusion at section 52(3). The township further claimed that if section 52(3) was found not to apply, sections 14(1) and 6(1)(b) (closed meeting) of the *Act* would apply to exempt the records from disclosure.

[9] Following notification of an affected party, the Chief Building Official (the CBO), the township issued a supplemental decision granting the appellant partial access to a garage construction plan.

[10] At the end of mediation, the only issue that remained unresolved is the appellant's access to the records responsive to part 4 of their request, the closed meeting minutes of Council's discussions of their Code of Conduct complaint against the CBO. Therefore, only the application of the exclusion at section 52(3)3 or, in the alternative, the application of the exemptions at sections 14(1) and 6(1)(b) to those closed meeting minutes remain at issue in this appeal.

[11] The appeal moved to the adjudication stage of the appeal process where an adjudicator may conduct an inquiry.

[12] I decided to conduct an inquiry, and I sought and received representations from the township, the CBO and the appellants which were shared between them in accordance with the IPC's *Practice Direction 7* on the sharing of representations.¹

[13] In this order, I uphold the township's decision that the records relate to labour relations and employment matters and are excluded from the scope of the *Act* under section 52(3)3.

RECORDS:

[14] The records remaining at issue consist of two sets of closed meeting minutes from the July 4, and July 18, 2023, Council meetings.²

DISCUSSION:

[15] The sole issue in this appeal is whether the exclusion at section 52(3)3 of the *Act* applies to the records remaining at issue.

[16] The township's position is that section 52(3)3 applies to exclude the records from the scope of the *Act* as they relate to an investigation into a public complaint made against

¹ The CBO's representations were not shared with the other parties due to confidentiality concerns.

² In their representations, the appellants indicated that they wished to amend their request to seek more records, other than those at issue in this appeal. If the appellants wish to seek further records from the township, they will need to make a new access request for these records.

a township employee.

[17] Section 52(3) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters.³ 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

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

[19] Section 52(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.

[20] 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*.

[21] 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.⁶

[22] 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.⁷

[23] 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.⁸

³ The IPC has consistently taken the position that the application of section 52(3) is record-specific and fact-specific. As such, when determining whether the exclusion applies, I must examine the record as a whole rather than looking at individual pages, paragraphs, sentences or words. This "whole record" method of analysis has also been described as the "record by record approach." See for example Orders MO-3927, M-352, MO-3798-I, MO-3927, MO-3947, MO-4071, PO-3642, PO-3893-I and PO-4564.

⁴ Order PO-2639.

⁵ *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107 (CanLII).

⁶ *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.

⁷ *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.), 2008 CanLII 2603 (ON SCDC) (*Ministry of Correctional Services*).

⁸ *Ministry of Correctional Services*, cited above.

[24] 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.

Part 1: collected, prepared, maintained or used

[25] For section 52(3) to apply, the records must have been collected, prepared, maintained by the township.

[26] The township states that the closed meeting minutes relate to the township's investigation into a public complaint made against a township employee, the CBO. It submits that the records were prepared, maintained and used by the township.

[27] The appellants did not address part 1 of the test under section 52(3)3 in their representations.

[28] Based on my review of the records and the township's representations, I find that they were prepared, maintained and used by the township. Therefore, I find that part 1 of the test has been met.

Part 2: meetings, consultations, discussions or communications

[29] 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

[30] 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

[31] The township states that the records relate to meetings of the township, and

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.).

communications and discussions with the employee about an employment-related matter.

[32] The appellants also did not address part 2 of the test in their representations.

[33] Based on my review of the records and the township's representations, I find that they were prepared, maintained and used by the township in relation to meetings, communications, and discussions about the complaint against the township employee. Therefore, I find that the collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications and part 2 of the test has been met.

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

[34] 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.¹¹

[35] The phrase "labour relations or employment-related matters" has been found to apply in the context of:

- a job competition;¹²
- an employee's dismissal;¹³
- a grievance under a collective agreement;¹⁴
- disciplinary proceedings under the *Police Services Act*;¹⁵ and
- a review of "workload and working relationships;"¹⁶

[36] 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.¹⁷ 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. 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).¹⁸

¹¹ Order PO-2157.

¹² Orders M-830 and PO-2123.

¹³ Order MO-1654-I.

¹⁴ Orders M-832 and PO-1769.

¹⁵ Order MO-1433-F.

¹⁶ Order PO-2057.

