Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3128

Appeals MA12-372, MA12-373 and MA12-374

Toronto Hydro Corporation

November 26, 2014

Summary: A trade union sought access to records relating to an RFP and settlement agreement, including drafts and related correspondence. Toronto Hydro located responsive records and denied access to them, claiming that they fell outside of the scope of the *Act* as a result of the operation of the exclusion at section 52(3) (labour relations or employment-related matters). In this order, the adjudicator finds that the exclusion at section 52(3) applies and the appeal is dismissed.

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

Cases Considered: *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner,* 2010 ONSC 991 (CanLII), March 26, 2010, Tor. Doc. 34/91 (Div. Ct.).

OVERVIEW:

[1] CUPE Local One (CUPE) submitted several requests for records to the Toronto Hydro Corporation (Toronto Hydro) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *MFIPPA*). This order deals with three of the requests, which will be referred to as the first, second and third requests or appeals in this order.

[2] The first request sought access to "a copy of RFP 12P-030 Night Shift Services, including all appendums and schedules." The requester subsequently narrowed its request to only the RFP. Toronto Hydro issued a decision to the requester claiming that the RFP was excluded from the scope of the *Act* by virtue of section 52(3) (labour relations and employment records). In the alternative, Toronto Hydro claimed that the RFP was exempt under the discretionary exemptions under sections 11(e) and (f) (economic and other interests) of the *Act*.

[3] The second request sought access to "… copies of any agreement of any kind made between Toronto Hydro and the [International Brotherhood of Electrical Workers (IBEW)] and any documents or correspondence in Toronto Hydro's possession related to any agreement between Toronto Hydro and the IBEW". Toronto Hydro issued a decision granting the requester full access to the final agreement between Toronto Hydro and the IBEW, dated July 7, 2006. However, Toronto Hydro claimed that the remaining responsive records, which included draft agreements and related correspondence, were excluded from the scope of the *Act* by virtue of section 52(3) (labour relations and employment records). In alternative, Toronto Hydro claimed that the responsive records qualified for exemption under the mandatory exemptions under sections 10(1) (third party information) or the discretionary exemption under section 12 (solicitor-client privilege).

[4] The third request sought access to "… copies of any and all correspondence or other documents related to RFP 12P-030 Night Shift Services, including but not limited to any correspondence between Toronto Hydro and the contractors' association and/or the IBEW". Toronto Hydro issued a decision claiming that the responsive records were excluded from the scope of the *Act* by virtue of section 52(3) (labour relations and employment records). In the alternative, Toronto Hydro claimed that the responsive records were exempt under the discretionary exemptions under sections 11(e), (f) and (g) (economic and other interests) and 12 (solicitor-client privilege). Toronto Hydro also advised that third party companies may need to be notified about the request under section 21(1) if the records were found to fall within the scope of the *Act*.

[5] CUPE (now the appellant) appealed Toronto Hydro's decisions to this office and a mediator was assigned to the appeals. During mediation, Toronto Hydro created an index of records describing the records at issue in the second and third appeals.

[6] The parties could not reach a settlement during mediation and the appeals were transferred to the adjudication process of the appeals process, in which an adjudicator conducts an inquiry under the *Act.* During the inquiry process, the parties submitted written representations to this office.

[7] The appeal files were subsequently transferred to me to issue a decision.

RECORDS:

[8] The record at issue in the first appeal consists of a "Request for Proposals – RFP 12P-030 for the supply of Power Line Technician Night Shift Services to [Toronto Hydro]", dated May 30, 2012.

[9] The records at issue in the second appeal consist of draft emails, draft agreements, memos, memorandums of settlements and correspondence relating to Toronto Hydro's agreement with the IBEW, totalling 32 records. These records are described in the index of records Toronto Hydro provided the appellant during mediation.

[10] The records at issue in the third appeal are emails and attachments exchanged between Toronto Hydro and RFP proponents, including the exchange of confidentiality agreements and undertakings relating to the submission of RFP's to Toronto Hydro. Also included are emails and correspondence exchanged between Toronto Hydro and the RFP proponents including requests for further particulars. Finally, the records at issue include the exchange of internal emails and correspondence between Toronto Hydro staff regarding the evaluation of the RFP's. These total 70 records and are described in the index of records Toronto Hydro provided the appellant during mediation.

[11] Essentially, the records at issue in the three appeals can be grouped in the following categories:

1. The RFP, including drafts, and any related emails, correspondence or other documents, including drafts and internal correspondence between Toronto Hydro staff and/or its solicitors (first and third appeals); and

2. The draft agreements between the IBEW and Toronto Hydro, and any related emails, correspondence or other documents exchanged between Toronto Hydro staff and/or its solicitors (second appeal).

