Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2902

Appeal MA11-494

Corporation of the City of Orillia

June 20, 2013

Summary: The appellant submitted a request to the City of Orillia for information related to him within a particular time frame. The appellant had been a candidate in the city's recruitment process for a new city manager. The city granted partial access to the responsive records claiming section 7(1) (advice and recommendations) and 14(1) (personal privacy) of the *Act* to deny access to portions of the records. The city also indicated that some records were excluded from the scope of the *Act* due to the application of the exclusion for labour relations and employment-related information at section 52(3). The appellant appealed the city's decision to withhold records based on the exclusion at section 52(3) and also claimed that the city did not conduct a reasonable search for responsive records. The appellant did not appeal the city's application of sections 7(1) and 14(1) to the records.

In this order, the adjudicator finds that the city conducted a reasonable search for responsive records and upholds its decision to withhold records based on the application of the exclusion at section 52(3) of the *Act*. The appeal is dismissed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 17 and 52(3).

Orders and Investigation Reports Considered: Orders M-830, PO-2123, and MO-2213.

OVERVIEW:

[1] The requester, who was a candidate in the City of Orillia's (the city's) recruitment process for a city manager, filed a two-part request to the city under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records containing general information, as well as records containing information about himself. Specifically, the requester sought access to the following information:

> Part One – access to general records (non-personal information)
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> 1) Copy of the City of Orillia Records By-law or any variation of terms used to identify rules, regulations, directives, policy guidelines etc. regarding information and record keeping practices;
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> 2) Copy of the complete City of Orillia Record Manual or any variation of terms used to identify rules, regulations, directives, policy guidelines etc. regarding information and record keeping practices and all associated record schedules;
>
> 3) Copy of City of Orillia directive, guideline policy, procedures, rule or any variation of terms etc. regarding the storage of all electronic records both transitory and official and email correspondence within the care and control of the City of Orillia and its employees and to include mayor and council;
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> 4) Copy of City of Orillia directive, guideline, policy, procedures, rules etc. related schedules and all related policies for reimbursement to mayor and councillors expenses tied to city business.
>
> (a) This is to **include** but not limited to: home internet services, home telephone, office supplies, all variation of mobile devices, meals, travel, travel allowances; and
>
> 5) Comprehensive listing of all official contact information (addresses phone numbers (home, cellular etc.), email addresses etc.) that is identified publicly (minutes, electronic directories, web pages, paper listing etc.) by the City of Orillia for the past and current Mayor and councillors.
>
> Part Two – Access to own personal records
>
> 1) For the period October 1, 2010 to September 14, 2011 **any and all** unredacted records (both written and electronic) that include but is not limited to the name or reference of:

[variants of the appellant's names, initials and nicknames]

> The search for unredacted records (both written and electronic) is to include all City of Orillia staff (including both past City Managers), the current and past Mayor and all current and past Councillors for the requested period.
>
> The search should include all computer records from home email systems used by council and staff in the course of city business – from Oct 1, 2010 to September 14, 2011.

[2] The city located responsive records and issued a decision letter granting the requester partial access to the records. With respect to part one of the request, which sought access to general information, the city located 19 records (98 pages and 2 discs of information). Full access was granted to this information. With respect to part two of the request, which sought access to the requester's own personal information, the city located 34 records (79 pages) and granted full access to 31 records and partial access to three records. The city claimed sections 7(1) (advice and recommendations) and 14(1) (personal privacy) of the *Act* to deny access to portions of these records. Also in response to part two of the request, the city located a further 101 responsive records (347 pages) which it states are concerned with employment-related matters. It denied access to this information claiming that it is excluded from the scope of the *Act* pursuant to section 52(3) of the *Act*.[1]

[3] The requester, now the appellant, appealed the city's decision to this office.

