



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1603

Appeal MA-020223-1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The appellant made a request to the Toronto Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to his application for a position with the Police.

The Police denied access to the responsive records, on the basis that the *Act* does not apply to them by virtue of the exclusion at section 52(3). The Police stated:

The records responsive to your request relate to an application for employment, which is considered to be an employment-related matter. Therefore, the [Police do] not have the authority to release the requested records.

The appellant appealed the decision of the Police to this office.

Mediation was not successful in resolving the issues in the appeal, so the matter was moved to the adjudication stage of the process.

I sent a Notice of Inquiry setting out the issues in the appeal to the Police, and received representations in response. I then sent the non-confidential portions of the representations of the Police to the appellant, who in turn provided representations. The appellant's representations provide detailed background regarding the subject matter of the records, but do not address the specific issues arising under section 52(3)3 of the *Act*.

RECORDS:

At issue in this appeal are two one-page letters from two different individuals to the Police.

DISCUSSION:

APPLICATION OF THE ACT

Introduction

The Police claim that section 52(3)3 of the *Act* applies to the records. That section reads:

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:

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

Section 52(4) reads:

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.

If the records fall within the scope of section 52(3)3, and none of the section 52(4) exceptions applies, then the records are excluded from the access provisions of the *Act*.

Section 52(3)3 applies if:

1. the records were 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.

Part 1: Were the records collected, prepared, maintained or used by the Police or on their behalf?

The Police submit:

The records . . . were prepared by members of the [Police] and provided to the Employment Unit to assist in the assessment of the appellant's suitability for employment as a Police Constable. These records were also used by management personnel in relation to the final decision concerning the appellant's application for employment.

In Order MO-1193, [Adjudicator] Holly Big Canoe found that the first requirement of subsection 52(3)(3) relating to "collected, prepared, maintained or used" had been met.

The records document the recruitment process, and it is apparent on review of each of them that they were collected, prepared or used by the Police as part of this process. Accordingly, I find that the first requirement under section 52(3)(3) has been met.

Therefore, it is the position of [the Police] that the first requirement has been met in this appeal.

It is clear that the Police both collected and used the records at issue in this appeal and, therefore, the first part of the three-part test has been met.

Part 2: Were the records collected and/or used in relation to meetings, consultations, discussions or communications?

The Police submit:

As stated in Requirement 1, the records were prepared, collected and used during the recruitment process. Following the recommendations made by the employment investigations on the suitability of the applicant for employment with the [Police], the records were used by management personnel to determine the appellant's suitability for employment; their findings were then communicated to the appellant in a letter.

In Order MO-1193, the Adjudicator found that the requirement of "in relation to meetings, consultations, discussions or communications" had been met.

. . . it is apparent on review of the records that they all were collected, prepared or used in relation to meetings, discussions or communications which took place in relation to the appellant's application for employment, and the second requirement under section 52(3)(3) has also been met.

Therefore, it is the position of [the Police] that the second requirement has been met in this appeal.

The findings in Order MO-1193 on this issue are equally applicable here. It is clear based on the face of the records and the representations of the Police that the records were collected and used in relation to meetings, discussions or communications in relation to the appellant's application for employment. Therefore, the second part of the three-part test has been met.

Part 3: Were the meetings, consultations, discussions or communications about employment-related matters in which the Police have an interest?

The Police submit:

. . . [T]he application for employment process is an employment-related matter. This position is supported in Order M-1127, by Inquiry Officer Donald Hale.

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 MO-1193, the adjudicator agreed with this interpretation:

I accept that a job competition is an employment-related matter.

Therefore, it is the position of [the Police] that the first part of Requirement 3 has been met.

The [Toronto Police Service] is a law enforcement institution governed by the Police Services Act (the 'PSA').

Section 43(1) of the PSA provides the basic criteria required for the hiring of police officers and other police staff.

43(1) No person shall be appointed as a police officer unless he or she,

- (a) is a Canadian citizen or a permanent resident of Canada;
- (b) is at least eighteen years of age;
- (c) is physically and mentally able to perform the duties of the position, having regard to his or her own safety and the safety of members of the public;
- (d) is of good moral character and habits; and
- (e) has successfully completed at least four years of secondary school education or its equivalent.

The complex demands of policing in a city of Toronto's size and cultural diversity require that candidates for the position of police constable be tested physically, intellectually and psychologically, and a *thorough background check performed*. Each candidate is carefully screened and meetings and/or consultations, discussions and communications are held concerning each applicant. Only those candidates who meet the highest possible standards are appointed.

Therefore, it is the position of [the Police] that the second part of Requirement 3 has been met.

I agree with the findings in Orders M-1127 and MO-1193, cited by the Police, that a job recruitment process qualifies as an employment-related matter. In addition, given that the job competition involved the workforce of the Police, the Police clearly had an interest in this employment-related matter. Although it may be the case that the job recruitment process has now come to an end, based on the decision in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), this does not negate the application of section 52(3)3. Therefore, the third part of the three-part test has been met.

In addition, I find that none of the exceptions in section 52(4) applies in the circumstances.

As a result, I conclude that the records are excluded from the scope of the *Act* by virtue of section 52(3)3.

ORDER:

I uphold the decision of the Police that the *Act* does not apply to the records.

Original Signed By: _____ January 8, 2003
David Goodis
Senior Adjudicator