DISCUSSION:

Are the records at issue excluded from the scope of the *Act* on the basis of section 52(3)?

[12] Section 52(3) 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:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.

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.

[13] 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*.

[14] 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]

[15] 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]

[16] 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.[3]

[17] 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.[4]

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

Section 52(3)1: court or tribunal proceedings

[18] I will first determine whether the RFP is excluded from the scope of the *Act* by virtue of section 52(3)1. For section 52(3)1 to apply, the institution must establish that:

1. the record was collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or usage was in relation to proceedings or anticipated proceedings before a court, tribunal or other entity; and

3. these proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the institution.

[19] At the time of the filing of their representations, the parties were involved in labour relations proceedings resulting from a grievance filed by the appellant. The appellant states that:

> [b]eginning in early 2012, Toronto Hydro offered a Voluntary Exit Program ("VEP") to certain members of [the union], apparently for the purpose of compelling some members of [the union] to leave their employment with Toronto Hydro.

[20] The appellant alleged that Toronto Hydro's VEP breached the collective agreement between the parties. During the arbitration hearing of the grievance, the appellant requested a copy of the RFP.

[21] Toronto Hydro submits that it opposed the appellant's request for disclosure of the RFP, but that the arbitrator ordered it disclosed to the appellant for the purposes of the arbitration hearing. A copy of the arbitrator's order was provided to this office during the representations stage of this appeal. The arbitrator ordered Toronto Hydro:

> [t]o disclose copies of any RFPs and all contracts with all service providers, contractors and sub-contractors issued and/or entered into by Toronto Hydro for a period of 6 months prior to the date upon which the VEP was offered and up to the date of the hearing, and any and all documents related thereto (eg. The number of employees working under contracts, locations and work covered by contracts) with respect to employees in the following classifications: CSR, Parts & Inventory, Linesmen Tests and Electrical Inspectors.

[22] Toronto Hydro submits that the appellant's request for the RFP through the grievance process demonstrates that it is a record that was collected, prepared,

maintained or used by Toronto Hydro in relation to labour relations proceedings. In support of its position, Toronto Hydro states:

> It is clear the requester filed the request for the RFP in preparation for, for use in, and in the context of the VEP Grievance hearings.

[23] In response, the appellant submits:

> Put simply, there is nothing to suggest that any of the requested documents, on their own, are in any way collected, prepared, maintained or used in relation to labour relations.

[24] In support of its position, the appellant submits that the records Toronto Hydro seeks to exclude from the *Act* are "designed to avoid employment and labour relations". Accordingly, "Toronto Hydro cannot plausibly claim that anything in [the RFP] or related documents or correspondence is in any way in relation to labour relations". The appellant submits that the RFP invites third-party contractors to provide services for Toronto Hydro to allow it to have work performed for it without creating employment relationships between Toronto Hydro and those performing the work.

[25] Though the appellant argues that it did not receive a copy of the RFP as a result of the documents ordered disclosed during the arbitration, it requests that this office investigate whether Toronto Hydro complied with the arbitrator's order by reviewing the disclosures that were to be made during the grievance arbitration.

[26] Finally, the appellant warns that a concerning precedent could take place if it is found that "mere production of a document in a grievance arbitration engages s.52(3)1". The appellant argues that "a vast number of records which are otherwise subject to *MFIPPA* could become arbitrarily removed from *MFIPPA*'s application by an institution's arbitrary decision to produce the record in a grievance proceeding".

Parts 1 and 3: collected, prepared, maintained or used … in labour relations or employment

[27] Part 1 of the test asks whether the institution collected, prepared, maintained or used the record. The RFP is a document prepared and distributed by Toronto Hydro. Its purpose is to invite proposals for the supply of night shift workers. Having regard to the record itself, I am satisfied that Toronto Hydro collected, prepared, maintained or used the record. Accordingly, I find that the first part of the three-part test has been met.

[28] Part 3 of the test asks whether the proceedings or anticipated proceedings relate to labour relations or the employment of a person by the institution. Previous decisions from this office have found that grievance arbitrations constitute a proceeding relating

to labour relations.[5] Having regard to the above, I find that the third part of three-part test has also been met.

Part 2: proceedings before a court or tribunal

[29] There is no dispute between the parties that, at the time the appellant submitted its request to Toronto Hydro for a copy of the RFP, the parties were on opposite sides of a grievance proceeding.

