



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

ORDER M-1008

Appeal M-9700150

City of Toronto



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NATURE OF THE APPEAL:

The requester is a former employee of the City of Toronto (the City). He submitted a request to the City, under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all of his personal information collected by a named City department during the term of his employment.

The requester also sought access to his personal information collected in relation to four specific incidents, including statements from eight named City employees. The requester is a former employee of the City. The City denied access to the records on the basis that they fell within the parameters of section 52(3) of the Act and therefore, outside the scope of the Act. The requester appealed the decision to deny access.

During mediation, the City provided the appellant with the contents of his personnel file.

The records that remain at issue consist of a one-page memorandum and a police occurrence report.

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

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. These provisions read:

- (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 relation 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.

The interpretation of sections 52(3) and (4) is a preliminary issue which goes to the Commissioner or her delegate's jurisdiction to continue an inquiry.

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 City submits that both sections 52(3)1 and 52(3)3 apply to exclude the records from the Act. The City explains that the appellant is a former employee of the department from which the records are sought. The City states that in 1994, the department held a promotion competition and a number of grievances were filed as a result of this competition. Two of these grievances are still outstanding with arbitrations pending. At the same time, concerns about breach of security surrounding the competition and in one of the sections of the department led to a review of security procedures. The records at issue arose as a result of the security problem in the department and the issues arising from the promotion competition. The City submits that the appellant was a member of the bargaining unit and that another individual referred to in one of the records is also a member. The City states that the records form part of the evidence to be presented at the hearing before the Arbitration Board.

The City submits that the records were collected, maintained and used by the City in relation to the arbitrations and grievance proceedings which are pending. The City further submits that the pending arbitration and grievance proceedings relate to labour relations and employment-related matters in which the City has an "interest" resulting from the collective agreement with its bargaining unit.

I will first consider the application of section 52(3)1.

I have reviewed the records at issue and have considered the representations of the parties. I find that the records were collected and maintained and will be used by the City in the arbitration hearing. This usage is for the purpose of and/or substantially connected to the arbitration and is thus, "in relation to" it (Order M-815). I also find that arbitration proceedings are properly characterized as "proceedings" before an "other entity", i.e. the Arbitration Board (Order M-815). Accordingly, I find that the first two requirements of section 52(3)1 have been met with respect to these records.

I am satisfied that the arbitration hearing arose out of the grievances filed in accordance with the collective agreement between the City and CUPE. Therefore, I find that the grievance arbitration is a proceeding relating to labour relations, and the third requirement of section 52(3)1 has been established (Order M-815).

In summary, I find that the records at issue in this appeal were maintained and will be used by the City in relation to proceedings before an "other entity", the Arbitration Board, and that these proceedings relate to labour relations. All of the requirements of section 52(3)1 of the Act have thereby been established by the City. None of the exceptions contained in section 52(4) are present in the circumstances of this appeal, and I find that the records fall within the parameters of section 52(3)1 and therefore are excluded from the scope of the Act.

Because of the findings I have made, it is not necessary for me to consider the application of the other parts of section 52(3).

ORDER:

I uphold the decision of the City.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ September 26, 1997