[4] During the mediation of the appeal, the appellant advised the mediator that he was not pursuing access to those portions of the records that were withheld pursuant to sections 7(1) and 14(1) of the *Act*. Accordingly, the records or portions of records for which those exemptions were claimed are no longer at issue in this appeal.

[5] The appellant also advised that he was of the view that the city did not conduct a reasonable search for records responsive to part two of his request and believed that additional records exist. He stated that his request for access to his own personal information was to include a search of all city staff's records for the requested period. The city advised the mediator that there were 15 staff and council members involved in the search and that it was not reasonable to extend the search to include over 200 staff members.

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[1] Section 52(3) is an exclusionary provision that sets outs of types of records to which the *Act* does not apply. If a record is covered by section 52(3) and none of the exceptions in section 52(4) apply, the record is excluded from the scope of the *Act* and not subject to the jurisdiction of the Information and Privacy Commissioner of Ontario.

[6] Also, the appellant advised that he was of the view that the city's information technology (IT) department should conduct a search of all computer drives, and that all employees should conduct searches of all drives accessible to them. The appellant also advised the mediator that he wished to be given access to a copy of the instructions that the city sent to its staff, the Mayor and council.

[7] Further, the appellant advised that he was in possession of emails and paper correspondence from the city, Mayor and councillors, that were not disclosed to him, including phone logs of calls made to him and that he sought access to these records.

[8] Finally, the appellant advised that he takes issue with the city's application of section 52(3) of the *Act* to exclude responsive records concerning employment related matters.

[9] As the appeal could not be resolved during mediation, it was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*. The adjudicator formerly assigned to this appeal began the inquiry by sending a Notice of Inquiry setting out the facts and issues to the city initially, and then to the appellant, seeking representations. Both parties provided representations, in turn, which were shared in accordance with the practices of this office. Reply representations were sought from and provided by the city in response to the appellant's representations. Sur-reply representations were sought from and provided by the appellant.

[10] The appeal was transferred to me to complete the inquiry. For the reasons that follow, I find that the city conducted a reasonable search for responsive records, and I uphold the city's decision that the records at issue fall outside of the scope of the *Act* pursuant to the application of the exclusion at section 52(3).

RECORDS:

[11] There are 101 records (347 pages) at issue in this appeal consisting of emails and records relating to a job competition.

ISSUES:

A. Did the city conduct a reasonable search for responsive records?

B. Does section 52(3) exclude the records from the scope of the *Act*?

DISCUSSION:

A. Did the city conduct a reasonable search for responsive records?

[12] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[2] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[13] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[3] To be responsive, a record must be "reasonably related" to the request.[4]

[14] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.[5]

[15] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[6]

[16] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[7]

[17] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.[8]

Representations

[18] The city submits that as the request for information was very broad and required clarification, it contacted the appellant by letter stating:

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[2] Orders P-85, P-221, and PO-1954-I.
[3] Orders P-624, and PO-2559.
[4] Order PO-2554.
[5] Orders M-909, PO-2469, and PO-2592.
[6] Order MO-2185.
[7] Order MO-2246.
[8] Order MO-2213.

> As your personal information request is very broad ([identified names, initials and search terms]) and would generate an enormous number of matches, we are prepared to search where we believe records may exist – Mayor and council, Human Resources Department, City Manager's Office, and City Clerk's Department. We are anticipating that you are not interested in your general taxpayer records relating to property, tax, water bills, building permits, recreational course, etc. If there are other departments you believe would hold the records you are seeking, please advise.

[19] The city submits that the appellant confirmed by email that he was not interested in general taxpayer records. However, he stated that he did not agree to the search being restricted to certain departments.

[20] The city submits that subsequently it advised the appellant, by email, how it planned to conduct the search for records:

> We have requested a thorough search by a number of departments and staff, as well as Mayor and council, where we believe responsive documents may be found. In addition, our records administrator searched all department files using the electronic records management system SIRE. Concerning emails, the City of Orillia IT department does not have the ability to do a detailed global "context or keyword" search in either the subject line or message body of all employee mailboxes. At the City of Orillia we have approximately 230 full time staff and up 400 part time staff (depending on time of year) and to have all employees search all computer records, emails etc., is not reasonable.

