

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4769

Appeal MA22-00454

County of Norfolk

February 19, 2026

Summary: The County of Norfolk received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to records between the county's staff and the county's insurer regarding a claim relating to a wrongful termination lawsuit.

The county issued a decision granting full access to some records, withholding the remaining records under the mandatory exemption for third party information (section 10(1)), or the discretionary exemptions for information relating to the county's economic interests (section 11(c)) and information subject to solicitor-client privilege (section 12). The county subsequently issued a supplementary decision claiming that all the responsive records were excluded from the application of the *Act* because they consist of labour relations and employment information (section 52(3)).

In this order, the adjudicator finds that the records are excluded from the application of the *Act* pursuant to section 52(3) of the *Act*. She upholds the county's decision to deny access to the records and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 51(1) and sections 52(3) and (4).

Orders Considered: Order MO-4578.

OVERVIEW:

[1] The appellant made an access request under the *Municipal Freedom of Information*

and Protection of Privacy Act (the *Act*) to the County of Norfolk (the county) for records regarding insurance coverage related to a claim of wrongful termination by a former employee. The relevant portions of the request¹ are for the following records:

[...] any records between the County's staff and insurer representative related to whether the claim served by [the appellant] against the County, Board of Health, [and named individuals] is covered by the insurance in place at the County; any records demonstrating an open and/or closed insurance file at the County related to this matter; and/or any records demonstrating or referring to the appointment of counsel, including confirmation or denial of appointment, by the insurer to defend. [...]

[...] any records between and amongst staff and records between and among staff, the Mayor and council members/board of health members (as a body or as individual members), and [named individual] related to whether there might be, is, or is not coverage of this claim.

[2] The county located 62 responsive records, totaling 476 pages. It issued an access decision granting the appellant full access to ten records. The county denied access to the remaining 52 records in full.² The county attached an index of records to its access decision.

[3] Subsequently, the county issued a supplementary decision to the appellant claiming that all 62 responsive records are excluded from the *Act* by section 52(3) (labour relations or employment records) of the *Act*.

[4] The appellant appealed the county's access decisions to the Information and Privacy Commissioner of Ontario (the IPC), which assigned a mediator to assist the parties in resolving the issues in dispute. During mediation, the parties agreed to remove record 4 from the scope of this appeal as it was being considered in a related appeal between the appellant and the county.³

[5] The appeal was not resolved during mediation and was moved to the adjudication stage of the appeal process.

[6] The adjudicator originally assigned to the appeal conducted an inquiry and received representations from the county and the appellant, which were shared among

¹ In the request, the appellant also sought access to a copy of the insurance policies in place during the time period of the wrongful termination claim. After communications between the requester and the county, this portion of the request became the subject of a separate request and subsequent appeal, Appeal MA22-00346, which was resolved by Order MO-4578.

² Access to the withheld records was denied under the mandatory exemption in section 10(1) (third party information) or the discretionary exemptions in section 11(c) (economic and other interests) and section 12 (solicitor client privilege) of the *Act*.

³ The appellant's access to record 4 was considered in Order MO-4578 which resolved the related appeal, Appeal MA22-00346.

the parties. The county was invited to provide a final reply to the appellant's representations but declined to do so. An affected party was also invited to provide representations; however, none were received.

[7] The appeal was then reassigned to me. I have reviewed the representations from the appellant and the county, and I have determined that I do not require further representations before making my decision.

[8] In this order, I find the records are excluded from the *Act* by virtue of section 52(3). I uphold the county's decision and dismiss the appeal.

RECORD:

[9] The following records, set out in the county's index of records, remain at issue in this appeal: records 1-3, 5-62.

[10] These records consist primarily of written correspondence, including emails and attachments to those emails.

DISCUSSION:

Preliminary Matter: Litigation between the Parties

[11] The appellant makes representations about the relevance of section 51(1)⁴ of the *Act* and the *Rules of Civil Procedure*. The wording of section 51(1) of the *Act* confirms and prior IPC orders⁵ have found that the access scheme in the *Act* does not limit a person's rights to access documents in the civil litigation process. I agree with the appellant that her discovery rights in civil litigation are distinct from her access rights under the *Act*, they are independent statutory regimes, and one does not impact or negate the other.

Section 52(3) excludes the records from the *Act*

[12] The sole issue in this appeal is whether the records are excluded from the operation of the *Act* by virtue of section 52(3).

[13] 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

⁴ Section 51(1) states: "This Act does not impose any limitation on the information otherwise available by law to a party to litigation."

⁵ See Order MO-4578 (which resolves the related appeal, Appeal MA22-00346) where the adjudicator considered the same arguments made by the appellant and similarly found that her discovery rights in civil litigation are distinct from her access rights under the *Act*. See also Orders MO-3900, MO-2684, and PO-2490.

subject to the access scheme in the *Act*, although the institution may choose to disclose it outside of the *Act's* access scheme.⁶ The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.⁷

[14] 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:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[15] 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*.