¹⁷ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

¹⁸ *Ministry of Correctional Services*, cited above.

Representations re part 3

[37] The township submits that the records contain discussions and communications about an investigation into an employee. In particular, the records relate to an investigation into a complaint from a member of the public about an employee which could result in discipline or termination of that employee. It states that the employee being investigated as a result of the complaint is a member of the township's own workforce, and, as a result, the township has an interest in the investigation as an employment-related matter.

[38] The township submits that past IPC orders have determined that records relating to a complaint of misconduct about an employee, including records related to human resource matters, are "employment-related matters in which an institution has an interest."¹⁹

[39] The appellants state that they made a complaint to the township about its CBO's failure to apply a relevant section of the Ontario Building Code (the OBC) when inspecting and approving a significant grading change to their adjacent neighbour's construction, thereby failing to protect the appellants' property.

[40] The appellants submit that the township's Council continues to ignore the evidence and refuses to demonstrate that it has addressed their concerns related to the CBO's actions. They state that the township is responsible for the CBO's failure to apply a relevant section of the OBC and the resultant adverse impact on their property.

[41] The appellants submit that, given the potential for litigation and for the township's liability for the damages to their property, the records, Council's meeting minutes, should not be excluded. The appellants seek access to the meeting minutes so that the township can demonstrate accountability for how it considered the documented evidence contained in the CBO's investigation file and took the necessary corrective action to ensure that adjacent properties are not adversely affected.

[42] In reply, the township submits that the records are subject to the section 52(3)3 exclusion as they arose in the employment context and concern an investigation of an employee carrying out their "employment duties".

[43] In sur-reply, the appellants submit that the records relate to the actual performance of the CBO's work requirements as identified in the township's Code of Conduct and not actions that are totally inappropriate (like sexual abuse) which, if disclosed, may cause personal harm to an individual. They state that the records arise in the "employment context" because they relate to Council's discussion of the CBO's application of a relevant section of the OBC which both the CBO and the Township/Council must administer. In addition, they submit that the records relate to whether the CBO breached the Code of Conduct for Building Officials by failing to appropriately apply a

¹⁹ The township refers to Order MO-4308 as an example.

relevant section of the OBC.

Analysis and findings re part 3

[44] Based on my review of the parties' representations and the records themselves, I find that the records were prepared, maintained and used by the township in relation to meetings, communications, and discussions about employment-related matters in which the township has an interest.

[45] In making this finding, I have considered the appellants' submission that the records should not be excluded under section 52(3)3 as this section 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.²⁰

[46] Previous orders of the IPC have consistently held that records relating to an employer's investigation into complaints about employees are employment-related, as they could result in disciplinary action against the employee.²¹

[47] The records at issue relate to the township's investigation into the appellants' Code of Conduct complaint against the CBO, a township employee. The Code of Conduct provides that:

The Ontario Building Code Act provides that the performance of Building Officials will be measured against this Code of Conduct. The municipal administration will review any allegations brought forward that the Code of Conduct has been breached. Disciplinary action arising from violations of this Code of Conduct is the responsibility of the Municipal employer and will be based on the severity and frequency of the violation in accordance with relevant employment standards.

[48] The township's own employee could be subject to disciplinary action by the township for breaching the township's Code of Conduct while performing his employment duties. If the township fails to investigate and act on the complaint, it risks potential liability under the Code of Conduct. Therefore, I find that the records, which contain information about the investigation, is properly characterized as matter "in which the institution has an interest"

[49] I find that part 3 of the test has been met as the records were prepared, maintained and used by the township in relation to meetings, communications, and discussions about employment-related matters in which the township has an interest.

[50] I have also considered whether any of the exceptions in section 52(4) are relevant

²⁰ *Ministry of Correctional Services*, cited above.

²¹ See for example, Orders MO-1635, MO-1723, PO-2748, and PO-2809.

in the circumstances of this appeal and find that none of them apply.²²

[51] As all three parts of the section 52(3)3 test have been met and none of the exceptions in section 52(4) apply, the records are excluded under section 52(3)3.

[52] As I have found that the records are excluded from the application of the *Act* under the exclusion in section 52(3)3, I do not have jurisdiction to consider whether the exemptions claimed by the township, in the alternative, apply. I dismiss the appeal.

ORDER:

I uphold the township's decision that the records are excluded from the application of the *Act*.

Original Signed by: _____

Diane Smith
Adjudicator

September 26, 2025 _____

²² Section 52(4) 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.