



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

ORDER M-1016

Appeal M-9700207

Metropolitan Toronto Police Services Board



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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 Metropolitan Toronto Police Services Board (the Police). The request was for access to the following information relating to the appellant:

- The Criminal/Discipline brief prepared for the Crown Attorney in March 1996.
- Any correspondence between the investigators, Crown Attorney's Office and Trials Office and Professional Standards Committee.
- The discipline brief relating to the two charges that were applied to the board to proceed.

The Police denied access to the records they identified as responsive to the request, based on the provision found in section 52(3) of the Act. The requester (now the appellant) appealed the Police's decision.

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

RECORDS:

The records consist of approximately 1800 pages and include file notes, correspondence, minutes of a meeting of the Professional Standards Review Committee, policies and procedures, the appellant's service record, a report concerning search warrants with which the appellant was involved and seven volumes, each consisting of 250 to 300 pages, dealing with search warrants with which the appellant was involved.

DISCUSSION:

JURISDICTION:

The only issue in this appeal is whether the records fall within the scope of sections 52(3) and (4) of the Act. If section 52(3) applies, and none of the exceptions found in section 52(4) apply, section 52(3) has the effect of excluding records from the scope of the Act, which removes such records from the Commissioner's jurisdiction.

Section 52(3)1

In order for a record to fall within the scope of section 52(3)1, the Police 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 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 institution.

[Order M-815]

Requirement 1

The Police submit that the records in question are associated with the investigation of allegations of misconduct against the appellant, a police officer. Such investigations are held under the authority of Part V of the Police Services Act (PSA). Under Part V of the PSA, section 58(1) provides that the Chief of Police is obligated to investigate any apparent or alleged misconduct by a police officer. During the course of these investigations, evidence and other information is gathered, recorded, and stored in various formats.

Having reviewed the records, I find that the records were collected, prepared, maintained and/or used by the Police or on their behalf. Therefore, the first requirement of section 52(3)1 has been established.

Requirement 2

In order to satisfy this requirement, the Police must establish that the disciplinary matter was a “proceeding”, that the proceeding was “before a court, tribunal or other entity”, and that the records were collected, prepared, maintained or used “in relation to” the “proceeding”.

In Order M-835, Assistant Commissioner Mitchinson made the following findings:

- A disciplinary hearing conducted under section 60 of the PSA is a dispute or complaint resolution process conducted by a court, tribunal or other entity which has, by law, the power to decide disciplinary matters. As such, these hearings are properly characterized as “proceedings” for the purpose of section 52(3)1.
- The Chief of Police or his delegate has the authority to conduct “proceedings” and the power, by law, to determine matters affecting legal rights and obligations and is properly characterized as an “other entity” for the purposes of section 52(3)1.

I agree, and have determined that the same findings apply in the circumstances of this appeal.

Having reviewed the records, I find that they were all collected, prepared, maintained and/or used by the Police in the context of the disciplinary hearing and, therefore, are properly characterized as being in relation to it. Finally, I find that all of the records are substantially connected to the disciplinary hearing. Accordingly, the second requirement under section 52(3)1 has been established.

Requirement 3

In the circumstances of this appeal, the disciplinary hearing was initiated as a result of an internal complaint under Part V of the PSA, not under the public complaints part of the statute (Part VI). I find that these Part V proceedings “relate to the employment of a person by the institution”. The penalties outlined in section 61(1), which may be imposed after a finding of misconduct, involve dismissal, demotion, suspension and the forfeiting of pay and time. In my view, these can only reasonably be characterized as employment-related actions. Therefore, the third requirement of section 52(3)1 has also been established.

As all of the requirements of section 52(3)1 of the Act have been established, and none of the exceptions contained in section 52(4) are present in the circumstances of this appeal, I find that the records are excluded from the scope of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
 Holly Big Canoe
 Inquiry Officer

_____ October 6, 1997