



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1954**

**Appeal MA-050062-1**

**Toronto Transit Commission**



Tribunal Services Department  
2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
Canada M4W 1A8

Services de tribunal administratif  
2, rue Bloor Est  
Bureau 1400  
Toronto (Ontario)  
Canada M4W 1A8

Tel: 416-326-3333  
1-800-387-0073  
Fax/Téloc: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Toronto Transit Commission (the TTC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

1. Portion of training manual and general instruction issued to the police officer (involved in this matter) regarding apprehending an accused/suspect. Specifically when and how to use handcuffs.
2. Policy/training manual for police officers as to how and where to take statement of an accused ([specially] underage/juvenile persons).
3. Training manual (used to train the ticket collectors) and general policy instructions about asking for I.D. from students/young commuters.
4. TTC policy/instructions to collectors regarding dealing with young customers in situation when I.D. is not produced.
5. TTC policy/instructions about dealing with the young customers in the event of disagreement and when to call police in the fray.
6. TTC by law and regulation applicable to commuters regarding their conduct on the TTC premises.

The TTC located six responsive records and granted access to one of them. Access to the five remaining responsive records was denied on the basis that they fall outside the ambit of the *Act* due to the operation of section 52(3)3 of the *Act*. The requester, now the appellant, appealed the TTC's decision.

During the mediation stage of the appeal, the TTC agreed to disclose Records 3, 4, and 5 to the appellant. The TTC also clarified that Record 2 responds to only a portion of part 2 of the request and that information relating specifically to juvenile/underage persons does not exist. The appellant confirmed that he wished to pursue access to Record 2 regardless.

As further mediation was not possible, the file was transferred to the adjudication stage of the appeals process. I first sought and received the representations of the TTC by providing it with a Notice of Inquiry setting out the facts and issues in the appeal. The TTC's submissions were then shared with the appellant, who also provided me with representations. The sole issue for determination in this appeal is whether section 52(3)3 of the *Act* excludes the responsive records from the operation of the *Act*.

## **RECORDS:**

There are two records at issue in this appeal. Both are entitled Training Precises and were prepared by the TTC's Corporate Security Department to assist in the training of its Special Constables. Record 1 consists of two documents that address "empty hand control" and "tactical handcuffing", while Record 2 describes how to take statements and interview suspects.

## **DISCUSSION:**

### **ARE THE RECORDS EXCLUDED FROM THE OPERATION OF THE ACT UNDER SECTION 52(3)3?**

#### **General Principles**

Section 52(3)3 states:

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.

If section 52(3) applies to the records, and none of the exceptions found in section 52(4) applies, the records are excluded from the scope of the *Act*.

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-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].

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

For section 52(3)3 to apply, the TTC 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.

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

The appellant's submissions do not expressly address the application of the section 52(3)3 exclusion. Rather, the appellant simply indicates that:

Our intent is not to get the personal or employment file of any individual. The requested information is that of routine standard training and process of instruction that applies to all officers (and if it changes then) or what was applicable to the batch or class to which the officer in question belonged. The intent is to know the criterion in place (not the personal details).

With respect to part one of the test outlined above, the TTC submits that it "collected, prepared, maintained and used" the records. On a plain reading of the records, I agree and find that they meet the criteria for the first part of the test under section 52(3)3 as they were clearly prepared, maintained and used by the TTC.

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

The TTC submits that:

. . . records 1 and 2 are discussed and distributed during extensive training sessions to officers in the Special Constable Services Department to communicate the procedures that the Special Constables must follow in conducting their duties.

I concur and find that the TTC has maintained and used the records in relation to the conduct of various training sessions involving its Special Constables. As a result, I find that part two of the test has been satisfied.

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

In support of its argument that part three of the test under section 52(3)3 has been met, the TTC submits that:

The Commission has a significant interest and responsibility in ensuring that its employees are adequately trained for their duties, particularly where there is an increased risk of injury to the employee or the public. An employee's failure to follow these procedures could compromise officer safety, cause injury to the officer, other employees, the suspect or the public; result in a complaint regarding the apprehension or interrogation of a suspect and/or subject the employee to discipline up to and including dismissal. In some instances, the Commission or its employee could be subject to civil litigation.

As noted above, in order to satisfy the third part of the test under section 52(3)3, the TTC must establish that these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which it has an interest.

Based on my review of the records, I find that their subject matter is not about “labour relations or employment-related matters” and that section 52(3)3 has no application to the records. While the records address in a generic way how TTC Special Constables are to carry out a portion of their duties, they are “about” an employment-related matter only peripherally as they address a Commission-wide procedure for the Special Constables to follow. In addition, I find that the records are clearly not “about” labour relations as that term has been defined in previous decisions [Order PO-2157].

I find support for this approach in Order MO-1729 where Adjudicator Shirley Senoff examined the application of the exclusionary provision in section 52(3)3 to those portions of the *London Police Service Procedure Manual* dealing with the use of force and the powers of search and seizure. In finding that the section 52(3)3 exclusion did not apply to these portions of the *Manual*, she made the following findings:

By the same token, the two chapters in the Manual at issue in this appeal (“Use of Force” and “Power of Search and Seizure”) set out various procedures governing how the Police carry out some of their duties. They are not “about labour relations or employment-related matters;” any connection they might have to workforce-related issues is merely incidental (see also Order PO-2093-I).

I do not accept the Police’s submission that section 52(3)3 should be given a “much broader” reading to extend to the records at issue. In my view, section 52(3)3 is not directed at records of this nature. Whether or not portions of the Manual are “sensitive and confidential” is irrelevant and does not affect my finding in this regard.

Accordingly, the two chapters at issue do not meet the requirements of Part 3 of section 52(3)3 and they are subject to the *Act*.

Because I have found that the records are subject to the *Act*, I will order the TTC to issue the appellant with a decision respecting access to the records in accordance with section 19 of the *Act*, using the date of this order as the date of request and without recourse to a time extension under section 20(1) of the *Act*.

## **ORDER:**

1. I order the TTC to provide the appellant with a decision respecting access to the records at issue in accordance with section 19 of the *Act*, using the date of this order as the date of request and without recourse to a time extension under section 20(1) of the *Act*.

2. I reserve the right to require the TTC to provide me with a copy of the decision letter referred to in Order Provision 1.

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Donald Hale  
Adjudicator

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August 25, 2005