[30] The word "proceedings" means a dispute or complaint resolution process conducted by a court, tribunal or other entity which has the power, by law, binding agreement or mutual consent, to decide the matters at issue.[6] "Other entity" means a body or person that presides over proceedings distinct from, but in the same class as, those before a court or tribunal. To qualify as an "other entity", the body or person must have the authority to conduct proceedings and the power, by law, binding agreement or mutual consent, to decide the matters at issue.[7]

[31] Previous decisions from this office have found that grievance proceedings constitute proceedings before an "other entity", namely an arbitrator appointed under the terms of the collective agreement.[8]

[32] In the circumstances of this appeal, the appellant and institution are parties to a collective agreement. The collective agreement manages ongoing employment and labour relationship issues between management and the union. If the union alleges a breach of the collective agreement, it files a grievance and an arbitrator is assigned to conduct a hearing. This is what occurred when the appellant filed a grievance about Toronto Hydro's VEP.

[33] The RFP at issue is dated May 30, 2012. In its representations, the appellant advises that Toronto Hydro started to offer the VEP in early 2012. Both parties confer that the appellant filed a grievance regarding the VEP in February 2012. The parties appeared before the arbitrator in July 2012 and, shortly after, he ordered Toronto Hydro to disclose copies of any RFPs issued and/entered into by Toronto Hydro for a period of 6 months prior to the date upon which the VEP was offered and up to the date of hearing.

[34] Having regard to the dates set out above, it appears that the RFP in question would fall within the ambit of documents the arbitrator ordered Toronto Hydro to disclose to the appellant. Though it is not clear from the representations of the parties whether Toronto Hydro actually provided the appellant with a copy of the RFP through

[5] Orders M-832 and M-1107, See also *Ministry of Correctional Services*, cited above.
[6] Orders P-1223 and PO-2105-F.
[7] Order M-815.
[8] Orders M-815 and P-1223.

the grievance disclosure process, I am satisfied that the arbitrator ordered it disclosed within the context of a grievance hearing. In my view, whether or not the appellant received a copy of the RFP in question through the grievance's discovery process is not relevant to whether part two of test has been satsified. The determination I am to make is whether the RFP in question is or was used *in relation to the* proceedings or anticipated proceedings.

[35] The divisional court in *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 instructs that the collection, preparation, maintenance or use of a record to be "in relation to" the proceedings mentioned in section 52(3)(1), it must be reasonable to conclude that there is "some connection" between them.[9]

[36] In my view, the fact that Toronto Hydro was ordered to disclose the RFP is sufficient evidence to establish that this record was to be used in relation to those proceedings, thus meeting part two of the three part test. In arriving at this decision, I also considered the appellant's concern that the discovery process in grievance arbitrations could be used to exclude documents that would normally be subject to the *Act*. The appellant's concern is a serious one, but not one that is warranted by the facts of this appeal. In this appeal, Toronto Hydro was ordered to disclose the record at issue after it objected to its release during a contested motion before the arbitrator, a disclosure process which is separate and distinct from disclosure under the *Act*.

[37] As I have found that all three parts of the test in section 52(3)1 has been met, I find that the RFP in question is excluded from the scope of the *Act*.

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

[38] I will now determine whether the other records identified as responsive to the request are excluded from the operation of the *Act* by virtue of the exclusion in section 52(3)3. 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.

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

Part 1: collected, prepared, maintained or used

[39] The records remaining at issue are the drafts of the IBEW settlement agreement and RFP and related correspondence exchanged between Toronto Hydro staff and/or its solicitors. Also remaining at issue is correspondence exchanged with the RFP proponents directly or internally among Toronto Hydro staff and its solicitors.

[40] I have reviewed these records and am satisfied that they have been prepared and/or maintained in the files of Toronto Hydro staff or its solicitors. Accordingly, I am satisfied that these records were collected, prepared, maintained or used by Toronto Hydro and find that the first part of the three part test has been met.

Part 2: meetings, consultations, discussions or communications

[41] Toronto Hydro submits that the main forum for its meetings, consultants and discussions with the appellant union are joint Labour-Management Committee meetings. Toronto Hydro argues that the records remaining at issue or the subject-matter of the records were discussed at these joint meetings. In support of its position, Toronto Hydro highlighted instances in its representations where the appellant made requests for some of the records at issue or raised concerns about Toronto Hydro "contracting out" night shift workers during their joint meetings. Toronto Hydro also attached copies of some of the appellant's communication bulletins to its members which discussed the union's concerns about the VEP and "contracting out".

