



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2086

Appeal MA-050355-1

Halton Regional Police



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NATURE OF THE APPEAL:

This appeal concerns a request submitted to the Halton Regional Police (the Police) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records relating to the requester that were provided by the Police to the requester's employer, the Royal Canadian Mounted Police (RCMP), between May 19, 2005 to August 6, 2005. Specifically, the requester sought the following information:

1. All of the records in question which were provided to the RCMP by the [Police].
2. All correspondence which were sent by the [Police] in relation to the aforementioned records to the RCMP, including but not limited to the correspondences which were addressed to [a named inspector] of the RCMP by the [Police].
3. All correspondence which were received by the [Police] in relation to the aforementioned records which were sent by the RCMP including but not limited to the correspondence which were sent by [named inspector] of the RCMP to the [Police]. [sic]

The Police issued a decision letter in which it confirmed the existence of responsive records, but denied access to them on the basis that they fall outside the scope of the *Act* due to the operation of section 52(3)3 (matters in which the institution has an interest) of the *Act*.

The requester (now the appellant) appealed the Police's decision.

Mediation was unsuccessful in resolving the appeal and the file was streamed to the adjudication stage for an inquiry.

I issued a Notice of Inquiry to the Police and sought and received their representations.

I then sought representations from the appellant and enclosed with my Notice of Inquiry the non-confidential representations of the Police. The appellant submitted representations in response.

I then provided the Police with the appellant's non-confidential representations and received reply representations from the Police. In its reply representations, the Police indicate that they are now also relying on the application of section 52(3)1 (court or tribunal proceedings) in addition to section 52(3)3.

RECORDS:

There are seventeen records at issue comprised of occurrence reports, follow up reports and correspondence between both the Police and the RCMP and the appellant and the Police.

DISCUSSION:

LABOUR RELATIONS AND EMPLOYMENT RECORDS

General principles

As indicated above, the Police have taken the position that sections 52(3) 1 and/or 3 apply to the information at issue in this appeal.

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.

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 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].

Section 52(3) may apply where the institution that received the request is not the same institution that originally “collected, prepared, maintained or used” the records, even where the original institution is an institution under the *Municipal Freedom of Information and Protection of Privacy Act* [Orders P-1560, PO-2106].

Section 52(3)1: court or tribunal proceedings

For section 52(3)1 to apply, the Police must establish that:

1. the record was collected, prepared, maintained or used by an institution or on its behalf;
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.

The Police state that they shared the records at issue with the RCMP in order for it to “review an incident” involving the appellant that the Police had investigated. The Police acknowledge that the appellant is an employee of the RCMP. The Police assert that the records at issue were collected, prepared, maintained or used by the “institution” in relation to “proceedings before a tribunal relating to the employment of a person by the institution.”

In response, the appellant states that the Police’s reliance on section 52(3) “appears to be without foundation and credibility” as he has “never been an employee of this ‘institution’.” The appellant adds that there has not been a proceeding before a court, tribunal or other entity involving the allegations put forward by the Police to the RCMP, nor is there currently a proceeding, or one pending, before a court, tribunal, or other entity involving the allegations investigated by the Police.

The Police were given an opportunity to respond to the appellant’s representations. In reply, the Police reaffirmed that the records were collected, prepared, maintained and used by the Police and shared with the RCMP in order to permit the RCMP to review the aforementioned incident. The Police also reaffirm that at all times the appellant was an employee of the RCMP. The Police did not respond to the appellant’s submissions regarding the use of the records in relation to proceedings or anticipated proceedings before a court, tribunal or other entity.

On my review of the parties’ representations, the records at issue and the circumstances surrounding the incident involving the appellant, I am satisfied that the records were prepared

and/or assembled by the Police and provided to the RCMP in the course of an investigation by the Police into an incident involving the appellant. Accordingly, I am satisfied that the records were “prepared” by an “institution” as defined by the *Act* and I therefore find that part one of the test has been met.

With regard to part two of the test, the Police have not provided evidence with respect to this part of the test. While the records clearly indicate that an investigation was conducted and that the records were ultimately shared by the Police with the RCMP, there is no evidence of current or anticipated proceedings against the appellant in regard to this incident before a tribunal, court or other entity. Accordingly, I find that part two of the test under section 52(3)1 has not been met.

However, even if I were to have found that part two of the test had been met in this case, I find that part three of the test has not been satisfied. The Police have provided no evidence to suggest that they are relying on the “labour relations” component of part three of the test. With respect to the other possible component in part three, “employment of a person by the institution”, it is clear that the appellant was employed at the relevant time by the RCMP, not the Police. The RCMP is not an “institution” under the *Act*. Accordingly, I find that records relating to any proceeding or anticipated proceeding does not relate to the employment of a person by an “institution” within the meaning of that term in section 2(1) of the *Act*.

I therefore find that section 52(3)1 does not apply in this case.

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

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

The Police state that for the reasons set out in its representations regarding the application of section 52(3)1, the information at issue was “collected, prepared, maintained and used by the institution in relation to communications about employment-related matters in which the institution has an interest.” The Police add that the preparation, maintenance and use of the records is for the specific purpose of complying with an employment-related statutory duty, namely, the administration of the internal discipline system of the RCMP, not the Police.

The appellant does not add any further representations that specifically address the application of the section 52(3)3 exclusion.

Turning to my analysis, part one of the test under sections 52(3)3 and 52(3)1 are identical. Having found above that the records were “prepared” by an “institution” under the *Act* for the purposes of section 52(3)1, I therefore find that part one of the test has been met for section 52(3)3.

With regard to part two of the test, on my review of the records, I am satisfied that they were “prepared” by the Police in relation to “communications” with the RCMP. Accordingly, I find that part two of the test has been met.

With respect to part three of the test, in my view, neither the representations submitted by the Police nor the records themselves demonstrate that the “communications” are about labour relations or employment related matters in which *the Police have an interest* [my emphasis]. While it may be the case that the RCMP has an interest in a labour relations or employment related matter with the appellant, the RCMP is not an institution under the *Act* and so it cannot gain the benefit of this exclusion. I acknowledge that the Police may have provided the records at issue to the RCMP in the discharge of a statutory responsibility to conduct an investigation of the appellant and to cooperate with RCMP in regard to its internal disciplinary process. However, the Police have not demonstrated that they have an interest in the outcome of this investigation or any discipline that may flow from it. Accordingly, I find that part three of the test under section 52(3)3 has not been met.

Accordingly, I find that section 52(3)3 does not apply in this case.

Having found that sections 52(3)1 and 52(3)3 do not apply, the records are subject to the access provisions of the *Act* and I will order the Police to issue a decision letter to the appellant in accordance with sections 19 and 22 of the *Act*.

ORDER:

1. I order the Police to issue a decision letter to the appellant with respect to all of the records, in accordance with sections 19 and 22 of the *Act*, using the date of this order as the date of the request.
2. I order the Police to provide me with a copy of the letter referred to in provision 1 of this order.

Original signed by:
Bernard Morrow
Adjudicator

September 14, 2006