[21] The city submits that it "searched all areas of the corporation where it was reasonably thought records could exist." It submits that:

> It was felt it was unreasonable to request 230 full time (400 part time) staff to search for records as per the requester's terms of reference as a) it was far reaching, quoting search terms such as [identified search term] and various combinations of names and initials and b) sending such a request to so many employees could compromise confidentiality of the requester.

[22] The city explains that because the requester had been involved in the recruitment process for a high level position, it seemed reasonable to search for responsive records in the offices of Mayor and council, the city clerk, the city manager, and human resources. It submits that the searches in each office were carried out by experienced staff members, including the Mayor and council, the Mayor's assistant, the recruitment company assisting the city in recruitment for the job competition at issue,

the city clerk, the deputy chief administrative office/chief financial officer, the IT manager, the human resources manager, and the freedom of information coordinator. It explains that the requester's detailed instructions were attached to memoranda sent to staff and searches were conducted of records including electronic records on computers (laptop and desktop), memory sticks, phones and other devices. It also submits that a records clerk conducted a search of all electronic records, corporate wide, using the city's electronic records management system.

[23] The city provided affidavits sworn by each of the individuals who conducted searches for responsive records attesting to the searches they conducted and the fact that they forwarded all responsive records located during their search to the Freedom of Information Coordinator.

[24] The appellant takes the position that the city's search was not reasonable because it unilaterally narrowed his request to records relating to the recruitment process in which he participated. In response to the city's statement that it conducted a search "where we believe the documents may be found," the appellant submits that, as a result, it has unjustifiably focused the search on a very small group of people. He submits that out of over 230 full time employees, the city chose to ask only 7 employees, the Mayor and 9 members council to search for responsive records. The appellant submits that the city "assumed all along that [he] only wanted records that relate to the hiring process so they restricted their search to 16 individuals." He submits that the time frame provided includes a period in which he was not part of the hiring process.

[25] In response to the city's concern that requesting that all city staff search their records would compromise the confidentiality of the appellant, the appellant submits that he is fully aware of the implications and that he made it clear to the city that he has "no issue" with the disclosure of his name or initials to all city staff for the purpose of a detailed search of any and all records responsive to his original request.

[26] The appellant submits that although the city states that its IT department does not have the ability to do a detailed global search of all employee mailboxes, the city uses Microsoft Outlook and could require its entire staff to do a search of their individual mailboxes. He submits that he requested that the city do so and was informed that it "was not prepared to do this."

[27] The appellant also submits that all employees should be asked to search all of their computer drives accessible to them and not accessible to the city's IT department

[28] The appellant states that he is "convinced" that there are hundreds of responsive records created that would be found from councillors and from city staff. As a result, he submits that the city's search is not complete and should not have been restricted to certain departments.

[29] On reply, the city submits:

> This request was not a simple request and involved many hours of work by staff. As the requester was not interested in narrowing or clarifying the scope of the request, the city tried, in good faith, to determine where records might exist in relationship to the requester's personal information. As the requester had been involved in a job competition for a high level position with the city, it stood to reason that records might exist in the areas of Mayor's Office and Council, as well as Departments of Human Resources, Clerks, City Manager and Treasury. The department heads of the key departments carried out searches, as well as all nine members of Council. It stood to reason that if any records existed, other than taxpayer records, they would likely be in these key areas including the employment recruitment company retained by the city. We asked the requester "If there are other departments you believe would hold the records you are seeking, please advise." The requester would not work with us to narrow the request. It seemed that records may exist in these key areas and not scattered about in the computers or emails of front line workers.