[42] The appellant argues that there isn't a "direct relationship between the requested records and labour relations". The appellant submits that Toronto Hydro's submission that the requested records fall within the scope of section 52(3)3 on the grounds that they were discussed in joint meetings or were discussed in union bulletins has no merit. In support of its position, the appellant states that it:

> … disputes that the mere discussion of a record's existence in a labour management meeting somehow engages s.52(3)3 of *MFIPPA*. [The appellant] equally disputes that any discussions of "contracting out" somehow engages s. 52(3)3 of *MFIPPA* in respect of [the RFP], or in respect of any other records requested in the Appeals.
>
> No such discussions of a document's existence or of "contracting out" amount to collection, preparation, maintenance or usage of the record "in relation to" meetings about labour relations. None of the requested records in any of the Appeals was ever collected, prepared, maintained or used "in relation to" a labour-management meeting between Toronto Hydro and [the appellant]. Quite to the contrary, Toronto Hydro ardently refused to provide copies of the requested records to [the appellant] in

> any labour management meeting or at any other time, which is the reason for the instant Appeals.
>
> Further, no discussion of any of the requested records or of "contracting out" in [the appellant's] bulletins in any way attracts the application of s. 52(3)3 of *MFIPPA*.

[43] Part two of the three part test in section 52(3)3 asks whether the records were collected, prepared, maintained or used in relation to meetings, consultations, discussions or communication. As stated previously in this order, the Divisional Court in *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner* instructs that the words "in relation to" in section 52(3) require that it must be reasonable to conclude that there is "some connection".[10]

[44] Toronto Hydro argues that there is a "connection" between the records at issue and its meetings, consultations, discussions or communications with the appellant. The appellant argues that no "direct relationship" between the records and any meetings, consultations, discussions or communications exist. In support of their positions, the parties have placed an emphasis on whether there is a connection between the records and any discussions and communications that occurred during their joint meetings.

[45] However, in my view, it is not necessary to demonstrate that the records were used collected, prepared, maintained or used in the parties' joint meetings. The union need not be a party to these communications for part 2 of the test to apply to the records. Instead, evidence demonstrating that the records were collected, prepared, maintained or used in relation to Toronto Hydro's internal meetings, consultations, discussions or communication with its solicitors and/or staff is sufficient for part 2 of the test in section 52(3)3 to be met.

[46] Many of the records remaining at issue are drafts of the settlement agreement and RFP or related correspondence in varying stages of completion exchanged between Toronto Hydro staff and/or its solicitors. Also at issue is correspondence exchanged with RFP proponents. Having regard to the actual content of the records remaining at issue, I am satisfied that they were collected, prepared, maintained or used in relation to Toronto Hydro's meetings, consultations, discussions or communications with its staff, solicitors or the RFP proponents directly or internally among Toronto Hydro staff and/or its solicitors.

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

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

[47] Given my finding above, I now must decide whether the subject-matter of Toronto Hydro's meetings, consultations, discussions or communications are about labour relations or employment-related matters in which Toronto Hydro has an interest.

[48] Toronto Hydro argues that the records remaining at issue relate to labour relations. In its representations, Toronto Hydro states:

> The very purpose for the issuance of [the RFP] was to address worker attendance utilization issues during the Night Shift, a labour relations matter. In addition, the RFP terms and conditions, as well as the content of the records relating to the RFP reflect and discuss the labour relations settlement between [Toronto Hydro] and the IBEW relating to the union affiliation of contracted workers. The RFP conditions are in fact an implementation of the IBEW Agreement. Further, as can be seen from the [union's] Bulletin communications and Labour-Management Committee meeting minutes, the RFP, as a contracting out of [Toronto Hydro] operations, is a matter of great concern to the [appellant] and a contentious labour relations matter as between [Toronto Hydro] and [the union].
>
> The IBEW Settlement Agreement, as explained above, represented the resolution of a labour relations matter. The content of the records related to the IBEW Agreement were directed at identifying the labour relations issue, assessing exposure to the labour relations threat and the threat of labour relations proceedings presented by the IBEW's 2005 demand letter, and negotiating the Agreement.
>
> … the purpose of the RFP, the content of the records regarding the RFP and the use of the RFP by both [Toronto Hydro in relation to the IBEW, and the union as a matter of labour conflict and potential bargaining with Toronto Hydro] all have a strong labour relations connection. Similarly the records relating to the negotiation of the IBEW Agreement are directly related to the negotiation of a labour relations resolution to a matter, work allocation and bargaining rights, directly related to labour relations. Both the RFP and related records, and the IBEW Settlement Agreement records reflect relationships with unions, and are analogous to or, in the case of the RFP as a contracting out, are related to, a collective bargaining relationship or a collective bargaining matter.

