



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

ORDER M-998

Appeal M_9700143

LaSalle Police Services Board



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NATURE OF THE APPEAL:

The Lasalle Police Services Board (the Police) received a request from a reporter under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of a report made by two City of London police officers following their internal investigation into the Lasalle Police Service.

The Police denied access to the record. The requester (now the appellant) appealed the decision of the Police.

During mediation, with the agreement of the appellant, the Appeals Officer clarified that the exemptions being relied upon by the Police to deny access to the record are sections 8(1)(a), (b), (d), (f), 8(2)(a) and 14 of the Act. The Police also claimed that, pursuant to section 52(3), the Act does not apply to the record.

This office sent a Notice of Inquiry to the Police and the appellant. Representations were received from both parties.

DISCUSSION:

JURISDICTION

The interpretation of sections 52(3) and (4) is a preliminary issue which goes to the jurisdiction of the Commissioner or her delegates to continue an inquiry. If the requested records fall within the scope of section 52(3) of the Act, they would be excluded from the scope of the Act unless they are records described in section 52(4). Section 52(4) lists exceptions to the exclusions established in section 52(3).

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.

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 section 52(4) are present, then the record is excluded from the scope of the Act and not subject to the Commissioner's jurisdiction.

The record at issue in this appeal is the "report" made by the two police officers.

I will first address the potential application of section 52(3)3. In order to fall within the scope of paragraph 3 of section 52(3), the Police must establish that:

1. the record was collected, prepared, maintained or used by the Police on their behalf; **and**
2. this collection, preparation, maintenance or usage 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 Police have an interest.

[Orders M-835, M-899, M-922, M-962 and P-1242]

The Police state the report was collected, prepared, maintained and used by the institution in relation to consultations and discussions about labour relations and employment-related matters in which they have an interest.

The appellant has restricted her representations to providing me with copies of a series of articles she has written about the Lasalle Police. She states that the public has a right to know, thus raising, by implication, section 16 of the Act, the so-called public interest override. I am only able to consider this section if I find that I have the jurisdiction to continue the inquiry. Should I find that section 52(3)3 applies to the record and none of the exceptions listed in section 52(4) are present, the record is excluded from the scope of the Act and section 16 has no relevance.

Requirement 1

I am satisfied that the record at issue was prepared on behalf of the Police by the two police officers from the London Police and was used and maintained by the Lasalle Police, thereby meeting Requirement 1.

Requirement 2

In Order P-1223, Assistant Commissioner Tom Mitchinson made the following comments regarding the interpretation of the phrase “in relation to” in section 65(6) of the provincial Act, the equivalent to section 52(3) of the Act:

I am of the view that if the preparation (or collection, maintenance, or use) of a record was **for the purpose of, as a result of, or substantially connected to** an activity listed in sections 65(6)1, 2 or 3, it would be “in relation to” that activity. (emphasis added)

The Police submit that the record was used “in relation to” consultations and communications in that it was the manner in which the results of the investigation were communicated to the Police.

Therefore, the report was prepared by the investigating police officers for the purpose of or “in relation to” consultations and communications and Requirement 2 has been established.

Requirement 3

I must now determine whether the communication to the Chief of Police is about an employment-related or labour relations matter in which the Police have an interest.

I find that because of the nature of the investigation conducted by the London Police officers the resulting consultations and communications are about employment-related matters.

The phrase “has an interest” has been defined as more than mere curiosity or concern. An “interest” must be a legal interest in the sense that the matter in which the institution has an interest must have the capacity to affect the institution’s legal rights or obligations (Orders M_835, M-899, M-922, M-962 and P-1242).

The Police state that they have a legal interest in maintaining proper policing standards and ensuring that members of the force are adequately trained to ensure public confidence in the police services. According to the Police, they have a legal obligation to ensure that proper policing procedures are followed. The Police state that through the Chief, the Police have a legal

obligation to investigate complaints involving any member of the police services within its jurisdiction. The Police submit that a failure to maintain adequate policing could affect their legal rights or obligations. The Police direct my attention to a number sections of the Police Services Act which spell out the responsibilities and potential liabilities of the Police in this regard.

It is clear that the Police have a legal responsibility to monitor the actions of the Chief of Police and the members of the force. Therefore, in my view, the Police have "an interest" in the consultations and communications which are reflected in the report and the third requirement is met.

Since all three requirements have been met, I find that section 52(3) applies to the record. As this is not a record to which section 52(4) applies, it is excluded from the scope of the Act.

Because I have found that the record falls outside of the scope of the Act, I need not consider sections 8(1)(a), (b), (d), (f), 8(2)(a), 14 and 16.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Marianne Miller
Inquiry Officer

_____ September 8, 1997