

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2813

Appeal MA12-301

The Greater Sudbury Police Services Board

November 26, 2012

Summary: The Greater Sudbury Police Services Board received a request made to the Sudbury Police Association for access to the by-laws, and the names and addresses of the members of the Association. The board denied the request on the basis that the Sudbury Police Association did not meet the definition of an “institution” under the *Act*, and therefore, the access provisions of the *Act* were not applicable. The decision of the board is upheld.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 2(1), Ontario Regulation 372/91.

BACKGROUND:

[1] The Greater Sudbury Police Services Board (the board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the by-laws of the Sudbury Police Association (the association) and the names and addresses of the association’s members. Although the request was delivered to the offices of the board, the requester identified the association as the institution to which the request was made.

[2] The board issued a decision stating that it did not have access to the by-laws of the association, which is not an institution under the *Act*. The board relied on section 18(2) in denying the request. The board also relied on the discretionary law enforcement exemption in section 8(1)(e) (endanger life or safety) and the mandatory personal privacy exemption in section 14.

[3] The requester, now the appellant, appealed the decision, asserting that the association was an institution for the purposes of the *Act* by virtue of the fact that it was created by the board, which is an institution. The appellant further asserted that the association fell within the definition of an institution "as a joint committee of management or joint board of management established under the Municipality Act and regulations."

[4] During mediation, the board clarified that it did not have "care or control" of the association's by-laws and therefore, could not respond to the request. The board also advised that all of its employees were members of the association. The appellant advised that he was no longer seeking the addresses of the association's members.

[5] The board subsequently issued a revised decision stating that the request was addressed to the association but delivered to the board, which was not the association; accordingly, the board did not have access to the requested information. The board reiterated in its revised decision that the association did not meet the definition of an institution under the *Act* and therefore, it was not able to forward the request to the association in accordance with section 18(2).

[6] Mediation did not resolve the appeal, and it was moved to the adjudication stage of the appeals process, in which an adjudicator conducts an inquiry under the *Act*.

[7] I sought and received representations from the appellant, who requested that I not share his representations with the board. Without deciding that these representations meet this office's criteria for withholding representations, I found it unnecessary to share them with the board. Due to the straightforward nature of the sole issue in this appeal, and based on the material before me, including the reasons for decision provided by the board at the mediation stage of the appeals process, I did not deem it necessary to invite the representations of the board.

[8] As a result of the appellant's request that I keep his representations confidential, my review of the appellant's representations in this order is limited.

[9] The sole issue in this appeal is whether the association is an institution, and therefore, subject to the *Act*.

DISCUSSION:

Is the association an institution, and therefore, subject to the *Act*?

[10] It is important to note that the appellant specified that his access request is made to the association. The question in this appeal therefore, is whether the association is an "institution" to which such a request may be made. Although the

Mediator's Report refers to the issue of "custody or control", the question is not whether the board has "custody or control" of the association's records, but whether the association must respond to this access request.

[11] The access provisions of the *Act* apply to all municipal "institutions". Institution is defined in section 2(1) of the *Act* as follows:

(a) a municipality,

(b) a school board, municipal service board, city board, transit commission, public library board, board of health, police services board, conservation authority, district social services administration board, local services board, planning board, local roads board, police village or joint committee of management or joint board of management established under the *Municipal Act, 2001* or the *City of Toronto Act, 2006* or a predecessor of those Acts,

(c) any agency, board, commission, corporation or other body designated as an institution in the regulations; ("institution")

[12] In addition, section 1(1) of Ontario Regulation 372/91 lists a number of bodies that are designated as institutions for the purposes of the *Act*. The association is not included in this list.

[13] In his representations the appellant asserts that the association is an institution by virtue of its relationship with the board. The appellant provides his view on the genesis, authority and function of the association, the relationship between the association, the board, and their respective members, and how all of these factors establish the association as an institution under the *Act*. The appellant further contends that if organizations such as the association were not subject to the *Act*, then institutions such as the board would be permitted to form associations, which in turn, would conduct the business of the institution with immunity from access to information requests under the *Act*.

[14] As noted above, I did not seek representations from the board as its position, that the association is not an institution under the *Act*, is clear from its decision letters.

[15] I have reviewed the representations of the appellant, and find there is nothing therein that establishes the association as an institution contrary to the definition of that term in the *Act* and the list of designated institutions in the regulations. There is nothing in the definition of the term "institution" in section 2(1) of the *Act* that captures a professional body such as the association. There is nothing in the material before me that supports the appellant's assertion that the association was created by the board, or

that the association is a "joint committee of management or joint board of management established under the Municipality Act and regulations."

[16] While the association may have a collective bargaining relationship with the board, this does not lead to the conclusion that it is a part of the board, co-manages the police service, or is synonymous with the police service. In his representations the appellant refers to the provisions of the *Police Services Act*, R.S.O. 1990, c. P.15. I have reviewed that Act, and it is apparent that associations and police boards are distinct entities with different purposes, with the role of associations being the representation of police officers with respect to their working conditions and remuneration. The provisions of that Act do not indicate that associations are created by the police boards with which they bargain.

[17] Accordingly, I find that the association is not an institution under the *Act*, and therefore, the *Act* is not applicable to it.

ORDER:

I uphold the decision of the board.

Original signed by: _____
Stella Ball
Adjudicator

_____ November 26, 2012