

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4698

Appeal MA24-00757

Regional Municipality of York

September 26, 2025

Summary: An individual asked the municipality for records related to the creation and suspension of a mandatory vaccination policy. The municipality withheld the responsive records based on section 52(3)3 of the *Act*, the exclusion for records related to labour relations and employment matters. The appellant appealed the municipality's access decision. In this decision, the adjudicator finds that the individual's request is for records that would clearly be excluded from the application of the *Act* by section 52(3)3 of the *Act*. She declines to conduct an inquiry in accordance with section 8.03(f) of the IPC's *Code of Procedure* and 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. Section 8.03(f) of the IPC's *Code of Procedure*.

OVERVIEW:

[1] An individual made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information from the Regional Municipality of York (the municipality):

All records (including, but not limited to: documents, emails, text messages, briefing notes, communication exchanges, etc.) relating to and referencing the rationale and sources (including, but not limited to factual materials, statistical survey, environmental impact statement, feasibility or technical study, inquiries undertaking, report containing results of research undertaken before the formulation of the policy, proposal to Council or any

government entities - provincial or federal, and order or ruling of CAO or any employee made at the conclusion of the exercise of discretionary power) justifying the creation of and the suspension of the York Region mandatory vaccination policy for the period of January 1, 2020 to March 1, 2023.

[2] The municipality issued a decision to withhold one of the responsive records under the discretionary exemption for closed meetings at section 6(1)(b) of the *Act*. It said that the remaining responsive records were excluded from the *Act* pursuant to section 52(3)3, because they were collected, prepared, maintained and used by the municipality for meetings, consultations, discussions and/or communications about labour relations or employment-related matters.

[3] The individual, now the appellant, appealed the municipality's decision. An IPC mediator discussed the appeal with the appellant and the municipality. The appellant told the mediator he was not interested in pursuing access to the information the municipality withheld pursuant to section 6(1)(b) of the *Act*. However, he challenged the municipality's position that section 52(3)3 of the *Act* applies to the remaining records that would be responsive to his request. He also asserted that there were additional responsive records that the municipality did not identify that informed its policies and the mediator added the issue of whether the municipality conducted a reasonable search for responsive records.

[4] Mediation did not resolve the appeal, and it was moved to the adjudication stage of the appeal process where an adjudicator may conduct a written inquiry under the *Act*. The appeal was assigned to me. After reviewing the Mediator's Report, my preliminary view was that the exclusion at section 52(3)3 would clearly apply to any records that would be responsive to the appellant's request. I wrote to the appellant advising him of my preliminary view and explaining my reasons for it. I let him know that I was considering declining to conduct an inquiry pursuant to section 8.03(f) of the IPC's *Code of Procedure* (the *Code*).¹

[5] I invited the appellant to review my reasons and provide a response if he disagreed with my preliminary view. The appellant provided a response, but it did not change my preliminary view. In this order, I find that the appellant's request is for information that would clearly be excluded from the *Act* by section 52(3)3. I exercise my discretion under section 8.03 of the *Code* not to conduct an inquiry, and I dismiss the appeal.

¹ Code of Procedure for appeals under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*, available online at: [Code of Procedure and Related Policies | Information and Privacy Commissioner of Ontario](#).

DISCUSSION:

The IPC's *Code of Procedure*

[6] Section 8.01 of the *Code* says that an adjudicator may conduct an inquiry to dispose of some or all of the issues in an appeal. Section 8.02 states that the adjudicator may consider the information contained in the Mediator's Report to determine whether the circumstances warrant conducting an inquiry. Section 8.03 provides guidance on when an adjudicator may decline to conduct an inquiry. Section 8.03(f) is relevant to this appeal and states the following:

Without limiting the Adjudicator's authority to decline to conduct an Inquiry for any other reason, the Adjudicator may decline to conduct an Inquiry where:

(f) an exclusion in the *Act* will clearly apply to the record.

[7] In my letter to the appellant, I explained that my preliminary view was that an exclusion in the *Act* would clearly apply to any records that would be responsive to his request, and that as a result, I was considering declining to conduct an inquiry. I offered the appellant an opportunity to respond to my preliminary view, which he did. Below I set out my preliminary view, as communicated to the appellant, his response, and my reasons for dismissing the appeal.

The application of section 52(3)3 of the *Act*

[8] 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*. The relevant portions of section 52(3)3 state:

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.

[9] 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*.

[10] 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.² For section 52(3)3 to apply, the

² *Ontario (Ministry of Correctional Services) v. Goodis*, 2008 CanLII 2603 (ON SCDC).

municipality 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.

