



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1136

Appeal M-9800090

City of Vaughan



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NATURE OF THE APPEAL:

The City of Vaughan (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request, made on behalf of the Vaughan Professional Fire Fighters Association (the Association), was for access to information relating to the recruitment of Fire Fighters, Fire Prevention Inspectors and Communications Operators, including copies of any examinations administered to new recruits for these positions.

The City responded to the requester by advising him that the City did not have copies of the Fire Fighters entrance examinations in its custody or control. Copies of the entrance examinations for the position of Fire Prevention Inspector were denied under section 11(h) of the Act (examination questions). The City also indicated that the individuals who applied for the recent Communications Operator position were not required to take a written test. The City further provided the requester with additional records relating to the hiring process for these positions.

The requester (now the appellant) appealed the City's decision.

During the mediation of the appeal, the appellant agreed to narrow the scope of his request to include only the examination and the scoring method used for the position of Fire Prevention Inspector, access to which was denied under section 11(h). In addition, with the assistance of the Mediator assigned to this file by our office, the request was amended to include any records relating to the hiring priorities applied between internal and external candidates for this position. The City responded to this portion of the amended request by advising the appellant that records which document different hiring priorities for internal and external applicants do not exist.

The appellant then confirmed that the denial of access to the Fire Prevention Inspector examination remains the sole issue in this appeal. The record responsive to this portion of the request consists of the written examination and includes the instructions, marking scheme and the mark allocated to each question.

A Notice of Inquiry was provided to the appellant and the City. Representations were received from both parties with respect to the application of section 11(h) to the records. The submissions of the appellant indicated that two grievances, one from an individual member and one by the association, have been commenced against the City alleging that the provisions of the collective agreement between the City and the Association with respect to hiring priorities had been breached. As a result, I determined that it was necessary to solicit the submissions of the parties on the possible application of section 52(3) of the Act, which relates to the jurisdiction of the Commissioner's office, to the record. A Supplemental Notice of Inquiry was provided to the parties and additional representations were made by each party.

DISCUSSION:

JURISDICTION

The first issue to be determined in this appeal is whether the record falls 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.

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. As a result, if I find that I do not have jurisdiction to deal with the record, I cannot deal with the substantive exemption claimed by the City.

In order for a record to fall within the scope of paragraph 1 of section 52(3) of the Act, the City must establish that:

1. the record was collected, prepared, maintained or used by the City 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 City.

Requirement 1

The City submits that the examination for the position of Fire Prevention Inspector was written to become part of the recruitment process to fill the position. It argues that the record was prepared, collected, maintained and used by various management staff in the Fire Department and its Human Resources Department. It goes on to state that the record is maintained and will be used by the City in relation to the grievance proceedings now underway. It indicates that it is anticipated that the examination will be used by the City to defend its position in the grievance arbitrations.

I find that the record at issue was maintained and will be used by the City in relation to the arbitration of the grievances filed against it by the Association and one of its members. Accordingly, the first requirement of section 52(3)1 has been satisfied.

Requirement 2

There is no dispute between the parties that there are, currently, ongoing grievance proceedings involving the Association and one of its members and the City. Applying the reasoning from Orders M-815 and P-1223, I find that these are proceedings before an “other entity”, namely an arbitrator appointed under the terms of the collective agreement between the Association and the City.

Accordingly, I find that Requirement 2 has been met.

Requirement 3

“[L]abour relations” for the purposes of section 52(3)1 is properly defined as the collective relationship between an employer and its employees (Order P-1252).

As noted above, the Association and one of its members have filed grievances in accordance with the collective agreement in force between the City and the Association. Accordingly, I find that the pending
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grievance arbitrations are “proceedings relating to labour relations” within the meaning of section 52(3)1, and the third requirement of that section has been satisfied.

In summary, I find that the record at issue in this appeal will be used by the City in relation to proceedings before an “other entity”, an arbitrator, 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 record falls within the parameters of section 52(3)1. It is, therefore, excluded from the scope of the Act. Because of the manner in which I have addressed the question of jurisdiction, I am unable to determine whether the record is properly exempt under section 11(h).

ORDER:

I dismiss this appeal.

Original signed by: _____

Donald Hale
Adjudicator

July 22, 1998