Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-13

Appeal M-910106

Ottawa-Carleton Regional Transit Commission

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I N T E R I M O R D E R

BACKGROUND:

In February, 1991, a request under the Municipal Freedom of Information and Protection of Privacy Act for access to personal information was received by The Regional Municipality of Ottawa-Carleton. The request was forwarded to the Ottawa-Carleton Regional Transit Commission ("OC Transpo"), which had the information.

On March 20, 1991, OC Transpo wrote to the requester, advising him of its position that the Municipal Freedom of Information and Protection of Privacy Act (the Act) did not apply to it, but that it had adopted a policy which "mirrored" the provisions of the Act. The letter stated that access was granted to some of the information requested, but denied to the balance of the information pursuant to section 4(1) of the policy.

In February, 1991, OC Transpo adopted a Freedom of Information and Protection of Privacy Policy, and designated the Chairman of the Transit Commission as the "head" for the purposes of this policy. As part of the policy, OC Transpo offered an arbitration system for requesters who disagreed with decisions made under the policy.

The requester appealed the decision of OC Transpo under section 39(1) of the Act, which gives a person who has made a request for access to a record under section 37(1) of the Act, a right to appeal any decision of a head of an institution to the Information and Privacy Commissioner. He also appealed the decision of OC Transpo that the Act did not apply to it.

OC Transpo is the Regional Transit Authority for the Ottawa-Carleton Region. The Transit Commission provides passenger transport in the regional area as designated under section 1 of the Regional Municipality of Ottawa Carleton Act, R.S.O. 1990, c. R. 14. This regional area includes the Township of Cumberland, the

City of Gloucester, the Township of Goulborn, the City of Kanata, the City of Nepean, the Township of Osgoode, the City of Ottawa, the Township of Rideau, the Village of Rockcliffe Park, the City of Vanier, and the Township of West Carleton. OC Transpo is an incorporated body consisting of nine members of Regional Council. Sections 11 and 12 of the Regional Municipality of Ottawa-Carleton Act give the Commission the right to maintain and operate passenger transport services in the regional area.

In addition to service in the regional area, OC Transpo offers bus service into Hull, Quebec, as part of its regular service. It is the contention of OC Transpo that, because it offers passenger service into Quebec, it is an interprovincial undertaking, and therefore, the Municipal Freedom of Information and Protection of Privacy Act does not apply to it, and therefore it is not an institution under the Act.

Six other appeals have been received by this office respecting decisions of OC Transpo to deny access to requested records. The appeals involve four other appellants. OC Transpo responded to the request giving rise to the first appeal under the Municipal Freedom of Information and Protection of Privacy Act. Upon receipt of notification by this office of the appeal, OC Transpo stated that the Municipal Freedom of Information and Protection of Privacy Act did not apply to it. It responded to the other requests, including the one giving rise to this appeal, by stating that the Act did not apply to it, and it applied its internal information and privacy policy to the requests.

Notice that an inquiry was being conducted to review the head's decision respecting the constitutional issue of whether the Municipal Freedom of Information and Protection of Privacy Act applies to OC Transpo was sent to the appellant, the institution, and four affected parties. The affected parties are the other appellants who have appealed decisions of OC Transpo to deny them access to requested records. An Appeals Officer's Report, which is intended to assist the parties in making

representations concerning the subject matter of the appeal, accompanied the Notice of Inquiry. In addition, a Notice of Constitutional Question was sent to the appellant, the institution, the affected parties, the Attorney General of Canada, and the Attorney General of Ontario.

Written representations were received from the appellant, the institution, the Minister of Justice, the Attorney General of Ontario and the four affected parties. In the circumstances of this appeal, I decided to permit an exchange of representations among the parties.

The sole question for me to decide in this Interim Order is whether the application of the Municipal Freedom of Information and Protection of Privacy Act to OC Transpo is constitutionally valid.

ISSUE 1: Whether OC Transpo is a federal or interprovincial undertaking.

