

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3084

Appeal MA12-490

Durham Regional Police Services Board

August 20, 2014

Summary: This appeal arose from a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to recruitment for a position for which the appellant's daughter was an applicant. The police denied access to the records on the basis that they are excluded from the application of the *Act* by virtue of the exclusion for employment-related records at section 52(3). The requester appealed the ministry's decision. In this order, the adjudicator upholds the police's decision to deny access to the records at issue on the basis that they are excluded from the operation of the *Act* pursuant to section 52(3).

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

Orders and Investigation Reports Considered: Orders M-830, P-1255 and PO-2123.

OVERVIEW:

[1] The appellant is the parent of an unsuccessful candidate for the 2012 Durham Regional Police's Youth in Policing Program. He submitted a request to the Durham Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information regarding the Youth in Policing Program, in particular records relating to the selection of the 2012 candidates for that program.

[2] The police issued a decision denying access to the requested records on the basis that the records fall outside the scope of the *Act* pursuant to the exclusion for employment-related records found at section 52(3). The police also advised the appellant that he may wish to contact the police's Human Resources Unit in order to ascertain his eligibility to access the records.¹

[3] The appellant appealed the police's decision to this office.

[4] During mediation, the police advised that the records include general information on the Youth in Policing Program which is available on their website and information relating to other individuals who applied to the 2012 program. The police reiterated their position that the responsive records fall outside the scope of the *Act* pursuant to section 52(3). The appellant indicated that he wishes to pursue access to the records available on the police's website, but that he is not pursuing access to personal information relating to applicants other than his daughter.

[5] No further mediation was possible and the appeal was forwarded to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry. The adjudicator initially assigned to the appeal sought representations from the police on the application of section 52(3) to the records. In their representations, the police took issue with printouts from their website being considered records responsive to the appellant's request. The police argued that copies of information from their website had been provided to this office not as responsive records, but rather as information that might help explain the Youth in Policing Program and clarify the fact that it is an employment competition. The police further noted that these records are publicly available on the police's website. As a result, the adjudicator added the possible application of the exemption for publicly available records at section 15(a) of the *Act* as an issue in this appeal, and sought representations from the appellant on the application of both the section 52(3) exclusion and the section 15(a) exemption to the records.

[6] The appeal was then transferred to me to complete the inquiry and I sought additional representations from the parties on the scope of the appellant's request. In particular, I asked whether the request included information resident on the police website pertaining to the 2012 Youth in Policing Program. The parties' representations were shared in accordance with section 7 of the Information and Privacy Commissioner's *Code of Procedure and Practice Direction 7*.

¹ Section 52(3) of the *Municipal Freedom of Information and Protection of Privacy Act* and the equivalent provision (section 65(6)) in the *Freedom of Information and Protection of Privacy Act* do not prohibit an institution from exercising its discretion to disclose records outside of the access regime established by those Acts: see Order PO-2639.

[7] In this order, I find that the information resident on the police's website pertaining to the 2012 Youth in Policing selection process was included in the scope of the appellant's access request and is therefore at issue in this appeal. However, I also conclude that information on the police website pertaining to other aspects of the program was not within the scope of the request and is therefore not at issue in this appeal. I further find that some of the other records provided to this office by the police are not within the scope of the appellant's request and are therefore not at issue in this appeal. I find that all of the records that are at issue in this appeal are excluded from the application of the *Act* by virtue of section 52(3) of the *Act*. On that basis, I uphold the ministry's decision.

RECORDS:

[8] The police provided this office with a package of documents beginning at page 4 and ending at page 188. For the reasons set out below under Issue A of this order, I find that not all of these records are responsive to the appellant's request. The records that are responsive to the appellant's request and are therefore at issue in this appeal consist of pages 4-14, 67-72, 92-95, 98-115, portions of pages 116-139, and pages 161-177.

ISSUES:

Issue A. What is the scope of the request? What records are responsive to the request?

