

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2888

Appeal MA12-446

South Simcoe Police Services Board

May 28, 2013

Summary: The requester sought access to costs paid to a hearing officer. The police denied access citing the exclusionary provision in section 52(3)2 of the *Act*. This order does not uphold the police's determination that the record is excluded from the scope of the *Act* under section 52(3)2.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 52(3)2.

BACKGROUND:

The South Simcoe Police Services Board (the police) received a request pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to the following:

...the total sum of the costs paid, in relation to [the requester's] Police Service Act hearing, for or to, [a named] hearing officer from [two named towns] and or the South Simcoe Police Service (SSPS) and or the [two named police services boards] for [2007 to 2012], including any outstanding bills yet to be paid...

The police located one responsive record and issued a decision to deny access to this record pursuant to sections 52(3)1 and 52(3)2 of the *Act*.

The requester (now the appellant) appealed the decision to this office.

During mediation, the police issued another decision letter to the appellant restricting their decision to only section 52(3)2 of the *Act* to deny access to the responsive record. As no further mediation was possible, this file was transferred to adjudication. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the police seeking their representations initially. The police did not provide representations in response, simply replying to the Notice of Inquiry by stating that they stand by their decision letter. The police's decision letter in this appeal, merely repeats the wording of section 52(3)2.

In this order, I do not uphold the police's determination that the record is excluded from the scope of the *Act* under section 52(3)2.

RECORDS:

The record at issue consists of a table outlining amounts paid to specified hearing officer, broken down by year, from 2007 to 2012.

DISCUSSION:

Does section 52(3)2 exclude the records from the *Act*?

Section 52(3)2 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:

Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.

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*.

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.¹

¹ Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

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.²

The term "employment of a person" refers to the relationship between an employer and an employee.³

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.⁴

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*.⁵

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.⁶

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.⁷

For section 52(3)2 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 negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution; and

² *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.

³ Order PO-2157.

⁴ *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.

⁵ Orders P-1560 and PO-2106.

⁶ *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

⁷ *Ministry of Correctional Services*, cited above.

3. these negotiations or anticipated negotiations took place or were to take place between the institution and a person, bargaining agent or party to a proceeding or anticipated proceeding.⁸

Analysis/Findings

The request in this appeal seeks the amounts paid to a hearing officer for services rendered at a *PSA* hearing. The responsive record consists of a list of dates and the corresponding amounts paid.

In the absence of representations from the police, I find that I have insufficient evidence to determine that this responsive record is excluded from the *Act* by reason of section 53(2)2.

Although the request seeks access to information about the costs of the hearing officer in relation to a *PSA* hearing, the police have not provided any evidence that this payment was made in relation to negotiations or anticipated negotiations relating to labour relations or to the employment of a person by them.

I find that part 2 of the test under section 52(3)2 has not been met. Accordingly, I find that the record is not excluded from the *Act* by reason of section 53(2).

ORDER:

I do not uphold the police's determination that the record is excluded from the scope of the *Act* under section 52(3)2. I order the police to provide the appellant with a decision letter respecting access to the record, in accordance with the requirements of sections 19 and 22 of the *Act* and without recourse to a time extension under section 20 of the *Act*.

Original Signed By: _____ May 28, 2013
Diane Smith
Adjudicator

⁸ Orders M-861 and PO-1648.