It is the position of OC Transpo, the appellant, the Attorney General of Ontario and the federal Department of Justice that OC Transpo is a federal undertaking. I agree.

Under the Constitution Act, 1867 (formerly the British North America Act), legislative power over transportation and communication is divided between the federal and provincial governments. Under section 92, the province is granted the power to regulate "Local Works and Undertakings." However, section 92.10(a) sets out the exceptions to the provincial power to legislate in relation to transportation:

> In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of subjects next hereinafter enumerated; that is to say, -
> ....
>
> 10. Local Works and Undertakings **other** than such as are of the following classes:-
>
> (a) Lines of Steam or other Ships,

> Railways, Canals, Telegraphs, and other Works and Undertakings **connecting the Province with any other** or others of the Provinces, **or extending beyond the Limits of the Province**; [emphasis added]

Section 91.29 grants authority to the federal Parliament for these enumerated entities which have been excepted from provincial jurisdiction:

> It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say, -
> .....
>
> 29. Such Classes of subjects as are **expressly excepted in the Enumeration of the Classes of Subjects** by this Act assigned exclusively to the Legislatures of the Provinces. [emphasis added]

Bus lines have been held to be included in the term "other works and undertakings" in section 92.10(a). (A.-G. Ont. v. Winner [1954] A.C. 541 (P.C.))

From the information provided to me in the affidavit of John Bonsall, General Manager of OC Transpo, it is clear that OC Transpo is an enterprise or undertaking which connects the Province of Ontario with

the Province of Quebec, and therefore extends beyond the provincial boundary. Thus, in my opinion, OC Transpo prima facie falls within the class of exceptions to provincial legislative jurisdiction under section 92.10(a), so that it is within federal legislative competence.

It appears that where there is a mixed provincial and interprovincial service or business, various courts have decided against the division of legislative jurisdiction over a single undertaking. Thus, one of either the Parliament of Canada or a provincial legislature will be found to have exclusive legislative jurisdiction over the undertaking. Dual legislative competence will only occur where there are two unintegrated and wholly severable activities or sub-entities within the parent company or enterprise. (Toronto v. Bell Telephone [1905] A.C. 52; A.-G. Ont. v. Winner, [1954] A.C. 541 (P.C.))

In the case of OC Transpo, the provision of bus routes through Ottawa-Hull is fully integrated within its day-to-day operations. The drivers are employees of OC Transpo, and the buses travel regular routes through Ottawa as well as Hull, Quebec. Given these facts, in my view, there is no question of two severable enterprises, the transit commission is a single undertaking, and will fall within a single level of legislative competence.

I have considered the fact that the extent of OC Transpo's interprovincial involvement is small in relation to the overall operation of the transit service. However, the extent or volume of interprovincial business does not seem to have been an overriding factor in court decisions as to characterization of the undertaking. It would appear that any regular, integrated
interprovincial business, however small, is sufficient to bring an enterprise within the definition of an interprovincial undertaking. (Re Tank Truck Transport, [1960] O.R. 497 (Ont. H.C.), affd. [1963] 1 O.R. 272 (Ont. C.A.); R. v. Cooksville Magistrate's Court; ex parte Liquid Cargo Lines Ltd, [1965] 1 O.R. 84 (Ont. H.C.))

Another factor to be considered is whether the funding of the entity is relevant to its characterization. In the case of OC Transpo, I am informed by Mr. Bonsall that it is funded, in addition to revenues from passenger fares, by the Regional Municipality of Ottawa-Carleton and by the Ontario provincial government. A federal subsidy was to have been discontinued in December 1991.

Courts have held that for most purposes, ownership or funding is not determinative of the question of competence to legislate for an entity. (United Transportation Union v. Central Western 119 N.R. 1 (S.C.C.), December 20, 1990.) It is my opinion that in the case of OC Transpo there is nothing in its funding arrangements as described by Mr. Bonsall, which would impact on the activity which characterizes it as an interprovincial undertaking.

