



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-159

Appeal M-9200214

Ottawa-Carleton Regional Transit Commission



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ORDER

BACKGROUND:

The Ottawa-Carleton Regional Transit Commission (OC Transpo) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all the requester's personal information for the period January 1, 1989 to February 20, 1991, including any records from his grievance and medical files.

Initially, OC Transpo did not make a decision concerning the request since it was of the view that the Act did not apply to it. The requester appealed the position taken by OC Transpo. In Interim Order M-13, I concluded that OC Transpo was covered by the Act and ordered it to make a decision under the Act respecting the request.

Following Interim Order M-13, OC Transpo issued a decision and granted partial access to the records by providing copies of the requester's medical records from January 1, 1989 to February 20, 1991. OC Transpo denied access to records from the requester's personnel and grievance files on the basis that these records are outside the jurisdiction of the Act.

The appellant appealed the decision because he did not believe that he had received all of the medical records in his file, and because he believes that the personnel and grievance records fall within the jurisdiction of the Act.

The appellant subsequently examined his original medical records at OC Transpo and withdrew his claim that more medical records exist.

As a result of mediation, OC Transpo granted access to those records in the appellant's personnel file that do not relate to his grievances by providing him with copies of his records pertaining to pay and benefits.

Further mediation was not successful and notice that an inquiry was being conducted to review the decision was sent to the appellant and OC Transpo. Written representations were received from both parties. This is a final decision dealing with access to the records in issue in this appeal, formerly M-910121.

The records at issue relate to the appellant's grievances, including personnel records and any notes and minutes made by staff. OC Transpo provided an affidavit, accompanied by an index describing the records in question.

ISSUES:

- A. Whether the records at issue are outside the jurisdiction of the Act.

- B. If the answer to Issue A is no, whether the mandatory exemption provided by section 10 of the Act applies to the records.
- C. If the answer to Issue A is no, whether the discretionary exemption provided by section 7 of the Act applies to the records.
- D. If the answer to Issue A is no, whether the discretionary exemption provided by section 11 applies to the records.
- E. If the answer to Issue A is no, whether the discretionary exemption provided by section 12 applies to the records.

SUBMISSIONS/CONCLUSIONS:

A. Whether the records at issue are outside the jurisdiction of the Act.

In Interim Order M-13, I examined the issue of whether the application of the Act to OC Transpo is constitutionally valid. I concluded on page 17 that OC Transpo falls within the definition of "institution" in section 2(1) of the Act and it was my view that the Act applied to it. However, in Interim Order M-13, I noted that as a result of the principle of "interjurisdictional immunity", there were some limits on the application of the Act to OC Transpo.

The principle of "interjurisdictional immunity" provides that a provincial law may not be applicable to an interprovincial undertaking where the law in question affects a vital part of its management and operation, or sterilizes it in its essential powers. I stated on page 16:

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.

In its representations relating to this appeal, OC Transpo indicated that disclosure of the records would affect labour relations and therefore they are outside the Commissioner's jurisdiction as discussed in Interim Order M-13.

The appellant submitted that disclosure of the records would not affect labour relations.

In order to determine whether the disclosure of the records would affect labour relations, it is first necessary to consider the nature of the records and determine whether they relate to labour relations. The records at issue relate to the appellant's grievances, including personnel records and any notes and minutes made by staff.

In its representations OC Transpo stated:

Documents such as those at issue in these appeals are created because, under the collective agreement, employees are subject to discipline only for just cause, and because the [Canada Labour] Code requires that every collective agreement provide for the resolution of disputes (for example, the validity of disciplinary decisions) by binding rights arbitration. The documents in question, all of them, relate to just such a proceeding.

I am of the view that the records do relate to the appellant's grievances.

I must also consider whether grievance proceedings relate to labour relations. In my view, labour relations involves the relationship between employers and their employees both union and non-union. Grievance procedures are designed to help resolve disputes which arise between employers and employees and are therefore an important part of that relationship. Accordingly, it is my view that records relating to grievances relate to labour relations.

I must now consider whether the disclosure of the records would affect labour relations. OC Transpo has indicated that the federally mandated collective agreement contains dispute resolution mechanisms including a grievance procedure. It submitted that the parties have, in accordance with general labour law, considered this grievance procedure to be confidential.

OC Transpo further states that:

the federal requirements for mandatory binding rights arbitration exist in a labour law general law which accords a privilege to discussions at grievance proceedings. That would, in our opinion extend to the documents which formed the subject matter of those discussions. No distinction is drawn between offers of settlement, per se, and any other

discussion at such a meeting.

In support of the view that these discussions and documents are usually confidential, OC Transpo referred to several labour arbitration cases including Ottawa-Carleton and C.U.P.E. (1984), 14 L.A.C. (3d) 445 (Picher) and Re City of Calgary and C.U.P.E. (1979), 22 L.A.C. (2d) 434 (Mason).

In its representations, OC Transpo stated that any issues of confidentiality are generally dealt with by the arbitrator. OC Transpo submitted that:

Both our collective agreement as it is and as it must be pursuant to section 57(1) of the Canada Labour Code vest exclusive and essentially unreviewable authority to determine issues of such confidentiality in an arbitrator.

As OC Transpo's grievance procedures are governed by the Canada Labour Code, which is a federal statute, any decisions concerning the disclosure of records related to a grievance would generally be made under that statute. Therefore, it follows that the application of the Act to records concerning grievances would impact on the way in which grievance procedures are carried out. Since I have found that grievances relate to labour relations and are an important part of the relationship between employers and employees, if the disclosure of the records in issue would impact on grievance procedures it would also clearly affect labour relations. In Interim Order M-13, I noted that where disclosure of a record would clearly affect labour relations of an institution which is an interprovincial undertaking, then such a record would fall outside of the jurisdiction of the Act. In my view, the disclosure of the records at issue in this appeal would have such an impact. Accordingly, I am of the view that the records are outside the jurisdiction of the Act.

In light of my conclusion, I will not consider issues B, C, D and E.

Original signed by: _____
Tom Wright
Commissioner

July 6, 1993