[30] The city notes that the appellant states in his representations that it made an error in assuming that he only wanted records relating to the hiring process, but submits that it "was not advised to correct this assumption." It also submits that hundreds of responsive records were located, however, the great majority of them fall outside of the scope of the *Act* pursuant to the application of the exclusion at section 52(3).

[31] With response to its ability to do a detailed global search of all employee mailboxes, the city submits:

> The IT Manager cannot do a **global search on each and every individual computer account.** He would have to search each account **individually** and have access to passwords…. This is why key departments and areas were asked to perform searches in their own areas. The IT Manager performed three searches (two employees were no longer with the organization).
> [emphasis in original]

[32] The city submits that it felt that it would be unreasonable to have each and every city employee (230 full time staff and up to 400 part time staff) to perform searches using a combination of the appellant's names, initials, nicknames (as identified in the request) on individual computers.

[33] The city also states that the appellant's initial request did not specifically ask the city to contact each and every employee and ask them to search for his information. It

submits that this only came up at mediation, and "at that point, after attempting to contact the appellant for clarification and narrowing of the request to make it more manageable, we had already carried out what we determined to be a reasonable search in this request."

[34] On sur-reply, the appellant submits that in his response to the city's letter regarding the search that was to be conducted, inviting him to identify other departments or individuals who might have responsive records, he stated:

> I do not agree with your suggestion of the search being restricted to certain departments. I am not in a position to determine when or where my name or combination of my name has been disseminated in correspondence (i.e. email) by city employees. I do not believe your office would be either. As you know, the issue of the hiring of City Manager has been in the public forum and of interest to many within the City of Orillia departments and council. So in order to satisfy my request, a complete and fulsome search needs to be conducted. This is the only way for the City of Orillia to confirm and ensure it conducts a search of all records in its care and control. Searches of electronic correspondence can easily be conducted with limited impact of resources especially emails.

[35] The appellant submits that in that letter he stated that he will permit the city an extension of time for the processing of the request[9] "to enable [its] office to complete the search of the remaining departments" but that the city did not expand its search to other departments. He also stated that he re-read these portions of his response (quoted above) to the city during a teleconference in the mediation stage of the appeal.

[36] The appellant also submits that despite the city's statements, these are "very simple requests, not complex at all." He submits that the total number of responsive records "has been so small given the public coverage in this circumstance" and that this is because the city "has severely restricted its search parameters."

[37] The appellant states that his correspondence with the city has been clear and concise and nowhere in his request or any of his communications did he indicate that it was for records relating to the hiring process. He submits that this is the first time they have indicated that they were not clear on the scope of the original request and that they limited the scope of their search.

Analysis and finding

[38] As noted above, where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has

[9] Pursuant to section 20 of the *Act*, a head may extend the time period to respond to the request.

conducted a reasonable search for records as required by section 17. A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request. In the circumstances of this appeal, I accept that the city's search for responsive records was reasonable.

[39] Part two of the appellant's request was for any and all records related to him (identified by any combination of names, initials or nicknames) within a specified time frame. I accept that this is a fairly broad request that required the city to determine which departments or individuals might reasonably hold records related to the appellant. As the appellant did not seek records related to himself as a taxpayer, the city considered departments and individuals that might have other types of records containing his personal information. Aware that the appellant was a candidate in the recruitment process for a high level city position, the city identified those departments and individuals who might hold records related to that process (and therefore records related to the appellant) and advised the appellant of its intent to search those records.

[40] Although provided with the opportunity to identify subject matters of the records he sought, or to identify other departments or individuals whose records that might have responsive records other than those identified by the city, the appellant maintained his position that he wanted access to all records in which he was named (or which contain a combination of his names, initials or nicknames) and that he wanted the city to search for responsive records among the records of all city employees in all city departments.