In summary, it is my view that OC Transpo is an interprovincial undertaking.

ISSUE 2: Whether the Municipal Freedom of Information and Protection of Privacy Act applies to OC Transpo.

The fact that "exclusive" legislative competence over a federal or interprovincial entity has been granted to the Parliament of Canada, does not mean that no provincial legislation applies to that entity. The "exclusiveness" of the power to legislate is limited by the rule that a provincial law of general application is applicable to a federal entity. (Construction Montcalm Inc. v. Minimum Wage Commission, [1979] 1 S.C.R. 754, 93 D.L.R. (3d) 641.)

The Municipal Freedom of Information and Protection of Privacy Act sets out the classes of entities to which the Act will apply in the definition of "institution":

2(1) In this Act,

"institution" means,

(a) a municipal corporation, including a metropolitan, district or regional municipality or the County of Oxford,

(b) a school board, public utilities commission, hydro- electric commission, **transit commission**, suburban roads commission, public library board, board of health, police commission, conservation authority, district welfare administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the Municipal Act,

(c) any agency, board, commission, corporation or other body designated as an institution in the regulations; ("institution")

The Act applies throughout the province to institutions performing a governmental function. It does not purport to regulate institutions outside of the province of Ontario. The Act does not differentiate as between institutions, and accordingly, once an entity falls within the definition of "institution", the Act applies uniformly to it in relation to other institutions in the class.

In my opinion, the classification of a transit commission as a municipal institution is also reasonable and natural, in that it seeks to identify as institutions all those municipal entities
which perform a governmental function. Thus it fulfils the purpose of the Act, which is to provide members of the public with a right of access to municipal government records and to protect the privacy of individuals whose personal information is in the custody or control of municipal entities with governmental functions.

[IPC Order M-13/May 4, 1992]

It is my view that the Municipal Freedom of Information and Protection of Privacy Act falls within the definition of a "provincial law of general application." (Kruger and Manuel v. The Queen, (1978) 2 S.C.R. 309 (S.C.C.))

Before a law of general application can apply to a federal entity, the law must be valid in the sense that it is within the enacting province's legislative competence. The matter of the Municipal Freedom of Information and Protection of Privacy Act is to regulate the information practices of municipal institutions. This brings it within the class of subjects under section 92.8, as being in relation to "Municipal Institutions in the Province". Thus, the Act is validly enacted, being within the legislative competence of the province.

Even in the case of a constitutionally valid law, the rule respecting the application of laws of general application is subject to exceptions. These exceptions are "paramountcy" and "interjurisdictional immunity". I will deal first with "paramountcy".

"Paramountcy"

As noted above, valid laws of both the province and the Parliament may each apply to the same set of facts. For example, the federal law may relate to the power to enact criminal laws respecting dangerous or reckless driving. The provincial law may relate to the regulation of traffic and driving on the highway. By virtue of the double aspect and incidental effect doctrines, the two laws may be applicable to the same facts. (O'Grady v. Sparling [1960] S.C.R. 804)

However, where Parliament has enacted a law, and there is an inconsistency between it and the provincial law, the federal law will be paramount, and the provincial law will be inoperative to the extent of the inconsistency. This means that the provincial law will be ineffective in just those parts or sections where it is inconsistent with the federal law.

"Inconsistency" has been defined as "express contradiction". There is express contradiction where one law expressly contradicts the other, when it is impossible for the person to obey both laws, or when "compliance with one law involves breach of the other." (Smith v. the Queen [1960] S.C.R. 776, 800. Where it is possible to comply with both laws there is no express contradiction. The converse is also true - where it is impossible to comply with both laws, only the federal provisions will apply.