[16] 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.⁸

[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.⁹ 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.¹⁰

[18] The IPC has consistently taken the position that the employment or labour relations exclusions (in both the provincial and municipal *Acts*) are record-specific and

⁶ Order PO-2639.

⁷ *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107.

⁸ *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.

⁹ *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).

¹⁰ *Ministry of Correctional Services*, cited above.

fact-specific.¹¹ In order to qualify for an exclusion, the record is examined as a whole.

[19] I have reviewed all the records at issue in this appeal – that is, all the records which were identified by the county (with the single exception of record 4 which was removed from this appeal with agreement from the parties) and I find that they are all excluded from operation of the *Act*.

[20] I have grouped the records in order to explain my reasons more efficiently; however, in arriving at my findings, I reviewed and considered each of the records individually.

Records 1-3, 5-31, 36-62

[21] Records 1-3, 5-31, and 36-62 consist of emails and other written correspondence.

[22] I find that records 1-3, 5-31, 36-62 are excluded from the application of the *Act* by virtue of section 52(3)1 of the *Act*.

[23] For section 52(3)1 to apply, the institution must establish that:

- The record was collected, prepared, maintained, or used by an institution or on its behalf;
- This collection, preparation, maintenance, or use was in relation to proceedings or anticipated proceedings before a court, tribunal, or other entity; and
- These proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the institution.

[24] Having reviewed these records and having considered each of them individually, I find that all the above-noted records fall within the exclusion in section 52(3)1 as follows.

[25] First, I find that these records were all either prepared, collected, or maintained by the county. The records are all communications either sent by, or received by, the county, and since retained.

[26] Second, I find that the preparation, collection and/or maintenance of these records was in relation to proceedings before a court. For the collection, preparation, maintenance or use of a record to be “in relation to” proceedings or anticipated proceedings, there must be “some connection” between them.¹² It does not require a “substantial” connection.¹³ The “some connection” standard must, however, involve a connection

¹¹ Order MO-4578. See also Orders M-797, MO-3163, P-1575, PO-2531, PO-2632 and PO-3456-I.

¹² Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

¹³ *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991

relevant to the scheme and purpose of the *Act*, understood in their proper context.

[27] Records 1-3, 5-31, 36-62 relate specifically to the action commenced by the appellant in the Ontario Superior Court of Justice and in which the county is a named defendant. There is no question that a civil claim filed with Ontario's Superior Court of Justice constitutes "proceedings" before a "court" as intended by the *Act*. The proceedings are actual, not anticipated, given that the appellant had already filed and served her Statement of Claim on the county at the time the emails were prepared, collected and/or maintained. The communications each relate specifically to the appellant's civil claim and clearly have "some connection" to the proceedings, and therefore, I find that they were prepared, collected and maintained "in relation to" the proceedings.

[28] Thirdly, I find that the proceedings clearly relate to the appellant's employment by the county as the claim brought by the appellant against the county alleges that, among other things, the county wrongfully terminated the appellant's employment with the county.

[29] The appellant says that the records are not excluded from the operation of the *Act*. She advances several arguments in support of her position.

[30] First, the appellant submits that section 52(3)1 is not aimed at exempting from disclosure records concerning insurance coverage for an employment-related claim, but to exempt "employment related records, generated for and relevant to a proceeding, from being subject to disclosure under the *Act*." The appellant concedes that the emails were generated as a result of her civil claim but says they are in no way relevant to the merits of her civil claim and, as a result, they are subject to disclosure under the *Act*.

[31] In my view, the appellant construes section 52(3)1 too narrowly.

[32] Contrary to the appellant's submissions, the test laid out in section 52(3)1 of the *Act* does not require the records be "generated for" actual or anticipated proceedings. Rather, the records need to be "collected, prepared, maintained, or used" by the institution in relation to actual or anticipated proceedings. The above-noted records meet this requirement.

[33] Likewise, contrary to the appellant's assertions, the test laid out in section 52(3)1 does not require that the records be "employment-related records;" that is the language set out in section 53(2)3 of the *Act*. Section 52(3)1 of the *Act* requires that the records be "related to proceedings or anticipated proceedings" and the proceedings, in turn, must be "relate[d] to labour relations or the employment of a person by the institution."

[34] As noted by the appellant at page 1 of her representations, the "employment of a person" refers to the relationship between an employer and an employee. There is no question that the above-noted records are related to the proceedings commenced by the appellant against the county for wrongful dismissal. Equally clear is the fact that the

wrongful dismissal claim is a proceeding that relates to the appellant's prior employment with the county.

[35] Secondly, and related to her first argument, the appellant submits that the purpose of section 52(3) is to exclude records held by an institution related to labour relations or employment matters. The appellant says that the records at issue have nothing to do with the former employee-employer relationship, only to "how insurance applies to a civil claim between the parties and the coverages that may be available." She also notes that the records have nothing to do with the prior employment relationship between the parties given that the records were generated at a time when the county was not acting as an employer and relate to insurance policies that existed prior to and after the employment relationship between the county and the appellant.