[11] In my letter to the appellant setting out my preliminary view, I explained that based on the wording of his request, I believed that parts 1 and 2 of the section 52(3)3 test would be satisfied by any responsive records. Given that the request was for records setting out the rationale and sources justifying the creation and suspension of a vaccination policy, my view was that any responsive records would have been collected, prepared, maintained, or used by the municipality to formulate, apply and or/suspend the vaccination policies. Accordingly, I confirmed my view that part 1 of the test is met.

[12] With respect to part 2, I advised the appellant that it was also apparent that the records he seeks access to would have been used in meetings, consultations, discussions, or communications about the vaccination policies. In my view, if the records were not used in this manner, they would likely not be relevant to the appellant's request (and therefore would not be responsive).

[13] Part 3 of the test specifies that the meetings, consultations, discussions or communications must be about labour relations or employment-related matters in which the institution has an interest.

[14] 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.³ 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.⁴

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

- a job competition;⁵

³ *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.

⁴ Order PO-2157.

⁵ Orders M-830 and PO-2123.

- an employee's dismissal;⁶
- a grievance under a collective agreement;⁷
- disciplinary proceedings under the *Police Services Act*;⁸
- a "voluntary exit program;"⁹
- a review of "workload and working relationships";¹⁰ and
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.¹¹

[16] I explained to the appellant that I agree with the municipality that records related to the creation and/or suspension of a mandatory vaccination policy are about employment-related matters in which the municipality has an interest. In my view, a policy that implements (or suspends) mandatory vaccinations for employees necessarily relates to the terms and conditions of their employment. A mandatory vaccination policy governs the circumstances under which employees are permitted to attend the workplace and affects fundamental aspects of the employment relationship.

[17] The creation of a mandatory vaccination policy is an employment-related matter because it sets rules that directly regulate employees in the course of their employment. Similarly, the suspension of such a policy alters those rules and impacts employees' working conditions. In both cases, the policy decisions concern "employment-related matters in which the institution has an interest" within the meaning of section 52(3)3.

[18] In summary, I explained that because the appellant requested records that informed the creation and/or suspension of a mandatory vaccination policy, my preliminary assessment was that any records that would be responsive to his request would be captured by section 52(3)3 and excluded from the operation of the *Act*. I said that the same reasoning would apply to any additional responsive records that he says exist that the municipality has not identified.

[19] I reviewed the exceptions set out in section 52(4) and stated that I saw no basis on which they might apply. I explained that because the appellant's request appears to be for information that would be excluded by section 52(3)3 of the *Act*, I made the preliminary decision to decline to conduct an inquiry as authorized by section 8.03(f) of

⁶ Order MO-1654-I.

⁷ Orders M-832 and PO-1769.

⁸ Order MO-1433-F.

⁹ Order M-1074.

¹⁰ Order PO-2057.

¹¹ *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

the Code.

[20] I confirmed my preliminary view that any records that would be responsive to the appellant's request would be subject to the exclusion at section 52(3)3 of the *Act*, and that the appeal should be dismissed without conducting an inquiry.

The appellant's response

[21] In response to my preliminary view letter, the appellant submits that although the exclusion may apply to some of the responsive records, there should be some information that the municipality can share, particularly any facts or scientific data. The appellant explains that he is seeking "all research, statistics, data and factual information that justified the creation of and the suspension of the [municipality's] mandatory vaccination policy."

[22] He argues that the municipality provided conflicting information that would have "affected the creation and suspension of the mandatory employee vaccination policy." He says this is why he is requesting the supporting facts, statistics and research. He argues that "factual, scientific data, research, studies, and similar data can be shared without revealing the status, impact or development of the policy and violating section 52(3) of the *Act*."

[23] In summary, the appellant submits that "painting all information with the same 'employer/labour relations' brush is not a correct interpretation of the *Act* nor in the spirit of the *Act* and open government."

Findings and analysis

[24] I have considered the appellant's response and remain of the view that his request is for records that are excluded by section 52(3)3 of the *Act*. The appellant asserts that the exclusion should not apply to facts and statistical data. However, the issue is that his request is not just for data, it is for data that informed the implementation and/or suspension of a policy central to the employer/employee relationship. This information is clearly subject to the exclusion at section 52(3)3 of the *Act*.

[25] Since it is clear the records the appellant requested would be excluded by section 52(3)3, I exercise my discretion under section 8.03(f) of the *Code* to decline to conduct an inquiry.

ORDER:

The appeal is dismissed.

Original Signed by:
Meganne Cameron

September 26, 2025

Adjudicator