



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1792

Appeal MA-030126-1

City of Ottawa



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NATURE OF THE APPEAL:

This appeal concerns a decision of the City of Ottawa (the City) made pursuant to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) had sought access to statistics relating to tickets issued under the *Provincial Offences Act* for fare violations on the City's transit system, OC Transpo.

The City provided the appellant with a decision claiming that the *Act* does not apply to the records because of section 52(3).

The appellant appealed the City's decision to this office.

I first sent a Notice of Inquiry to the City seeking representations. The City submitted representations and agreed to share them in their entirety with the appellant. I then sought and received representations from the appellant.

RECORDS:

There are six pages of records at issue in this appeal. Pages 1-3 contain fare violation statistics for the period between January 1, 1999 and December 31, 2001 ("VMS-POP Work Summary Reports"). Page 4 is entitled "Warnings & Tickets Issued by Transit Law Enforcement Officers Under Fares" for the years 1997-2002. Pages 5 and 6 are entitled "Transit Law Enforcement Statistical Reports" for January 2003 and February 2003 respectively.

DISCUSSION:

LABOUR RELATIONS AND EMPLOYMENT RECORDS

Introduction

As stated above, the City has taken the position that section 52(3) applies to the records. The City indicates in its representations that it is relying upon section 52(3)1 and/or 3. If section 52(3)1 or 3 applies to the records, and none of the exceptions found in section 52(4) applies, section 52(3)1 or 3 has the effect of excluding the records from the scope of the *Act*.

Sections 52(3)1 and 3 state:

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.

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

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

1. the records were collected, prepared, maintained or used by an institution 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 institution.

In order for a record 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 an 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 institution has an interest.

Section 52(4) states:

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.

I will first consider the application of section 52(3)1.

Section 52(3)1: court or tribunal proceedings

Requirement 1

The City states that the records at issue were prepared by City staff, specifically staff in Transit Operations or the Security Branch of OC Transpo.

The appellant does not offer representations that are relevant to a consideration of this requirement.

On my review of the records and the City's representations, I am satisfied that the records were collected, prepared, maintained or used by the City. I find that requirement 1 under section 52(3)1 has been satisfied for all of the records.

Requirement 2

The City submits that OC Transpo provides public transit in the Ottawa-Carleton region. Due to the inter-provincial nature of some of its transit routes, OC Transpo is a federal undertaking and its labour relations matters are governed by the *Canada Labour Code* (the *Code*). The City states that in December 2001, the Amalgamated Transit Union, Local 279 (the Union), brought an application before the Canada Industrial Relations Board (CIRB) with respect to alleged unfair labour practices at OC Transpo. The Union alleged that in September and October 2001, the City violated section 94(3) of the *Code* by eliminating the positions of fare inspectors and by assigning those duties to other City staff, namely, by-law officers. The City states that the hearing of this complaint before the CIRB is ongoing. In addition, the City indicates that several grievances relating to the rationalization of the fare inspection department and the elimination of positions have been brought by fare inspectors and are currently before an arbitration board.

The City submits that the "VMS-POP Work Summary Reports" were prepared by an employee of OC Transpo for the purposes of the hearing before the CIRB. The City states that the document entitled "Warnings & Tickets Issued by Transit Law Enforcement Officers Under Fares" and the two documents entitled "Transit Law Enforcement Statistical Report" were prepared by OC Transpo Security staff prior to the hearing before the CIRB and are being used by the City in its case before the CIRB.

The City also submits that all of the records are being used by the City in regard to the ongoing grievances by fare inspectors before an arbitration board.

The appellant states that he is a 28-year employee of OC Transpo and he has first hand knowledge of fare fraud on City buses that the City is aware of and not addressing. He indicates that he needs this information to support his position.

The appellant submits that the City is deliberately misusing section 52(3) to withhold what he considers to be “public records”. He believes that the broad wording of section 52(3) could allow the City to exclude every record linked to “labour relations and employment related matters” since the City is in the “employment business”, which he finds unacceptable. Assuming the records “are currently being used” in relation to a “proceeding” before the CIRB, the appellant asserts that the records could have multiple uses, including his own interest in gaining access under the *Act*. He does not understand how gaining access to these records could compromise the City’s position in the “proceedings” since the CIRB hearing is open to the public.

I acknowledge the appellant’s concerns and interest in securing this information. However, I am persuaded that the City either prepared, or is maintaining or using, these records in relation to proceedings before the CIRB and an arbitration board. Accordingly, I find that requirement 2 has been satisfied for all of the records under section 52(3)1.

Requirement 3

The City states that it is using all six records with respect to the conduct of its cases in both the Union’s complaint before the CIRB and the ongoing grievances that are before an arbitration board. The City submits that these matters meet the labour relations requirement under the section 52(3)1 test.

The appellant does not provide representations that address this requirement.

In my view, it is clear that the proceedings in this case relate to labour relations matters involving the City before the CIRB and an arbitration board. Accordingly, I find that requirement 3 has been met with respect to the records at issue.

In conclusion, I find that all three requirements of section 52(3) have been satisfied. In addition, I find that none of the section 52(4) exceptions applies. Therefore, the *Act* does not apply to the records. Accordingly, it is not necessary for me to make a finding on the application of section 52(3)3.

It may be that the information contained in the records is also contained in other records held by the City, and that these records are not excluded from the scope of the *Act*. I decline to make a ruling on this point since the issue is not before me.

ORDER:

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

Original signed by: _____
Bernard Morrow
Adjudicator

_____ May 21, 2004