In the present case, an Access to Information Act (federal Act) exists. This federal Act purports to have objects and purposes which are similar to those of the Municipal Freedom of Information and Protection of Privacy Act, with the important distinction that the federal Act applies only to federal entities. It does not purport to extend to municipal or provincial entities. The federal Act applies to "government institutions" as defined in section 3 as:

> "government institution" means any department or ministry of state of the Government of Canada listed in Schedule 1 or any

body or office listed in Schedule 1.

OC Transpo is not listed as a scheduled institution under the federal Act, and it is not disputed that OC Transpo is not a "government institution" for purposes of the Access to Information Act.

It is the position of OC Transpo that the doctrine of paramountcy must be invoked to prevent the application of the Municipal Freedom of Information and Protection of Privacy Act to it. In its representations OC Transpo stated:

> In reality it would not be possible for the Commission to comply with both the federal and Provincial enactments. The Acts are very similar in their intention and in their format, however, they could not operate concurrently, for example:
>
> - As the head is not specified, other than by references to regulations or orders in council made pursuant to the Act, there is a situation in which the decision making vest [sic] in two different individuals, or offices, for purposes of the Acts.
>
> - Any refusal to give access to a record requested under the respective pieces of legislation must be accompanied by a statement of the specific provision of the particular Act on which refusal was based. With the two concurrent pieces of legislation dealing with the same record, it would not be administratively possible for the Commission to comply with both Acts.
>
> - Fees are chargeable under both access to information acts, however the amount of fees chargeable will be prescribed by regulations and will not be consistent. As with other provisions in the legislation, the institution will be liable for a penalty if an excessive fee is charged.
>
> - Disclosure of personal information is subject to different rules in the different statutes.
>
> - Complaints, or appeals, are subject to review by two different administrative bodies, both with

> powers to investigate, hold hearings, and order compliance.
>
> - Mandatory reporting requirements are imposed, to different ministers, and levels of government.
>
> - As disclosure of personal information is restricted in the legislation, assumedly the disclosure of a record in an unsevered form to either Commissioner's office would be a violation of the other Act, bearing in mind the general offence provisions of each statute for disclosing information in violation of the Act.

In my view, the concerns expressed by OC Transpo are entirely hypothetical. They would be real if OC Transpo were a scheduled government institution under the federal Act. However, as I have noted, it is not.

I received representations from the federal Department of Justice, in which it submitted that OC Transpo could not qualify as a federal "government institution" for the purposes of either the Access to Information Act or the Privacy Act:

> Based upon legislative intent, certain features are considered in listing a "government institution" under the Access to Information Act and the Privacy Act: (a) the institution is listed in one of the Schedules to the Financial Administration Act; (b) it is federally regulated; (c) it reports to Parliament either directly or indirectly; (d) it received funding approval from the Treasury Board; and (e) the federal government has a strong hold over the institution by reason of funding, voting procedures, or the appointment of officials via:
>
> House of Commons, minutes of Proceedings and Evidence of the Standing Committees on Justice and Legal Affairs respecting Bill C-43 (An Act to enact the Access to Information Act June 2, 1981)....It is respectfully submitted that the Access to

> Information Act and the Privacy Act could not presently apply to OC Transpo because it is not listed in the appropriate schedules. More importantly, the federal Acts would not apply in the future because OC Transpo does not meet any of the factors for inclusion cited.

Thus, it is apparent that OC Transpo could not be an institution under both the federal and provincial Acts. Therefore, there is no question of dual coverage leading to inconsistency of result in decisions regarding access to information or protection of privacy under the federal and provincial Acts. As stated in CN Railway Co. v. Ontario (EPA Director), 3 O.R. (3d) 609, (Ont. Div. Ct.), May 3, 1991) at page 630:

> The test today is clearly such that mere duplication by the provincial legislature of laws enacted by Parliament is no longer sufficient to invoke the doctrine of paramountcy. Actual conflict between the two pieces of legislation is required.

Accordingly, I am of the view that there is no issue of paramountcy in this case.

