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

ORDER M-999

Appeal M_9700145

Municipality of Metropolitan Toronto

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The Municipality of Metropolitan Toronto (the Municipality) received a request to examine the originals of the requester's corporate and human resources personnel files.

The Municipality provided the requester with access to the responsive records except for notations made on the first page of her resume during the course of a job competition. The Municipality denied access to this information pursuant to sections 14(2)(h) and 38(b) (invasion of privacy) of the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester (now the appellant) appealed this decision.

This office sent a Notice of Inquiry to the Municipality and the appellant. Although the Municipality did not raise the issue, both parties were asked to make representations on section 52(3) which may remove the information from the scope of the Act. Representations were received from both parties.

In its representations, the Municipality takes the position that section 52(3) is applicable in this case and states that it is no longer relying on sections 14(2)(h) and 38(b).

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).

The institution relies solely on section 52(3)3 to remove the information from the scope of the Act. The appellant did not make representations on the application of section 52(3).

Section 52(3)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 notations are the only information at issue in this appeal.

In Order P-1242, Assistant Commissioner Tom Mitchinson held that in order for a record to fall within the scope of paragraph 3 of section 65(6) of the Freedom of Information and Protection of Privacy Act, which is the provincial equivalent to section 52(3) of the Act, an institution must establish that:

1. the record was collected, prepared, maintained or used by the institution or on its 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 institution has an interest.

Requirement 1

In its representations, the Municipality states the notations were prepared and used in its employment process. In my view, it is clear that the notations were prepared or used by the Municipality. Therefore, Requirement 1 has been established.

Requirement 2

The Municipality states the notations were used in relation to discussions and consultations between those conducting the job competition and the employee's former supervisor. The Municipality explains that when a former employee applies for employment, it is part of the institution's job competition process to check the employee's service rating.

In Order P-1223, Assistant Commissioner Mitchinson stated 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 52(3)1, 2, or 3]", it would be "in relation to" that activity.

In the circumstances of this appeal, I find that the Municipality prepared and/or used all the notations "in relation to" consultations and discussions which took place around the job competition process. Therefore, Requirement 2 has been met.

Requirement 3

In order to satisfy the third requirement, the Municipality must establish that the consultations and discussions are about labour relations or employment-related matters in which it has an interest.

The Municipality states that the discussions, consultations and communications were about an employment-related matter, namely a job competition in which it has an interest.

A number of previous orders have found that a job competition is an employment-related or labour relations matter.
In Order M-830, Assistant Commissioner Mitchinson found that job competitions are matters in which an institution "has an interest" because the job competition process involves certain legal obligations which an employer must meet, for example under the Ontario Human Rights Code, the employer has a duty not to discriminate in selecting an employee in a job competition.

I agree with this conclusion and find that in the circumstances of this appeal, the Municipality "has an interest" in the job competition which is the subject of the records in this appeal. Therefore, Requirement 3 has been established.

Accordingly, all of the requirements of section 52(3)3 of the Act have been established by the Municipality. Since none of the exceptions contained in section 52(4) are present in the circumstances of this appeal, I find that the notations fall within the parameters of section 52(3)3. Therefore, they are excluded from the scope of the Act.

ORDER:

I uphold the decision of the Municipality.

Original signed by: September 11, 1997
Marianne Miller
Inquiry Officer