[36] I first note that the appellant's request for records was not strictly limited to whether the county had insurance coverage, or the extent of any such coverage, for the appellant's civil claim. The appellant also requested records demonstrating an open and/or closed insurance file at the county, any records demonstrating or referring to the appointment of counsel, and any records amongst the county "related to" whether there might be, is, or is not coverage of the appellant's claim.

[37] Notwithstanding the foregoing, I disagree with the appellant's submissions that the records at issue in this appeal "have nothing to do with the former employer employee relationship." Communications regarding the appellant's wrongful dismissal claim against the county are clearly connected to the employer-employee relationship between the parties.

[38] I also note that in Order MO-4578 (which resolved the related appeal, Appeal MA22-00346), the adjudicator ordered disclosure of the county's four insurance policies that were in place over the time period of the wrongful termination claim, noting that the policies "do not relate specifically to wrongful dismissal litigation, nor the appellant in particular. They deal with many different types of liability that the county may face."¹⁴

[39] Records 1-3, 5-31, 36-62 in this appeal are clearly distinguishable from the insurance policies that were considered in Order MO-4578. The records at issue in this appeal relate specifically to the appellant and, even more specifically, her civil claim against the county for the alleged wrongful termination of her employment with the county. In other words, the records relate specifically to the wrongful dismissal litigation and the appellant.

¹⁴ Order MO-4578 at para. 42. In Order MO-4578, the adjudicator found that, as only a small portion of the policies in question in that appeal related to the purposes set out in section 52(3), there was not "some connection" between the subject matter of section 52(3) and the policies as a whole. She therefore found that the policies were not excluded from the scope of the *Act* under section 52(3).

Records 32-35

[40] In contrast to the first group of records, records 32-35 predate the commencement of the appellant's civil claim against the county. They relate to the appellant's employment, generally speaking.¹⁵

[41] I find that records 32-35 are excluded from the operation of the *Act* pursuant to section 52(3)3 of the *Act*.

[42] For section 52(3)3 of the *Act* to apply, the institution must establish that:

- The records were collected, prepared, maintained, or used by an institution or on its behalf;
- This collection, preparation, maintenance, or use was in relation to meetings, consultations, discussions, or communications; and
- These meetings, consultations, discussions, or communications are about labour relations or employment-related matters in which the institution has an interest.

[43] I find that records 32-35 are excluded from the application of the *Act* per section 52(3)3 of the *Act* for the following reasons.

[44] First, I find that these records were collected, prepared, maintained, or used in relation by the county as they are all records originating from the county, including documents generated by the appellant herself in the exercise of her duties.

[45] Second, I find that these records were collected, prepared, maintained, or used in relation to meetings, consultations, discussions, or communications. Past IPC orders have established that records produced in the context of a job competition or promotions are "communications" for the purposes of section 52(3) of the *Act*.¹⁶

[46] In Order MO-1426, the adjudicator found that it is reasonable to expect that records that would be routinely created as part of the employer's normal employment practices – for example, a person's application for employment and performance appraisals – would be used by an institution in considering and assessment an employee's performance when problems arise and therefore are records that were collected, prepared, maintained or used by the city in relation to meetings, discussions, consultations and communications about the employee and their continued employment with the institution. The records in question are likewise records that would routinely be created as party of the appellant's employment file and I adopt the adjudicator's

¹⁵ Though not determinative or relevant to my analysis on the application of section 53(3)3 to these records, I note here parenthetically that they do not appear to be responsive to the appellant's initial request for records. Notwithstanding the foregoing, I find they are excluded from operation of the *Act* by virtue of section 52(3)3 of the *Act*.

¹⁶ See Orders P-1242 and PO-3642, MO-4308

reasoning to the records.

[47] Third, I find that these meetings, consultations, discussions, or communications for which the records were prepared, collected, maintained, or used are about employment-related matters in which the institution has an interest.

[48] 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.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.¹⁸

[49] The appellant's employment and eventual dismissal by the county is clearly an employment-related matter in which the county has an interest.

[50] Given my findings, it is not necessary for me to address section 52(3)2 of the *Act* or consider the parties' representations on its applicability to the records.

52(4) Exceptions do not apply

[51] I find that none of the exceptions set out in section 52(4) apply. If the records fall within any of the exceptions in section 52(4), the records are not excluded from the application of the *Act*.¹⁹ The parties did not make submissions on section 52(4). Based on my own review of the records, I find that the records at issue do not relate to any agreement nor to an expense account.

Conclusion

[52] I find that the records are excluded from the operation of the *Act* by virtue of section 52(3) of the *Act*.

[53] As the records are excluded from the scope of the *Act* virtue of the application of section 52(3), I will not consider the applicability of the exemptions at sections 10, 11 or 12 to the records or respond to the parties' representations thereon.

¹⁷ Order PO-2157.

¹⁸ *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. 507.

¹⁹ 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 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.

ORDER:

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

Original Signed by: _____
Tamara Henderson
Adjudicator

February 19, 2026 _____