"Interjurisdictional Immunity"

Even where paramountcy does not apply, a validly enacted provincial law of general application may not necessarily be valid in its application to federal undertakings. As Professor Hogg states in "Constitutional Law of Canada", (2d edition, 1985, the Carswell Company) at p. 329, n.99:

> Undertakings (whether incorporated federally or provincially or outside Canada or even if unincorporated) operating in the field of federal legislative competence are, by definition,

> subject to federal regulation of their activities, and therefore some immunity from provincial laws purporting to regulate the activities is possible.

Undertakings engaged in interprovincial or international transportation or communication, which come within the federal jurisdiction under the exception to section 92.10, are immune from otherwise valid provincial laws which would have the effect of "sterilizing" or "mutilating" the undertakings. For example, an international bus line was held to be immune from regulation as to routes and rates (A.-G. Ont. v. Winner [1954] A.C. 541); a tour bus service operating in a federally operated park was held to be similarly immune from provincial regulation of its routes and rates, but not from provincial safety regulation (C.T.C.U.Q. c. Commission des champs de bataille nationaux 115 N.R. 106 (S.C.C.)

With respect to the application of provincial laws to federal undertakings Mr. Justice Beetz stated in Bell Canada v. Commission de la sante et de la securite de travail (Que.) et Bilodeau et al. [1988] 1 S.C.R. 749; 85 N.R. 295:

> Works, such as federal railways, things, such as land reserved for Indians, and persons, such as Indians, who are within the special and exclusive jurisdiction of Parliament, are still subject to provincial statutes that are general in their application, whether municipal legislation, legislation on adoption, hunting or the distribution of these provincial laws does not bear upon those subjects in what makes them specifically of federal jurisdiction.

This principle was further discussed in C.T.C.U.Q. c. Commission des champs de bataille nationaux, supra, where Mr. Justice Gonthier stated:

> Construction Montcalm clearly established that in principle a valid provincial law of general application applies to works, undertakings, services or things which otherwise fall under

> federal jurisdiction.
>
> As an exception to this principle, however, Parliament can assert exclusive legislative jurisdiction excluding the application of provincial statutes to the **specifically federal aspects** of such things or persons....**The immunity pertaining to federal status applies to things or persons falling within federal jurisdiction, some specifically federal aspects of which would be affected by the provincial legislation.** This is so because these specifically federal aspects are an integral part of federal jurisdiction over such things or persons and this jurisdiction is meant to be exclusive.
>
> It is the fundamental federal responsibility for a thing or person that determines its specifically federal aspects, those which form an integral part of the exclusive federal jurisdiction over that thing or person: Clark v. Canadian National Railway Co. and New Brunswick [1988] 2 S.C.R. 680, 89 N. R. 81. (pp.119-121) [emphasis added]

The rule respecting the "essential powers" of an undertaking, and whether they would be affected by the legislation has been extended to include legislation which "affects a vital part of the management and operation of the undertaking." (Commission du Salaire Minimum v. Bell Telephone Co. [1966] S.C.R. 767.) The rule has been applied most often in the area of labour relations, as Mr. Justice Gonthier remarked in CTCUQ, supra:

> The classic example is that of legislative jurisdiction over labour relations, where this court has established that provincial legislation dealing with this area -- a matter in principle reserved for the provinces: Toronto Electric v. Snider is not applicable to federal undertakings even if the legislation is otherwise valid: Reference re Minimum Wage Act of Saskatchewan [1948] S.C.R. 248; Bell etc.

Indeed, this principle has been applied to OC Transpo itself in Re Ottawa Carleton Regional Transit Commission and Amalgamated Transit

Union, Local 219, et al., 44 O.R. (2d), (1984), where the Ontario

Court of Appeal held that OC Transpo is a federal undertaking, subject to federal legislative jurisdiction in the area of labour relations.

Nonetheless, provincial laws having a significant affect on federal entities have been held to apply to those entities. The determinative point for the courts appears to be that the provincial laws do not affect the federal entities in their **essential** powers.

