



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1838**

**Appeal MA-030395-1**

**County of Simcoe**



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## **NATURE OF THE APPEAL:**

This appeal concerns a decision of the County of Simcoe (the County) made pursuant to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) made a request under the *Act* for the following information:

Quantitative study of resumption of land ambulance service by County of Simcoe and replacement of contractor.

The following two records were found to be responsive to the appellant's request:

- nine-page document, dated August 13, 2003, prepared for the County's Human Services Committee, pertaining to the County's proposed decision to terminate its relationship with an affected party for the delivery of land ambulance services and assume the direct delivery of these services (Record 1)
- one-page document, undated, entitled, "Further Analysis of Health Trust Financial Information" (Record 2)

The County applied the exemptions found in sections 6(1)(b) (closed meetings) and 11(d), 11(e), and 11(f) (economic interests) of the *Act* to deny access to the records in their entirety.

The appellant appealed the County's decision.

During the mediation stage, the appellant removed pages 7, 8 and 9 of Record 1 from the scope of the appeal.

At that time, the appellant felt that there should be more records addressing the bases for the County's financial calculations. After conducting a further search, the County informed the mediator that there are no additional responsive records. The mediator advised the appellant. The appellant has elected not to pursue reasonable search as an issue in this appeal.

Also during the mediation stage, the County disclosed significant portions of Record 1. None of Record 2 was disclosed to the appellant and it remains at issue in its entirety.

The County advised the mediator that it is applying section 52(3) (labour relations and employment records) to exclude the information remaining at issue in Record 1 and the information in Record 2 in its entirety from the scope of the *Act*. The County also indicated that "in the alternative" to section 52(3) it is applying the mandatory exemption at section 10(1)(a), (b) and (c) (third party information) to deny access to the information at issue, in addition to sections 6(1)(b) and 11(d), (e) and (f). Because Record 2 appears to contain actual staff salaries, the mandatory exemption at section 14(1) of the *Act* may also apply in the circumstances of this appeal.

I first sent a Notice of Inquiry to the County seeking representations on all issues and to one affected party with respect to the application of section 10(1).

I received representations from the County. The affected party chose not to submit representations. The County agreed to share its representations in their entirety with the appellant.

I then sought representations from the appellant and included with my Notice of Inquiry a copy of the County's representations. The appellant submitted representations in response.

## **RECORDS:**

The following information remains at issue:

- Record 1 - a severed paragraph on page 3, a severed figure on page 4 and a severed figure on page 5
- Record 2 - in its entirety.

## **DISCUSSION:**

### **LABOUR RELATIONS AND EMPLOYMENT RECORDS**

#### **General Principles**

As stated above, the County has taken the position that section 52(3) applies to the information at issue in this appeal. Section 52(3) is record-specific and fact-specific (Order M-927). If section 52(3) applies to a specific record, in the circumstances of a particular appeal, and none of the exceptions listed in section 52(4) are present, then the record is excluded from the scope of the *Act* and not subject to the Commissioner's jurisdiction.

Prior to this inquiry the County did not identify the paragraph(s) under section 52(3) upon which it is relying. However, on my review of the County's representations, it would appear that it is relying upon sections 52(3)2 and 3.

Section 52(3)2 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:

2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.

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

The term “in relation to” in section 52(3) means “for the purpose of, as a result of, or substantially connected to” (Order P-1223).

The term “labour relations” refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships [Order PO-2157, *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.)].

The term “employment of a person” refers to the relationship between an employer and an employee. The term “employment-related matters” refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship (Order PO-2157).

If section 52(3) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date [*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].

I will first examine the application of section 52(3)3 to the two records at issue.

For section 52(3)3 to apply, the institution must establish that:

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

## **Record 1**

With respect to the severed paragraph on page 3 of this record, the County submits:

[This information] relates to ongoing negotiations related to the termination of services provided by [an affected party]. The County [...] applied section 52(3) to exclude the information from the scope of the *Act* as the severed paragraph speaks to the intended relationship between the County [...] and [the affected party's] principals and unionized staff. This information formed part of a report

that was prepared for and considered by [...] County Council as the basis for assuming direct delivery of land ambulance service.

The County does not make representations regarding the impact of section 52(3)3 on the severed portions at pages 4 and 5 of this record.

The appellant's representations do not address the application of section 52(3)3 to this record. Instead, the appellant has focused on the view that this information should be publicly available.

Turning to my analysis, the record is an internal document marked "confidential" that was prepared for the County's "Human Services Committee". It provides recommendations, background information and a discussion of the financial and labour relations impacts regarding the County's proposed decision to assume responsibility for and control of its land ambulance services.

On my review of the record and the County's representations, I am satisfied that it was prepared, maintained and used by the County in relation to meetings, consultations, discussions and communications about a labour relations matter. These meetings, consultations and discussions involve the County's proposed decision to terminate its relationship with an affected party regarding the provision of land ambulance services and its assumption of the direct delivery of these services. It is apparent, particularly from my review of the record, that this transition has significant labour relations implications.

I must now determine whether the matter which is the subject of this record is one in which the County "has an interest". The phrase "in which the institution has an interest" means more than a "mere curiosity or concern", and refers to matters involving an institution's own workforce [*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].

As alluded to above, this record was prepared and used by the County in relation to meetings, discussions, consultations and communications about a labour relations matter, namely the County's proposed decision to take on the delivery of land ambulance services. It contains significant information regarding the labour relations impact of this decision. On my review of the record, I find that the implementation of this decision would have clear labour relations implications for the County's workforce and that, as a result, the County would have a genuine interest in the subject matter of the record.

I note that the County has disclosed portions of Record 1 despite the fact that section 52(3) is, as stated above, "record-specific". Where section 52(3) is found to apply to a record *all* of the information contained in it is excluded from the scope of the *Act*. However, in my view, the County's actions in this case do not impair its ability to rely on the application of section 52(3) to the undisclosed information in this record.

Therefore, although the County made a decision to reveal portions of Record 1 to the appellant, I find that this record is subject to the exclusion set out in section 52(3)3. I also find that none of

the exceptions listed in section 52(4) applies. Accordingly, I conclude that this record falls outside the scope of the *Act*.

## **Record 2**

As stated above, County has denied access to this record in its entirety. In support of its position under section 52(3)3, the County states:

[T]his [record] contains management and administration salary information, as well as transition costs, and formed part of a report that was prepared for and considered by [...] County Council as the basis for assuming direct delivery of land ambulance service and later used in negotiations in the termination of [an affected party's] services.

Again, the appellant does not make representations regarding the possible application of section 52(3)3. As above, the appellant's representations focus on his view that this information should be publicly available.

On my review of this record and the County's representations, I am satisfied that it meets the requirements of section 52(3)3 for the reasons expressed above in my discussion of Record 1. It is clear to me that Record 2 was prepared, maintained and used by the County in relation to meetings, consultations, discussions and communications about a labour relations matter in which the County has an interest. This record provides an analysis of the financial implications of a proposed decision to terminate its relationship with the affected party and assume responsibility for the delivery of land ambulance services. The record sets out specific costs associated with this transition including management and administration salary and benefits costs and severance costs. I am satisfied that the contents of this record have labour relations implications for the County and that the County would have an interest in the subject matter of the record.

I find that Record 2 is subject to the exclusion set out in section 52(3)3. I also find that none of the exceptions in section 52(4) applies. Accordingly, I conclude that this record falls outside the scope of the *Act*.

## **ORDER:**

I uphold the County's decision that the *Act* does not apply to the records.

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Bernard Morrow  
Adjudicator

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September 29, 2004