



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1094

Appeal M-9700337

Terrace Bay Police Services Board



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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Terrace Bay 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 about a complaint filed against the requester by a co-worker. In particular, the requester sought “full disclosure of any and all letters, documents, or correspondence related to and including the letter of August 19, 1996 sent to the Chief of Police and the Terrace Bay Police Services Board” by a named individual. The requester is a member of the Police and seeks access to information about a complaint filed against him by a co-worker. The Police identified the records responsive to the request and denied access on the basis that the records fell outside the scope of the Act pursuant to section 52(3). The requester appealed the decision to deny access.

During mediation, the requester, now the appellant narrowed the scope of his request to two records: the letter of complaint from the co-worker and subsequent correspondence from the same individual.

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

DISCUSSION:

JURISDICTION

The sole issue in this appeal is whether the records fall within the scope of sections 52(3) and (4) of the Act.

Section 52(3) and (4) state:

- (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 relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or 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:

[IPC Order M-1094/April 16, 1998]

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'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 appellant provided detailed and extensive representations on the chronology of events. The Police submit that the records fall within the scope of section 52(3)1 of the Act. I have reviewed the representations of both the parties.

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 Police 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 Police.

Requirements 1 and 2

As I have indicated previously, the records consist of the letter of complaint and a subsequent letter written by the same individual. The Police submit that at the time that the complaint was made, it could have resulted in an internal investigation and a decision made by the Chief of Police about disciplinary action toward either the appellant or the co-worker under the provisions of the Police Services Act (the PSA). The Police submit that therefore, the records were collected and maintained for use in relation to an anticipated proceeding, a disciplinary hearing conducted by the Chief of Police or his/her delegate.

Previous orders of the Commissioner have established that a disciplinary hearing under section 60 of the PSA is properly characterized as a “proceeding” for the purposes of section 52(3)1. The Chief of Police or his/her delegate has the authority to conduct “proceedings” and the power to determine matters affecting legal rights and obligations, and, as such, constitutes an “other entity” (Orders M-835 and M-840).

Based on the foregoing and upon review of the records, I am satisfied that the records were collected and maintained by the Police for use in relation to an anticipated proceeding. Requirements 1 and 2 have been met.

Requirement 3

I must determine whether the proceedings for which the records were collected and maintained relate to “labour relations” or to “the employment of a person by the institution”.

In Order M-835, Assistant Commissioner Tom Mitchinson found that proceedings under Part V of the PSA which deal with internal complaints “relate to the employment of a person by the institution”. He found that the penalties outlined in section 61(1) of the PSA which may be imposed after a finding of misconduct, involve dismissal, demotion, suspension and forfeiture of pay and time and that these could reasonably be characterized as “employment-related actions”, despite the fact that they are contained in a statute and applied to police officers.

I agree with the Assistant Commissioner’s reasoning and approach and adopt it for the purposes of this appeal. I find that the records were collected and maintained by the Police for an anticipated proceeding and that this anticipated proceeding related to the employment of a person by the Police. Requirement 3 has been satisfied.

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

ORDER:

I uphold the decision of the Police.

Original signed by: _____

Mumtaz Jiwan
Inquiry Officer

_____ April 16, 1998