



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

ORDER M-887

Appeal M_9600326

The Corporation of the City of Gloucester



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NATURE OF THE APPEAL:

The Corporation of the City of Gloucester (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the letters written by two employees of the City regarding certain allegations made against the requester. The City located two internal memoranda which were responsive to the request and denied access to them in their entirety, claiming that because of the application of section 52(3) of the Act, the records were outside the scope of the Act.

The requester (now the appellant) appealed this decision. This office provided a Notice of Inquiry to the appellant and the City. The City provided representations in response to this Notice. The appellant's representations were submitted by her counsel.

DISCUSSION:

JURISDICTION

The sole issue to be determined in this appeal is whether the records which are responsive to the appellant's request fall within the scope of sections 52(3) and (4) of the Act. These sections state:

- (3) 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.
- (4) 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.

The interpretation of sections 52(3) and (4) is a preliminary issue which goes to the Commissioner's jurisdiction to continue an inquiry.

Section 52(3) is record-specific and fact-specific. If this section applies to a specific record, in the circumstances of a particular appeal, and none of the exceptions listed in 52(4) are present, then the record is excluded from the scope of the Act and not subject to the Commissioner's jurisdiction.

The City claims that all three parts of section 52(3) apply in the circumstances of this case. I will begin with section 52(3)1.

Section 52(3)1

In order for a record to fall within the scope of this provision, the City must establish that:

1. the record was collected, prepared, maintained or used by the City or on its behalf; **and**
2. this collection, preparation, maintenance or usage was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity; **and**
3. these proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the City.

(Orders P-1223 and M-815)

The City indicates that the requested records are being maintained and used by it in relation to arbitration proceedings arising, in part, from the suspension of the appellant from work for three days in 1996.

The City has provided documentation to establish that the appellant filed a number of grievances under the collective agreement (the collective agreement) between CUPE Local 1525 and the City. The appellant was, and continues to be, a member of the bargaining unit. The City indicates that following its investigation into the grievances, the appellant, her representative and the City agreed that any outstanding grievances were to be referred to a three member arbitration

panel. The City confirms that the arbitration process is currently under way, and that the bargaining agent has advised the City of its nominee for the Board of Arbitration.

The appellant's counsel confirms that he represents the appellant through her bargaining agent. Counsel refers to the grievance/arbitration procedures under the collective agreement but does not provide any specific representations on this issue.

The City claims that the requested records form part of the evidence to be used by it in responding to a number of the grievances brought by the appellant and her representative which will be dealt with in the arbitration.

The City submits that the arbitration which has been commenced on behalf of the appellant constitutes a "proceeding" before a tribunal or other entity and that this proceeding relates to labour relations or the employment of the appellant by the City.

I have reviewed the two records at issue and have considered the representations of the parties. I find that the records were maintained and will be used by the City in the hearing before the Board of Arbitration. This usage is for the purpose of and/or substantially connected to the arbitration and is thus, "in relation to" it (Order M-815). I also find that the arbitration proceedings are properly characterized as "proceedings" before "another entity" (Order M-815). Accordingly, I find that the first two requirements of section 52(3)1 have been met with respect to these records.

In the circumstances of this appeal, the City has established that the appellant, who was a member of CUPE at the time, filed her grievances in accordance with the collective agreement between the City and CUPE. Therefore, I find that the grievance arbitration is a proceeding relating to labour relations, and the third requirement of section 52(3)1 has been established (Order M-815).

In summary, I find that the records at issue in this appeal were maintained and will be used by the City in relation to proceedings before an "other entity", the Board of Arbitration, and that these proceedings relate to labour relations. All of the requirements of section 52(3)1 of the Act have thereby been established by the City. None of the exceptions contained in section 52(4) are present in the circumstances of this appeal, and I find that the records fall within the parameters of section 52(3)1 and therefore are excluded from the scope of the Act.

Because of the findings I have made, it is not necessary for me to consider the application of the other parts of section 52(3).

ORDER:

I uphold the City's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ January 8, 1997