



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1679**

**Appeal MA-030032-1**

**Greater Toronto Transit Authority**



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## **NATURE OF THE APPEAL:**

Greater Toronto Transit Authority (GO Transit) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a letter of complaint written by a GO Transit employee about the requester, another GO Transit employee. In denying access to the requested record, GO Transit relied on section 52(3) of the *Act*, which operates as a jurisdiction-limiting provision.

The requester, now the appellant, appealed GO Transit's decision. As mediation of the appeal was not possible, the matter was moved into the adjudication stage of the process. I decided to seek the representations of GO Transit initially, and provided it with a Notice of Inquiry. I received submissions from GO Transit which were then shared, in their entirety, with the appellant, along with a copy of the Notice. The appellant also made representations.

The sole record at issue in this appeal is an undated, two-page letter entitled "INAPPROPRIATE CONDUCT".

## **DISCUSSION:**

### **Section 52(3)3: matters in which the institution has an interest**

The sole issue for determination in this appeal is whether the record requested falls outside the scope of the *Act* because of the operation of section 52(3)3, which 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.

### **Introduction**

If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies, the section has the effect of excluding records from the scope of the *Act*. For section 52(3)3 to apply, GO Transit must establish that:

1. the records were collected, prepared, maintained or used by the institution or on its behalf;
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 institution has an interest.

## **Representations of the parties**

Neither GO Transit nor the appellant directly addressed the application of section 52(3)3 in their representations. GO Transit simply states that it determined that the record “was obviously a ‘labour relations’ issue both in content and implications” and that the record “was clearly protected under section 52(3) of the *Act*”. It goes on to add that “this type of communication exchange is considered to be a labour relations matter and as such confidentiality under the *Act* is expected.”

The appellant’s representations focus on the question of fairness. She takes the position that if GO Transit is relying on the contents of the record for a labour relations purpose, she ought to be entitled to have access to it.

### ***Part 1: collected, prepared, maintained or used***

Based on my review of the contents of the record and the information provided to me by the appellant, I find that the record was “used” by GO Transit as part of an investigation undertaken into the actions of an employee. Accordingly, the first part of the test under section 52(3)3 has been satisfied.

### ***Part 2: meetings, consultations, discussions or communications***

Again, based on the information provided to me by the appellant, I find that the record was used in relation to discussions or communications pertaining to GO Transit’s investigation into allegations of workplace harassment against a GO Transit employee. As a result, I find that the second part of the test has been met.

### ***Part 3: labour relations or employment-related matters in which the institution has an interest***

According to the submissions provided to me by the appellant, the record at issue contains information which corresponds to the subject matter of the harassment complaint that was the subject of a GO Transit investigation. I find that the allegations contained in the record relate directly to incidents which occurred in the workplace and may properly be considered to be “employment-related matters” for the purpose of this analysis.

I must now determine whether the subject matter of the record is one in which GO Transit “has an interest” within the meaning of section 52(3)3. In its decision in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507, the Ontario Court of Appeal stated that the phrase “in which the institution has an interest” means more than a “mere curiosity or concern”, and refers to matters involving the institution’s own workforce.

In the present case, the subject matter of the record involves allegations of inappropriate conduct on the part of certain GO Transit employees, including the appellant. An investigation was undertaken by GO Transit into allegations of harassment involving another of its employees.

According to the evidence tendered by the appellant in this inquiry, the subject matter of the record at issue formed at least part of the basis for these allegations. In my view, the fact that GO Transit undertook an investigation into the events described in the record is evidence of its “interest” in the subject matter of this document. I find that the initiation of an investigation is further proof that GO Transit’s interest went beyond a “mere curiosity or concern” as contemplated by the decision in *Ontario (Solicitor General)*. Accordingly, I conclude that GO Transit’s interest in the subject matter of the record is sufficient to bring it within the ambit of the third part of the test under section 52(3)3.

As all three parts of the test have been satisfied, I find that the record falls outside the scope of the *Act* as a result of the operation of section 52(3)3.

**ORDER:**

I uphold GO Transit’s decision.

Original Signed By: \_\_\_\_\_ August 28, 2003 \_\_\_\_\_  
Donald Hale  
Adjudicator