



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-991

Appeal M_9700113

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information concerning a particular internal investigation into problems between staff and a copy of the investigator's report.

The requester is employed by the Police and was the complainant in the internal investigation to which the request relates.

The Police denied the requester access to 60 pages of statements, memoranda and other communications on the basis that pursuant to section 52(3), the Act does not apply to the records.

The requester (now the appellant) appealed the decision of the Police. This office sent a Notice of Inquiry to the Police and the appellant. Representations were received from the Police only.

DISCUSSION:

JURISDICTION

The sole issue in this appeal is whether the requested records fall within the scope of section 52(3) of the Act. If so, 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 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.

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]

Requirement 1

The Police state that the records consist of memos, investigative reports, personnel documentation and other correspondence “collected, prepared and maintained to document the occurrences stemming from the requester’s job performance issues and subsequent related incidents.”

I am satisfied that the records at issue in this file were prepared, collected, used and maintained by the Police in and for its internal investigation, meeting Requirement 1.

Requirement 2

The Police submit that the records document communications relating to the internal investigation, and that they were created and/or maintained for and in connection with that investigation.

I am satisfied that the records are communications in and about the internal communication between various police employees and, therefore, meet Requirement 2.

Requirement 3

In my view, the records or “communications” are “about” the internal investigation.

The investigation relates to issues of employee performance and workplace harassment. In Order P-1242, Assistant Commissioner Tom Mitchinson determined that “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.” I adopt this interpretation and find that the Police “have an interest” in investigations having to do with harassment complaints and worker performance because the Police are legally obligated to prevent or stop workplace harassment between its employees and to treat such employees fairly with respect to performance issues which may arise. Accordingly, Requirement 3 has also been met.

Since all three requirements have been met, I find that section 52(3) applies to the records. As these are not records to which section 52(4) applies, they are excluded from the scope of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

August 27, 1997