



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1635

Appeal MA-020259-1

City of Toronto



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NATURE OF THE APPEAL:

The requester, an employee of the City of Toronto (the City), made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City for access to information about an allegation that was made against her. Specifically, she requested the following:

- The name(s) of the person who reported the allegation
- The date, time, and place of the allegation
- The nature of the allegation with complete details
- A sworn oath of affidavit

The City denied access to all of the information concerning the allegation, stating that the records fell outside of the scope of the *Act* by virtue of section 52(3) of the *Act*. In particular, the City asserted that sections 52(3)1 and 52(3)3 of the *Act* applied to all records related to the allegation and to the resulting investigation.

The requester (now the appellant) appealed the City's decision. Mediation did not resolve the issues, and the appeal was moved to the adjudication stage of the process.

A Notice of Inquiry was sent to the City, inviting representations on whether sections 52(3)1 and/or 52(3)3 applied to the records. The City provided representations, and the Notice of Inquiry was sent to the appellant, along with the non-confidential portions of the City's representations. The appellant provided representations in response.

The records at issue consist of 16 pages of correspondence and hand-written notes relating to the allegation and the subsequent investigation.

DISCUSSION:

ARE THE RECORDS EXCLUDED FROM THE ACT DUE TO SECTION 52(3)1 OR 52(3)3?

Introduction

Section 52(3) is record-specific and fact-specific. If section 52(3) applies to the records, and none of the exceptions found in section 52(4) apply, then the records are outside the scope of the *Act*.

The City claims that the records fall within the scope of both section 52(3)1 and 52(3)3.

I will examine the application of section 52(3)3, initially.

Section 52(3)3

Section 52(3)3 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.

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

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

The City provided representations on the application of section 52(3)3. The appellant's representations focus on the actual circumstances that led to the allegation against her, and the impact the investigation has had on her. They do not directly address the three parts of the section 52(3)3 test.

Part One of the Test Under Section 52(3)3

The City submits that it collected, prepared, maintained or used the records in relation to meetings, consultations, discussions or communications about the appellant.

The records, which consist of correspondence and hand-written notes relating to the allegation and the subsequent investigation, were collected or prepared by an individual during the investigation into the allegation made against the appellant.

I find that the records at issue were collected, prepared and used by the City, and that the first part of the test under section 52(3)3 has been satisfied.

Part Two of the Test Under Section 52(3)3

The City states:

The City submits that it collected, prepared, maintained or used the records at issue in relation to meetings, consultations, discussions or communications about the appellant, more specifically, in respect to an investigation into the allegations that led to the issuance of a warning letter to her.

Accordingly, the City submits that the collection, preparation or usage of the records was in relation to discussions or communications between the investigator and others, including the appellant.

I accept the City's position that the records were collected, prepared or used by the City in relation to discussions or communications, specifically, discussions or communications about the investigation into the allegations against the appellant. As a result, the second part of the section 52(3)3 test has been met.

Part Three of the Test Under Section 52(3)3

The City submits that the discussions or communications all relate to an employment-related matter in which the City has an interest. The City states:

Clearly an employer's investigation about allegations regarding an employee's behaviour and/or actions ... is an employment-related matter.

The City submits that it has an interest in this employment-related matter and that this interest is more than mere curiosity or concern.

The City has a legal obligation under the collective agreement, employment and other legislation to investigate complaints from employee(s) about another employee ... and to deal appropriately with the matter, taking any necessary disciplinary action.

I am satisfied that the appellant was an employee of the City at the time the records were collected or prepared, and that the subsequent investigation resulted in disciplinary action against the appellant. I am also satisfied that these records concern an employment-related matter.

I also agree with the City's position that it had an interest in this employment-related matter involving its employee, and that this interest was more than a mere curiosity or concern. Although it may be that the investigation has now ended, 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 section 52(3)3 test has been met.

I have found that all three parts of the section 52(3)3 test have been met. As a result, I conclude that the records are excluded from the scope of the *Act* by virtue of section 52(3)3. In addition, I find that none of the exceptions in section 52(4) apply in the circumstances.

Having found that section 52(3)3 applies, it is not necessary for me to determine whether section 52(3)1 applies.

ORDER:

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

Original signed by: _____
Frank DeVries
Adjudicator

_____ April 22, 2003 _____