



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1127

Appeal M-9800086

Toronto Police Services Board



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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to the contents of the requester's application for employment file. The Police located the responsive information and denied access to it, claiming that under section 52(3) of the Act, the records containing the responsive information fall outside the scope of the Act.

The requester, now the appellant, appealed the decision to deny access. During the mediation of the appeal, the appellant agreed to limit the scope of his appeal to a one-page document entitled "Employment Investigator's Report" dated October 9, 1997.

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties. The sole issue to be determined in this appeal is whether, because of the operation of section 52(3), the responsive record is excluded from the scope of the Act.

DISCUSSION:

JURISDICTION

The interpretation of sections 52(3) and (4) is a preliminary issue which goes to the jurisdiction of the Commissioner or her delegate to continue an inquiry. If the requested records fall within the scope of section 52(3) of the Act, 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).

These sections 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 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.

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 record at issue is a one-page report completed by an Employment Investigator employed by the Police following the submission of an application for employment by the appellant for a position with the Police.

The appellant submits that he was never employed by the Police, he was merely being considered for employment. Because he was not an employee of the Police, the appellant takes the position that section 52(3) does not apply to the requested record as it is not about labour relations or employment-related matters.

Section 52(3)3

In Order P-1242, Assistant Commissioner Tom Mitchinson held that in order for a record to fall within the scope of paragraph 3 of section 65(6), the provision in the provincial Act which is the equivalent to section 52(3)3, an institution 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 meetings, consultations, discussions or communications; **and**
- [IPC Order M-1127/July 6,1998]**

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

Requirement One

In my view, it is clear that records which are compiled in the course of a job competition, such as the record at issue in this appeal, are either collected, prepared, maintained or used by the employer, and in many cases, all four. Accordingly, I find that Requirement 1 has been established with respect to the present record.

Requirement Two

The Police state that the information in the record was used in relation to its hiring process. In Order P-1223, Assistant Commissioner Mitchinson stated that if the preparation (or collection, maintenance, or use) of a record was “for the purpose of, as a result of, or substantially connected to an activity listed in [sections 52(3)1, 2, or 3]”, it would be “in relation to” that activity.

Previous orders have found that, in the context of a job competition, an employment interview is a “meeting” and that deliberations about the results of a competition among the panel are “meetings, discussions or communications” (Orders M-861 and P-1258).

In addition, records generated with respect to these activities would either be for the purpose of, as a result of, or substantially connected to these communications, and therefore, properly characterized as being “in relation to” them (Order P-1258).

In the circumstances of this appeal, I find that the Police prepared, maintained or used the record “in relation to” communications which took place around the job competition process. Therefore, Requirement 2 has been met.

Requirement Three

I find that a job competition is an employment-related or labour relations matter. In my view, the complete hiring process, including the screening of potential candidates, must be considered to be an employment-related matter, regardless of the fact that the person may not ultimately be the successful candidate.

In Order M-830, Assistant Commissioner Mitchinson found that job competitions are matters in which an institution “has an interest” because the job competition process involves certain legal obligations which an employer must meet under the Ontario Human Rights Code, for example, a duty not to discriminate in selecting an employee in a job competition.

I agree with this conclusion and find that, in the circumstances of this appeal, the Police have “an interest” in the job competition which is the subject of the records in this appeal. Therefore, Requirement 3 has been established.

Accordingly, all of the requirements of section 52(3)3 of the Act have been satisfied by the Police. Since none of the exceptions contained in section 52(4) are present in the circumstances of this appeal, I find that the records fall within the parameters of section 52(3)3. Therefore, they are excluded from the scope of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____

Donald Hale

Adjudicator

July 6, 1998