



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER MO-2457**

**Appeal MA08-412**

**City of London**



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## NATURE OF THE APPEAL:

The City of London (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for three categories of records, which can be summarized as follows:

- information compiled by the security staff especially by [a named individual];
- information regarding the communication system between the Mayor's office and the City Clerk's offices during 2003; and
- the City Clerk's office roll call for employees for May of the year 2003.

In response to the request the City issued a decision in which it stated:

- records responsive to item 1 would be released with some information severed on the basis of the exemption in section 14(1) (invasion of privacy) of the *Act*;
- records responsive to item 2 regarding the communication system between the Mayor's office and the City Clerk's Office do not exist; and
- records responsive to item 3 were denied on the basis of the exemption in section 14(1) of the *Act*.

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

During mediation the City disclosed additional information to the appellant, and also conducted another search and located additional records responsive to the request. The City then issued a supplementary decision in which it granted access to a number of the newly-located records, but denied access to one identified record. The City's decision regarding access to that one record read:

The request for the attendance record for [an identified employee for a specific two-week period] is denied in accordance with section 14(1) of the *Act*, as it would constitute an unjustified disclosure of personal information.

The appellant advised that he continued to seek access to this record, which is the attendance record of a named individual, and that he wanted to know which days this particular employee was in attendance for the specified two week period. This information is contained in the "In" and "Date" columns of the requested attendance record. The appellant confirmed that he was not seeking access to the other information contained in the attendance record, and access to that information is not at issue in this appeal.

Also during mediation, the identified employee confirmed that she did not consent to the disclosure of the information at issue. Mediation did not resolve this issue, and this file was transferred to the inquiry stage of the process.

I sent a Notice of Inquiry to the City and an affected party, initially. Both the City and the affected party provided representations in response to the Notice of Inquiry, and both parties also took the position that the record fell outside the scope of the *Act*, on the basis of the exclusionary

provision in section 52(3)3. As this issue raises the question of whether the record falls within the scope of the *Act*, it was identified as an issue in this appeal.

I then sent a modified Notice of Inquiry, along with a copy of the representations of the City, to the appellant. I did not include a copy of the representations of the affected party, as all of the issues identified in those representations were also included in the City's representations. I did not receive representations from the appellant.

## **RECORDS:**

The record at issue is a computer-generated one-page printout from the attendance report of an identified employee of the City for a two-week period. The portions remaining at issue consist of two columns of this attendance record (the "In" and "Date" columns).

## **DISCUSSION:**

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

The City and the affected party take the position that the *Act* does not apply to the record because it falls within the exclusion in section 52(3)3.

#### **General Principles**

Section 52(3)3 of the *Act* 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)3 applies to the record, and none of the exceptions found in section 52(4) apply, the record is 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. The meaning of "labour relations" is not restricted to employer-employee relationships. [*Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.). See also Order PO-2157.]

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)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].

The type of records excluded from the *Act* by s. 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees’ actions. [*Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.)]

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

#### ***Introduction***

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.

#### ***Requirement 1: Was the record collected, prepared, maintained or used by the City or on its behalf?***

The City states that the information contained in the record relates to the attendance of a named employee, and that the record was collected, prepared, maintained and used by the City. It states:

Attendance records are collected by the institution for several purposes including payroll purposes, benefits tracking purposes and performance evaluation purposes. An employer must collect and maintain attendance records in order to properly manage its workforce.

Attendance records are maintained by the City ... in order to continue and maintain responsible operation with respect to the management of its employees.

The collection of such records for the purpose of maintaining responsibility for operating is consistent with Order PO-1772. While Order PO-1772 referred to the operation of a detention centre, a publically funded institution such as the City ... has an equal responsibility to monitor and maintain records pertaining to its operation.

Also, in accordance with Order P-1514, attendance records are collected, prepared and/or maintained by the City in its capacity as an employer. In Order P-1514 this argument was sufficient to satisfy the first requirement of section 52(3).

Based on my review of the record and the representations of the City, I am satisfied that the record, which relates to the attendance of the named employee, was collected, prepared, maintained and/or used by the City.

***Requirement 2: Was the record collected, prepared, maintained and/or used in relation to meetings, consultations, discussions or communications?***

In support of its position that the record was collected, prepared, maintained and/or used in relation to meetings, consultations, discussions or communications, the City states:

The record ... which dealt with the attendance of a named employee, was collected in anticipation of future meetings, consultations and/or discussions. Attendance records, being of interest on both an individual and organizational level, may at any time become relevant in discussions at the City.... Indeed, they are regularly used by the Payroll Division to calculate an individual's compensation and by the Human Resources Division for tracking performance, benefits used and remaining and for pension calculation purposes.

Based on the City's representations, I am satisfied that the record was collected, prepared and/or used in relation to meetings, consultations, discussions or communications. The attendance record, which is a printout from the electronic attendance record-keeping system, would clearly have been used by various divisions at the City to communicate information relating to attendance, and to calculate compensation and various benefits, along with other matters.

***Part 3: Were the meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest?***

The phrase "labour relations or employment-related matters" has been found to apply in the context of:

- a job competition [Orders M-830, PO-2123]
- an employee's dismissal [Order MO-1654-I]
- a grievance under a collective agreement [Orders M-832, PO-1769]
- disciplinary proceedings under the *Police Services Act* [Order MO-1433-F]
- a "voluntary exit program" [Order M-1074]
- a review of "workload and working relationships" [Order PO-2057]

- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act* [*Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.)]

The phrase “labour relations or employment-related matters” has been found *not* to apply in the context of:

- an organizational or operational review [Orders M-941, P-1369]
- litigation in which the institution may be found vicariously liable for the actions of its employee [Orders PO-1722, PO-1905]

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 [*Solicitor General* (cited above)].

In support of its position that the record falls within the exclusion in section 52(3)3, the City states:

“Employment-related matters” have been held to refer 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 (PO-2157 as referred to in PO-2614). Records relating to staffing problems or the evaluation of employees and records relating to a review of the compensation package for employees have been considered “employment-related” (PO-2374, MO-1735). The record in question deals with attendance, and can be seen as a record relating to these the aforementioned matters.

While 52(3) can refer to individuals who are not in an employment relationship, the named employee was formerly employed by the City.... The fact that records relate to former employees does not mean the records are not “employment-related” (PO-2212).

The City also refers to Order P-1326 in support of its position that an institution has an interest in staffing matters and monitoring employee attendance.

### *Findings*

In this appeal the record at issue is identified above. The City has stated that the information in the record is clearly employment-related, and deals with the attendance of its employee, and consequently that it involves human resources or staff relations issues arising from the relationship between an employer and employees.

On my review of this record, I am satisfied that it relates directly to matters relating to the City’s own workforce and, consequently, to “employment-related matters” for the purpose of section 52(3)3. This attendance record, which is a printout from the City’s electronic attendance record-

keeping system, relates to the calculation of compensation and various benefits, along with other matters. I find that it relates directly to the employment-related matters relating to the City's workforce and that it fits within the exclusionary provision in section 52(3)3.

**ORDER:**

I uphold the City's decision that the record is excluded from the scope of the *Act* as a result of section 52(3)3.

Original signed by: \_\_\_\_\_  
Frank DeVries  
Adjudicator

September 17, 2009 \_\_\_\_\_