[41] Although I acknowledge that at no point did the requester specifically state that he was seeking records only about the recruitment process, I note that in his letter responding to the clarification request by the city, the only subject matter that he addresses is that of the hiring of the city manager. In that communication he stated: "As you know the issue of hiring of City Manager has been in the public forum and of interest to many within the City of Orillia departments and council. So in order to satisfy my request, a complete and fulsome search needs to be conducted." Additionally, I note that in the course of this appeal, including in all of his representations, the only subject matter mentioned by the appellant in relation to his request is that of the recruitment process for city manager.

[42] As previously stated, in responding to access requests, the *Act* does not require the city to prove with absolute certainty that further records do not exist. The city must simply provide sufficient evidence to show that they have made a reasonable effort to identify and locate responsive records reasonably related to the request. In my view, a reasonable search for responsive records in these particular circumstances does not necessarily require a search of the records of every single one of the city's employees and departments to locate records that relate to the appellant. In this appeal, the city considered the context in which the appellant's personal information could appear

within city records (other than as a taxpayer) and identified the departments and individuals who might have records related to the appellant in that context. The appellant had no previous employment connection with the city prior to the recruitment process and did not provide the city with another context in which his personal information might appear within city records. Also, it does not appear that the city was aware of another context in which his information might appear.

[43] I find that the city has provided sufficient evidence to demonstrate that it made a reasonable effort to identify and locate records responsive to the appellant's request. I accept that it spent a considerable amount of time and effort attempting to locate records responsive to the request based on the information that it had before it, including the communications during the processing stage between the city and the appellant. I accept that searches were conducted by experienced city staff, knowledgeable of the subject matter and records holding practices of the records in their custody and control as well as those in their departments, and that they expended reasonable efforts to identify and locate records reasonably related to the appellant's request. Although the city withheld the majority of the records located during the searches pursuant to the exclusion at section 52(3) of the *Act,* over 350 pages of responsive records were identified. In my view, this is a considerable amount of responsive records even considering the appellant's position that there was significant amount of public interest and discussion about the hiring of a city manager

[44] Moreover, as previously stated, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[10] In this appeal, although the appellant maintains his position that additional records should exist, including records that do not necessarily relate to the recruitment process, I do not accept that he has established a reasonable basis for such a conclusion. In my view, I have not been provided with sufficient evidence to conclude that other city departments or individuals could reasonably be expected to hold additional records relating to the appellant or containing his personal information (other than taxpayer records) either in the context of the recruitment process or in another context, particularly given that he had no prior employment connection with the city.

[45] In conclusion, I am satisfied that experienced city staff, knowledgeable in the records holding of the city, expended reasonable efforts to identify and locate records which are reasonably related to the appellant's request. Consequently, I find that the city's search for responsive records was reasonable and I will uphold it.

[10] Order MO-2246.

B. Does the labour relations exclusion at section 52(3) exclude the records from the scope of the *Act*?

[46] The city takes the position that the *Act* does not apply to all of the 101 records remaining at issue because they fall within paragraphs 2 and 3 of the labour relations exclusion listed at section 52(3). Those paragraphs state:

> Subject to section (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:
>
> …
>
> 2. 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.
>
> 3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

[47] Section 52(4) lists the exceptions to section 52(3). It states:

> This Act applies to the following records:
>
> 1. An agreement between an institution and a trade union.
>
> 2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
>
> 3. An agreement between an institution an one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.
>
> 4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

[48] 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*.

[49] 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.[11]

[50] 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.[12]

[51] 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.[13]

[52] 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.[14]

[53] 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.[15]

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

[54] 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.

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[11] Order MO-2589; see also *Ontario(Attorney General) v.Toronto Star*, 2010 ONSC 991 (Div. Ct.).
[12] *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.
[13] Order PO-2157.
[14] *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.
[15] *Ibid..*

Part 1: collected, prepared, maintained or used

[55] The city submits that all of the records that it has identified as being excluded from the application of the *Act* pursuant to section 52(3) "were collected, prepared, maintained or used by the city or on its behalf in the context of a job competition, and are clearly employment-related matters in which the city has an interest."

