

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER MO-2725

Appeal MA11-188

Guelph Police Services Board

April 27, 2012

**Summary:** The appellant made a request to the police for an internal police report relating to a specific incident. The police denied access to the report on the basis that it was excluded from the *Act* under section 52(3) and that any responsive records are also exempt from disclosure under sections 8(2)(a), 12 and 14(1). The police's decision that the report is excluded from the *Act* under section 52(3)3 is upheld.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 52(3)3.

**Orders and Investigation Reports Considered:** MO-2324

### OVERVIEW:

[1] The appellant made a request to the Guelph Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

...the internal police report into a [specified date] incident at a [specified address]...

[2] The police denied access to the responsive record pursuant to the exclusion in section 52(3)1 and the exemptions in sections 8(2)(a) (law enforcement report), 12 (solicitor-client privilege), and 14(1) (personal privacy).

[3] During mediation, the appellant advised the mediator that he wished to pursue access to the withheld record and raised the possible application of the public interest override in section 16 of the *Act*. The police maintained their position respecting non-disclosure of the record.

[4] The adjudicator sought representations from the police on the application of the exclusion only. The police provided representations in response to the Notice of Inquiry. After the receipt of the police's representations, the file was transferred to me to complete the inquiry. I then provided the appellant with an opportunity to make representations and he did so, on the issue of severance of the record only.

[5] In this order, I uphold the police's decision that the record is excluded from the *Act* under section 52(3).

## **RECORDS:**

[6] The record at issue consists of a 28 page internal investigation report.

## **DISCUSSION:**

### **Does section 52(3) exclude the record from the *Act*?**

[7] The police submit that the exclusions in sections 52(3)1 and 52(3)3 apply to the record at issue. Based on my review of the record and the police's representations I determined that I need only consider the application of section 52(3)3 which 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.

[8] 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*.

[9] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in paragraph 1, 2 or 3 of this section, it must be reasonable to conclude that there is "some connection" between them. [Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.)]

[10] 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].

[11] 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].

[12] The exclusion in section 52(3) does not exclude all records concerning the actions or inactions of an employee simply because this conduct may give rise to a civil action in which the Crown may be held vicariously liable for torts caused by its employees [*Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.)].

[13] The type of records excluded from the *Act* by section 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 [*Ministry of Correctional Services*, cited above].

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

#### ***Introduction***

[14] 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.

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

[15] The police submit that the record at issue is a Guelph Police Service Internal Investigation report (“the report”) prepared by its Professional Standards Branch. The report relates to an incident that occurred on a specified date and deals with the named

police officers and their handling of the occurrence.

[16] The police submit that the report was prepared in accordance with section 76(1) of the *Police Services Act* (the *PSA*) which deals with internal complaints and states as follows:

A chief of police may make a complaint under this section about the conduct of a police officer employed by his or her police force...and shall cause the complaint to be investigated and the investigation to be reported on in a written report.

[17] The police state that the report considers the handling of the call for service by the named officers and:

...draws conclusions as to officer adherence to Guelph Police Service policy as well as any possible police misconduct under the Code of Conduct provisions of the *PSA*.

[18] I have reviewed the record at issue and considered the police's representations. I find that the report was prepared and used by the police for the purpose of reviewing the named officers' conduct in the handling of the occurrence which is the subject of the request. I am satisfied the police have met Part 1 of the section 52(3)3 test.

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

[19] The police submit that the report was used in meetings, consultations, discussions and communications about the conduct of the subject police officers involved in this internal investigation. The meetings and discussions were between the Guelph Police Professional Standards Branch, the Chief and Deputy Chief of Police, and the involved officers, in relation to the investigation and its conclusions.

[20] Based on the police's representations and the content of the record at issue, I find that the record, while prepared to report on the findings of the named officers, was used in meetings and discussions between the Professional Standards Branch, the involved officers and the Chief and Deputy Chief of Police. Specifically, the findings and conclusions of the report were the subject of meetings and discussions. Accordingly, I find that the report was used by the police in relation to meetings, discussions and communications and I am satisfied that the police have met Part 2 of the section 52(3)3 test.

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

[21] The phrase "labour relations or employment-related matters" has been found to

apply in the context of:

- disciplinary proceedings under the *Police Services Act* [Order MO-1433-F]

[22] The records collected, prepared maintained or used by the Ministry ... are excluded only if [the] meetings, consultations, discussions or communications are about labour relations or "employment-related" matters in which the institution has an interest. Employment-related matters are separate and distinct from matters related to employees' actions [*Ministry of Correctional Services*, cited above].

[23] The police submit that the record at issue deals with employment-related matters and that past decisions of this office have found that proceedings under the *Police Services Act* are employment-related matters in which the institution has an interest. Further, the police states:

Although no disciplinary action was initiated, it was the conclusion of the Professional Standards Branch that this issue be dealt with as a training matter for the officers involved. This again, clearly brings the Report into the realm of employment-related matters.

[24] Finally, the police cite order MO-2324 where Adjudicator Colin Bhattacharjee found a "Final Report to the Chief of Police" following an SIU investigation to be about employment-related matters. In finding that the report was about "employment-related" matters, Adjudicator Bhattacharjee stated the following:

As noted above, the Police prepared and used the report for the primary purpose of investigating the conduct of their police officers, particularly the officer who was accused of sexually assaulting a protestor. Although the report contains a brief evaluation as to whether the Police's policies provided adequate guidance to their officers, the report is fundamentally about the conduct of the officers who removed the protestors from the hotel.

In my view, the report is about employment-related matters, because of the potential for disciplinary action against the officers involved. It logically follows, therefore, that the meetings, discussions and communications that took place with respect to the report were also about employment-related matters. Even though the report did not recommend that disciplinary proceedings be initiated against any of these officers, this does not remove employment-related matters from the realm of these meetings, discussions and communications.

[25] The circumstances in the present appeal are different than those that gave rise to order MO-2324. In the present appeal, the complaint which initiated the

investigation by the Professional Standards Branch came from the Chief of Police and directly related to the conduct of the officers involved in the incident which is the subject of the request. The police used the phrase "internal investigation" for this type of investigation. The report relates to the Professional Standards Branch investigation and findings of the conduct of the police officers involved and their adherence to the Guelph Police Service policy, as well as the Code of Conduct provisions under the *PSA*. The present appeal does not involve a case where a third party has complained about the conduct of the officers. Based on the circumstances in this case, I find that the record at issue relates to potential disciplinary action against the officers involved and that the meetings, discussions and communications between the Professional Standards Branch, chief of police and the named officers were about employment-related matters.

[26] Lastly, I must consider whether the meetings, discussions and communications are about "employment-related matters" in which the institution 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 the institution's own workforce [*Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*]. In the present appeal, I find that the police have an interest in the employment-related matters in the record at issue that extends beyond a "mere curiosity or concern". In my view, the conduct of its police officers in carrying out their duties is clearly within the police's interest.

[27] In summary, I find that the police have met Part 3 of the section 52(3)3 test. As I have found that the police have used the report in relation to meetings, discussions and communications about employment-related matters in which they have an interest, I find that section 52(3)3 of the *Act* applies. Further, as none of the exceptions in section 52(4) apply, I find that the record is excluded from the scope of the *Act*.

[28] As I have found that section 52(3)3 applies I do not need to consider section 52(3)1 or the possible application of the public interest override which was raised by the appellant.

**ORDER:**

I uphold the police's decision and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

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April 27, 2012