In CTCUQ, Mr. Justice Gonthier remarked, obiter, that the bus service run by the National Battlefields Commission was subject to provincial safety regulation:

> I hasten to add that this does not mean that the federal service is necessarily exempt from the application of provincial legislation dealing with safety in the transport industry...indeed the provisions dealing with safety are generally such that they rarely affect the vital or essential aspects of service or undertaking. **They rather tend to touch on certain secondary aspects of operations**, which may often be likened to the example given in Construction Montcalm, or a requirement by the province that workers wear a protective helmet on all construction sites, a requirement which was applicable to the site of a new airport. [emphasis added]

It is the position of OC Transpo that the Municipal Freedom of Information and Protection of Privacy Act cannot apply to it as a federal undertaking. This is because an analysis of its provisions shows that application of the Act to OC Transpo as an institution would "truly affect the management and operation of the institution subject to the Act":

> ...this law although purporting to apply generally to all individuals, decidedly affects the employer employee relationship to a great extent. The privacy provisions of the Act impose narrow terms within which institutions can now collect information on their employees and give to the employee a new right to compel information from its employer in its possession, which would otherwise be provided for through the mechanism of a collective agreement, and its grievance procedure....it is submitted that the Act to the extent that it attempts to regulate the Commission, on a labour relations basis with its employees, and on a larger, management scale, is inapplicable.

However, as stated in Irwin Toy Ltd v. Quebec (Attorney General) 58 D.L.R. (4th) 577 (S.C.C.), there is a distinction between legislation in relation to a matter and legislation incidentally affecting a matter.

The Municipal Freedom of Information and Protection of Privacy Act does not regulate labour relations, working conditions, nor the management and operation of any institution to which it applies. Its purpose is to provide a right of access to information in the custody or control of institutions, and protection of personal privacy. It is possible that the disclosure of certain requested information might, in an unusual case, indirectly affect the management or labour relations of an institution. However, this concern is recognized in the Act, even for those institutions which are wholly within provincial jurisdiction, and exemptions from disclosure are available to the institution. In the very unusual case where it can be shown that disclosure of a record would clearly affect the working conditions, labour relations, or a vital part of the management and operation of an institution which is an interprovincial undertaking, then such a record would fall outside of the jurisdiction of the Act.

The specifically federal aspect of OC Transpo must be considered - it is

a public bus line providing interprovincial service. The provision of a public bus service going into Quebec is its dominant federal characteristic. This specifically federal aspect of the undertaking, particularly in its operation, would be drastically

affected by labour relations legislation, and is distinguishable in this regard from the Municipal Freedom of Information and Protection of Privacy Act.

In my view, at most, the Municipal Freedom of Information and Protection of Privacy Act, 1989 would have an incidental effect on the management and operation of the undertaking. There are certain obligations which flow from designation as an institution under the Act. However, the dominant effect of these obligations would be incidental with respect to the operation of the bus line.

It is my view that the application of the Act to the undertaking could be characterized as having an effect on the **secondary aspects** of the operation. (CTCUQ supra) The Act would certainly not "sterilize " or "mutilate" the undertaking in its essential powers. It would not impair the operation of the interprovincial bus line.

CONCLUSION:

A federal undertaking is subject to provincial laws of general application where the laws in question do not affect a vital part of its management and operation, or sterilize it in its essential powers. In my view, the Municipal Freedom of Information and Protection of Privacy Act is a provincial law of general application which does not affect OC Transpo in its specifically federal aspect, but rather in a secondary aspect of its operation. While it is clear that the Act may have an incidental effect on OC Transpo, the effect will not be on its essentially federal function, which is the provision of an interprovincial bus service.

[IPC Order M-13/May 4, 1992]

OC Transpo is the Regional Transit Authority for the Ottawa-Carleton Region. As such it falls within the definition of "institution" in section 2(1) of the Act. Accordingly, it is my view that the Municipal Freedom of Information and Protection of Privacy Act applies to it.

