



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

# **ORDER M-1110**

**Appeal M-9800037**

**Peel Regional 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>

## **BACKGROUND:**

The appellant is a disabled person. He submitted an application to the Peel Regional Police Services Board (the Police) for employment with the Police as a police officer. Following submission of his application he underwent academic and physical testing and was granted an interview with the Police. Following this, he did not hear back from the Police for several months and subsequently received correspondence from them confirming that he had withdrawn his application. He notified the Police that this was not the case and the Police agreed to reactivate his file. The appellant still did not hear back from the Police regarding his application for employment.

## **NATURE OF THE APPEAL:**

The appellant then made a request to the Police under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information pertaining to his application for employment with the Police. He specifically referred to:

... all documents, including, but not limited to, test scores, interview notes, post-it notes, notes regarding any telephone calls that were made with myself or any third parties regarding my application including other police services that may have been contacted. I want all records including rough notes and scrap notes and officers memo books/duty books that exist. I want all records that exist that were made by any officers having contact with my file, including but not limited to, [two named officers].

I do not require the documents I submitted by courier, which include the [Police] application I filled out and my Military files. I do not require any test questions pertaining to the testing I completed, I simply want my scores and any records made relating to same.

In early discussions with the Police, the appellant agreed that information related to references is not at issue.

The Police located records responsive to the request and denied access to them, stating that the records fell outside the scope of the Act pursuant to section 52(3). The appellant appealed this decision.

During mediation, the Police released all of the responsive records to the appellant. The Police emphasized that this was done outside of the Freedom of Information process, and their position remains that section 52(3) of the Act applies to the records. The appellant believes that additional records should exist, and, therefore, raised the reasonableness of the search as an issue in this appeal.

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

Before beginning I note that in order to determine whether the search conducted by the Police was reasonable, I must have jurisdiction to deal with the records at issue. The interpretation of sections 52(3) and (4) is a preliminary issue which goes to the Commissioner's jurisdiction to continue an inquiry.

Therefore, if I find that I do not have jurisdiction to continue this inquiry, I am unable to consider the reasonableness of the search conducted by the Police.

## **DISCUSSION:**

### **JURISDICTION**

The first issue in this appeal, therefore, 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 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.

### **Section 52(3)3**

In order for a record to fall within the scope of paragraph 3 of section 52(3), the Police must establish that:

1. the record was collected, prepared, maintained or used by the Police or on their 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 Police have an interest.

[Order P-1242]

### **Requirements one and two**

The Police forwarded to this office the records which they released to the appellant outside the context of the Freedom of Information scheme. These records consist of the appellant's application for employment, interview notes, test scores, correspondence regarding the appellant's application and computer generated forms containing information pertaining to the appellant's application. I am satisfied that these records were collected, prepared, maintained and/or used by the Police, thus meeting Requirement one.

Moreover, I am satisfied that the records were generated either for the purpose of, as a result of, or substantially connected to meetings, discussions or communications regarding the appellant's application for employment, and therefore, are properly characterized as being "in relation to" them (Order P-1242). Therefore, Requirement two has also been established.

### **Requirement three**

In my view, it is self evident that the submission of an application for employment and subsequent evaluation of that application by the Police is an "employment-related matter".

In Order M-830, Assistant Commissioner Tom Mitchinson found that a "job competition process" involves certain legal obligations which an employer must meet under the Ontario Human Rights Code (the Code). These involve a duty not to discriminate in selecting an employee in a job competition. He went on to find that job competitions are matters in which an institution "has an interest". Assistant Commissioner Mitchinson defined the term "has an interest" as follows:

[IPC Order M-1110/June 3,1998]

Taken together, these [previously discussed] authorities support the position that an “interest” is more than mere curiosity or concern. An “interest” must be a legal interest in the sense that the matter in which the Ministry has an interest must have the capacity to affect the Ministry’s legal rights or obligations.

I concur with this conclusion and find that this rationale is equally applicable to an application for employment outside the “job competition” context.

In his representations, the appellant expresses his concern that he has been discriminated against because he is disabled. In my view, this relates directly to the obligations of the Police under the Code.

In considering the circumstances of this appeal, I find that the Police have an interest in the appellant’s application for employment. Requirement three has, accordingly, been established for those records which have been forwarded to this office.

In summary, I find that the records forwarded to this office were collected, prepared, maintained and/or used by the Police, in relation to meetings, discussions and consultations about employment-related matters in which they have an interest. All of the requirements of section 52(3)3 of the Act have thereby been established by the Police. None of the exceptions contained in section 52(4) are present in the circumstances of this appeal, and I find that these records fall within the parameters of section 52(3)3, and therefore, are excluded from the scope of the Act.

In my view, any other records which might be in the custody or control of the Police which are responsive to the appellant’s request would also fall within this category of records. Therefore, I find that any responsive record would fall within the parameters of section 52(3)3 of the Act and would be excluded from the scope of the Act.

Because of the manner in which I have decided the jurisdictional question under sections 52(3) and (4), it is not necessary for me to determine whether the search conducted by the Police was reasonable, and as I indicated above, I am precluded from doing so.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_ June 3, 1998

Laurel Cropley  
Adjudicator  
(formerly Inquiry Officer)