



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

# **ORDER MO-xxx**

**Appeal MA-020320-1**

**Sudbury Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The appellant submitted a request to the Sudbury Regional Police Services Board (the Police) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of a restraining order against a named police officer and other unnamed officers, as well as any disciplinary action taken against three named police officers.

The Police issued a decision indicating that the restraining order does not exist, and that section 52(3)3 applies to records relating to any disciplinary action taken against the police officers.

The appellant appealed the application of section 52(3) to the records. He also indicated his belief that the restraining order should exist.

During the intake stage of this appeal, the appellant indicated that the record he is seeking may not be a restraining order, but rather an injunction, and agreed to resubmit his request to the Police for this information.

During mediation, the mediator clarified with the appellant that the only issue to be determined in this appeal is the application of section 52(3) of the *Act* to the disciplinary records requested. Mediation could not be effected and this matter was forwarded to adjudication.

I decided to seek representations from the Police, initially, and they submitted representations in response. In them, the Police described the records and the circumstances relating to them in such a way that sharing this information would impact on the personal privacy interests of an identified individual. Therefore, I did not attach their representations to the Notice that I subsequently sent to the appellant. Rather, I summarized the major points raised by the Police in them.

The appellant submitted representations in response to the Notice that I sent him.

## **RECORDS:**

The records at issue are comprised of a typed note and an internal memorandum with another internal memorandum attached to it.

## **CONCLUSION:**

The records at issue fall outside the jurisdiction of the *Act* pursuant to section 52(3)3.

## **DISCUSSION:**

### **JURISDICTION**

#### **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 Police claim that the records fall within the scope of section 52(3)3.

#### **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 Police 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 Police indicate that the records pertain to the investigation by an officer with the Professional Standards Branch of a complaint regarding a named officer. The Police discuss the nature of the investigation and the consequences and ultimate resolution of the matter.

The Police note:

This employer documents, in an employee's personnel file communications that relate to an employee's conduct, both positive and negative. These communications may be used by the employer when recommending promotion or reclassification of an employee.

The Police are of the view that section 52(4) does not apply. In addition, the Police indicate that they considered whether information could reasonably be severed pursuant to section 4(2) and concluded that it could not.

In summation, the Police argue that the records at issue deal with an employment related matter and involve only employees of the Police.

The appellant states:

The Police refusal to release records under [section 52(3)3] is unfounded. Labour Relations and Employment matters are not applicable. Finally, what interest does the Police have? It is Society that has the interest in how they are policed and what policies and standards are acceptable.

...

The records were collected for both the behalf of the institution AND the public. They serve as employee profiles and as public record. The only interest the institution may have is employee reprimand or dismissal. [appellant's emphasis]

The appellant also submits that the information should be released under section 52(4) and section 16 of the *Act*, as he believes there is a public interest in disclosure.

***Parts One and Two of the Test Under Section 52(3)3***

The Police submit that they collected, prepared, maintained or used the records in relation to meetings, consultations, discussions or communications about a matter pertaining to an employee of the Police.

The records at issue comprise internal Police communications relating to an identified individual in their employ.

I find that the records at issue were collected, prepared and used by the Police in relation to communications about a complaint, and that the first two parts of the test under section 52(3)3 have been satisfied.

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

As I noted above, the Police indicate that the records were created in relation to an investigation into a complaint about a named officer.

I am satisfied that the individual identified in the records was an officer in the employ of the Police at the time the records were collected or prepared. I am also satisfied that these records concern an employment-related matter, that is, the investigation of a complaint about the officer.

I find that the Police have an interest in this employment-related matter involving their employee, and that this interest is more than a mere curiosity or concern.

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.

Although the appellant raised the possible application of the public interest override in section 16 of the *Act*, he has not submitted any representations on this issue. Accordingly, I decline to consider whether it is available to the appellant as an override to the exclusions in section 52(3), and if so, whether it applies in the circumstances.

**ORDER:**

I uphold the decision of the Police.

Original Signed by \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ May 15, 2003