I wish to note that although the source of funding of an entity is not determinative of the characterization of an entity as an interprovincial undertaking, I am mindful of the fact that the institution in this appeal, OC Transpo, is largely funded by the Regional Municipality of Ottawa-Carleton and the Government of Ontario. This fact gives the people of Ontario a significant stake in this institution. It is therefore fitting, in my view, that the rights of the people of Ontario regarding access to information and protection of privacy as contained in the Municipal Freedom of Information and Protection of Privacy Act, should, to the extent possible, be available in the case of OC Transpo.

EFFECT OF CONCLUSION ON APPELLANT'S REQUEST

The appellant in this appeal requested access to his personal information in a job competition file, including "advice and recommendations made by OC Transpo staff (about myself) regarding interview (panel) date December 21, 1989." The appellant is not an employee of OC Transpo.

The records do not relate to working conditions which would govern a contract of employment between OC Transpo as an employer and an employee. The term "working conditions" was defined by Mr. Justice Beetz in Bell Canada v. Commission de la sante et de la securite et Bilodeau, et al. 51 D.L.R. (4th) 161 (S.C.C.) (1988), at p.197:

> Working conditions are conditions under which a worker or workers, individually or collectively, provide their services in accordance with the rights and obligations included in the

> contract of employment by the consent of the parties or by operation of law, and under which the employer receives those services.

Nor do the records relate to the "labour relations" between an employer and employee. Where a collective agreement makes provision respecting the hiring of individuals, it is generally in the context of the hiring and promotion of persons who are already employees of the particular employer. As stated above, the appellant in this appeal is not an employee. The records do not relate to the content of a collective agreement, nor to the mutual rights and obligations as between an employer and employee.

Further, I have received no evidence to show that disclosure of the records at issue would affect a vital part of the management and operation of OC Transpo, nor that it would impair the functioning of the transit commission in its specifically federal aspect. Accordingly, it is my view that the records requested by the appellant fall within the jurisdiction of the Act.

The head has not made a decision under the Municipal Freedom of Information and Protection of Privacy Act with respect to access by the appellant to the requested records. Accordingly, it is necessary for the head to review the requested records and make a decision as to access under the Act.

EFFECT OF CONCLUSION ON THE REQUESTS OF AFFECTED PARTIES:

The affected parties in this appeal are those individuals, other than the appellant, who made requests to OC Transpo for access to information under the Municipal Freedom of Information and Protection of Privacy Act, and who appealed the head's decision to this office.

I have found that OC Transpo is an institution under the Act. However,

the head has not made a decision under the Act respecting access to the requested information in the case of any of the affected parties. Accordingly, it is necessary for the head to review the requests of the affected parties, and to make a decision whether disclosure of each requested record would clearly affect labour relations, working conditions or a vital part of the management and operation of OC Transpo. The head must then make a decision as to access under the Act, for each record which falls within the jurisdiction of the Act.

ORDER:

1. I order the head to make a decision regarding access to the records requested by the appellant in this appeal, under the Municipal Freedom of Information and Protection of Privacy Act, within ten (10) days of the date of this Order, and to provide me with a copy of this decision within five (5) days of the date that the decision is made. I remain seized of this appeal.

2. I order the head to review each of the requests made by the affected parties, and for each requested record, to decide whether the record falls within the jurisdiction of the Municipal Freedom of Information and Protection of Privacy Act. I further order the head to make a decision regarding access, for each record which falls within the jurisdiction of the Act, within twenty (20) days of the date of this Order, and to provide me with a copy of these decisions within five (5) days of the date that the decisions are made. The appeals to which this provision applies are: M-910059, M-910121, M-910164, M-910165, M-910166 and M-910290. I remain seized of these appeals.

3. Copies of the decisions referred to in provisions 1 and 2 should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Toronto, Ontario, M5S

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Original signed by: May 4, 1992
Tom Wright
Commissioner