[49] The appellant submits that the records do not concern a labour relations or employment related matter. In support of its position, the appellant argues that:

- the RFP is an invitation to third-party contractors to provide services for Toronto Hydro without creating an employment relationship between Toronto Hydro and those performing the work;

- given the RFP is designed to avoid employment relationships, Toronto Hydro can not claim that the RFP or any related documents or correspondence is in any way related to labour relations;

- there is no collective bargaining relationship between Toronto Hydro and the IBEW;

- the settlement agreement between the IBEW and Toronto Hydro is a commercial as opposed to a collective agreement[11]; and

- in the absence of a collective bargaining relationship between Toronto Hydro and the IBEW, Toronto Hydro cannot claim that anything in the agreement or related documents or correspondence is in any way in relation to labour relations.

[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] 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.[13]

[51] It appears that the crux of the appellant's submission is that the records remaining at issue are not related to a labour relations matter as the records themselves do not relate to an alleged breach arising from the collective agreement between the parties, such as the union's allegation about Toronto Hydro's VEP. The appellant's position that there is no collective bargaining relationship between Toronto Hydro, the IBEW or the RFP proponents appears to be technically correct. However, whether or not a collective agreement exists is not the only factor in determining whether the records are about labour relations or employment-related matters.

[52] Having regard to the records themselves, I am satisfied that the settlement agreement between Toronto Hydro and the IBEW was struck to settle a dispute that

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[11] In support of its argument, the appellant provided a copy of a letter from Toronto Hydro's counsel. The letter was sent to the appellant along with the copy of agreement. Toronto Hydro's counsel's letter advises that it is his understanding that the agreement "was intentionally structured as a commercial agreement, and not a voluntary recognition agreement or collective agreement".

[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] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

could have resulted in proceedings within the jurisdiction of the *Ontario Labour Relations Act*. Most of the records relating to the settlement agreement are email exchanges between Toronto Hydro and its solicitors about the legal issues relating to contracting out night shift work. One of the key records is a legal memorandum prepared by Toronto Hydro's counsel (Record 22). In my view, the content of this record leaves no doubt that the records relating to the settlement agreement were collected, prepared, maintained or used to address a labour relations or employment-related matter that could have resulted in proceedings under the *Ontario Labour Relations Act*.

[53] In addition, having regard to the records themselves, I am satisfied that the conditions set out in the RFP implement key terms of Toronto Hydro's agreement with the IBEW. In fact, the terms and conditions are the subject-matter of most of the records at issue relating to the RFPs. It is the subject-matter of Toronto Hydro's emails and correspondence to the RFP proponents in addition to its emails and correspondence exchanged internally between staff and solicitors processing and evaluating the bids.

[54] The circumstances of this appeal are unique in that records, such as RFPs and correspondence to bidders, would not normally contain the terms and conditions of a settlement agreement which resolved a labour relations or employment-related matter. Typically, RFPs and correspondence to bidders are documents that institutions would prepare as part of their normal course of business. However, in the circumstances of this appeal it appears that these records, along with the drafts and related correspondence relating to the settlement agreement, were not prepared as part of Toronto Hydro's normal course of business. In my view, the vast majority of the records remaining at issue were collected, prepared, maintained or used by Toronto Hydro to address labour relations or employment-related matters, such as work allocation, bargaining rights and threatened labour relations proceedings. Accordingly, I am satisfied that these records are about labour relations or employment-related matters in which Toronto Hydro has an interest and I find that part three of the three-part test in section 52(3)3 has been met.

[55] I acknowledge that there may be some attachments to the records or portions of records that would appear not to relate to labour relations or employment-related matters. However, these records are attached to emails, documents or correspondence I found were collected, prepared, maintained or used by Toronto Hydro in relation to labour relations or employment-related matters in which it has an interest. Previous decisions from this office have held that section 52(3) is record-specific and fact-specific.[14] Accordingly, if this section applies to a specific record, in the circumstances of a particular appeal, and none of the exceptions in section 52(4) are present, then the entire record is excluded from the scope of the *Act*.

[14] Order P-1242.

ORDER:

I uphold Toronto Hydro's decisions and dismiss the appellant's appeals.

Original Signed By: November 26, 2014
Jennifer James
Adjudicator