[56] The appellant states that the records in dispute relate to a job competition in which he participated. He submits that he is only seeking the information relating to him.

[57] Having reviewed the records carefully, I find that all of them relate to the recruitment process conducted by the city for the hiring of a new city manager. They include records prepared by city staff and used by interview panel members to record comments on the candidates' responses to questions and to rate how they met the priority criteria established for the position. They also include emails and other correspondence, collected, prepared, maintained or used by city staff in the course of deliberations taken with respect to the results of the competition.

[58] From my review, it is clear that all of the records for which the exclusion at section 52(3) was claimed were collected, prepared, maintained and used by the city. Accordingly, I find that part 1 of the section 52(3)3 test has been established.

Part 2: meetings, consultations, discussions or communications

[59] The city submits that the records were collected, prepared, maintained and used in relation to meetings, consultations, discussions and communications in the context of a job competition. It relies on Order MO-830, in which former Assistant Commissioner Tom Mitchinson found:

> [I]n the context of a job recruitment process:
>
> - an employment interview is a "meeting;" and
>
> - deliberations about the result of a competition among the interview panel members are "meetings, discussions or communications," and sometimes all three.
>
> Moreover, the records generated with respect to these activities would be either for the purpose of, as a result of, or substantially connected to these meetings, discussions or communications, and therefore properly characterized as being "in relation to" them (Order PO-1242).

[60] In the current appeal, the appellant was a candidate in the city's recruitment process for a new city manager. The records at issue are all related to either the employment interview itself or the subsequent deliberations about the results of the competition. As a result, I am satisfied that they were collected, prepared, maintained and/or used in relation to meetings, consultations, discussions or communications amongst various city staff regarding the recruitment process involving the appellant. Therefore, I find that the second part of the section 52(3)3 test has also been established.

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

[61] The records collected, prepared maintained or used by the institution 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."

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

- a job competition[16]
- an employee's dismissal[17]
- a grievance under a collective agreement[18]

[63] 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.[19] Previous orders have found that institutions "have an interest" in the recruitment process for the purposes of the third requirement for the application of the exclusion at section 52(3)3.[20]

[64] The city submits that these meetings, consultations, discussions or communication for which the records at issue were collected, prepared, maintained and used were about employment related matters in which the city clearly has an interest as they relate to the recruitment process for a high level position in the city's administration.

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[16] Orders M-830, and PO-2123.
[17] Order MO-1654-I.
[18] Orders M-832, and PO-1769.
[19] *Solicitor General*, *supra,* note 6.
[20] Order M-830, and PO-2123.

[65] From my review, it is clear that all of the records at issue relate to a job competition conducted by the city. In keeping with previous orders issued by this office, I accept that a job competition is a labour relations or employment related matter in which the city has an interest. As a result, I find that the third requirement of the exclusion has been met.

Conclusion

[66] In summary, I find that the records at issue in this appeal were collected, prepared, maintained and/or used by the city in relation to meetings, discussions and consultations about employment-related matters in which the city has an interest, specifically the job recruitment process in which the appellant was candidate. I find that all the requirements of section 52(3)3 have been established and that none of the exceptions in section 52(4) are applicable. As a result, the records are excluded from the scope of the *Act* and I uphold the city's decision not to disclose them to the appellant.

[67] I have found that all of the records for which section 52(3) has been claimed are excluded from the scope of the *Act* pursuant to section 52(3)3. Accordingly, it is not necessary for me to determine whether the exclusion at paragraph 2 of section 52(3) also applies in the circumstances of this appeal.

ORDER:

1. I find that the city's search for responsive records was reasonable.

2. I uphold the city's decision not to disclose the responsive records pursuant to the exclusion at section 52(3) of the *Act*.

3. I dismiss the appeal.

Original signed by: June 20, 2013
Catherine Corban
Adjudicator