



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

# **ORDER M-996**

**Appeal M\_9700126**

**City of Toronto**



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## **NATURE OF THE APPEAL:**

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the City of Toronto (the City). Specifically, the following records were requested:

1. reports of doctors and other health professionals;
2. reports of rehabilitation assessments and plans, including modified work programs and modified work requirements;
3. job descriptions for positions held; and
4. performance evaluations.

The City denied access to the responsive records on the basis that pursuant to section 52(3), the Act does not apply (despite this decision, the City did disclose some of the records to the appellant informally).

The appellant appealed the City's decision. This office sent a Notice of Inquiry to the City and the appellant. Representations were received from both parties.

## **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.

The City relies on sections 52(3)1 and 52(3)3 of the Act to exclude the records in their entirety in this appeal. In order to fall within the scope of section 52(3)3, 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 meetings, consultations, discussions or communications; and
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the City has an interest.

### **Requirements 1 and 2**

The City states that the records consist of 231 pages of doctors' letters and reports, internal memoranda, reports and related documentation from three sections of the City's Human Resources Division: the Employee Health and Safety Section, the Employee Assistance and Rehabilitation Section, and the Workers' Compensation Section.

It is clear from the records that the appellant has had extensive contact with the Employee Assistance and Rehabilitation Section. This department has worked with other departments to provide modified jobs for the requester, and has also worked with the Employee Health Services Section to perform or obtain a number of assessments of the appellant to determine which functions he could perform. The City also arranged a rehabilitation placement for the requester. Based on my review of the records, I am satisfied that the records were collected, prepared, maintained or used by the City in relation to meetings, consultations, discussions or communications and Requirements 1 and 2 have been met.

### **Requirement 3**

The City submits that the meetings, consultations, discussions or communications relate to the City's endeavours to accommodate an employee with a disability. The meetings, consultations, discussions or communications also relate to the appellant's claim to the Workers' Compensation Board and his application for long term disability. All of these, in my view, are employment-related matters.

The City has a duty under the Ontario Human Rights Code to accommodate an employee with a disability, and an obligation under the collective agreement which governs the relationship between the appellant and the City to provide rehabilitative assistance to members of the bargaining unit. Accordingly, I am satisfied that the City has an interest in these matters, and Requirement 3 has 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 City's decision.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ September 8, 1997