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

DISCUSSION:

A. What is the scope of the request? What records are responsive to the request?

[9] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

- ...
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[10] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.²

[11] To be considered responsive to the request, records must "reasonably relate" to the request.³

[12] The appellant's request to the police stated as follows:

This correspondence pertains to a request for information relating to the Durham Regional Police - Youth in Policing Program and particularly the proceedings and materials related to the selection of 2012 candidates. Furthermore, as a parent and legally authorized agent of one of the candidates, an additional criteria search relating to [the appellant's daughter] "The Candidate"... and I ... respectively. The search should also include the files, communications, agenda's and committee minutes and notes of the "Youth in Policing Committee and Administrators", Deputy Chief [a named individual], Chief Administrative Officer [a named individual], Director of Human Resources [a named individual], and [a named individual]. The search should also include the Chief of Police [a named individual], Deputy Chief [a named individual], Executive Officer [a named individual], [two named individuals], Chair of Police Services Board [a named individual], [a named individual], and any and all other related Durham Regional Police staff as identified in the course of the search and its investigative results.

The search should date for the period beginning June 2011 to present and inclusive of any additional materials revealed during the course of the search and up to its completion.

² Orders P-134 and P-880.

³ Orders P-880 and PO-2661.

Representations

[13] As noted above, in its representations, the police submitted that copies of information from the police's website had been provided to this office not as records responsive to the appellant's request, but rather as information that might help explain the Youth in Policing Program and clarify the fact that it is an employment competition.

[14] The appellant's representations state:

[The police's] website and primary public announcement tool and program interface was indeed intended to be part of the scope of the request... It must also be emphasized that the timed announcement of the DRPS website for the YIPI program was the reference point that all YIPI candidates were instructed to watch for and respond to as the application process and platform unfolded. The timing and duration of these website announcements is critical evidence that seeks to be suppressed due to their obvious revelations.

[15] The appellant submits that a liberal interpretation of the request ought to have been adopted and that the website information was meant to be included in his request. Specifically, he submits that the website capture pertaining to the Youth in Policing Program for the requested dates relates reasonably to the request.

Analysis and conclusion

[16] On a plain reading of the appellant's request, the pertinent parts that set out the scope of the request are as follows:

information relating to the Durham Regional Police-Youth in Policing Program and particularly the proceedings and materials related to the selection of 2012 candidates.

and

The search should date for the period beginning June 2011 to present.

[17] The remainder of the request, which addresses which files to search, does not extend the request beyond records relating to the selection of the 2012 candidates; rather, it sets out the areas that the appellant wanted the police to search in order to find records relating to the selection of 2012 candidates.

[18] My interpretation of the appellant's request is supported by a review of his representations. As noted above, the appellant submits that "the timing and duration of these website announcements is critical evidence that seeks to be suppressed due to

their obvious revelations". From reviewing the appellant's access request and his representations, I find that his request was for all documents relating to the selection of candidates for the 2012 Youth in Policing program, and not for more general information about the 2012 Youth in Policing program.

[19] The appellant's request for all documents relating to the selection of the 2012 candidates would include information resident on the police's website related to the selection of the 2012 candidates. However, other information about the Youth in Policing Program in 2012 (that is, information that does not pertain to the selection of the 2012 candidates) is not responsive to the appellant's request.

Website material

[20] I have reviewed the website printouts that the police provided to this office, which are found at pages 161-188 of the records. Pages 161-177 contain information relating to recruitment for the 2012 Youth in Policing Program, which includes job descriptions, application deadlines, and an application package. This information clearly relates to the selection of candidates for the Durham Regional Police – Youth in Policing Program for 2012 and I find, therefore, that it comes within the scope of the appellant's request.

[21] However, the website printouts at pages 178-188 contain other information about the 2012 Youth in Policing program, such as a calendar of public events and articles about past events for the 2012 Youth in Policing students. These website printouts do not pertain to the recruitment for the 2012 Youth in Policing program. I find, therefore, that these records do not fall within the ambit of the appellant's request and I will not address them further in this order.

Other records provided by the police to this office

[22] As noted above, the police provided this office with a package of documents beginning at page 4 and ending at page 188. Pages 73-80 are no longer in issue, as they are evaluations of applicants other than the appellant's daughter. Pages 140-160, relating to the processing of the appellant's access request, were removed because they were not responsive to the request. In addition, I have found above that pages 178-188 are not responsive to the appellant's request.

[23] From my review of the remainder of the documents, it is clear that many of them are similarly not within the scope of the appellant's request. Specifically, I find that the following documents are not responsive to the appellant's request:

- Pages 15-35 and 42-66, which are documents relating to the funding of the Youth in Policing program;

- Pages 36-41, which are miscellaneous documents pertaining to the Youth in Policing program, for example documents relating to promotional events and a list of other police forces participating in the Youth in Policing program;
- Pages 81-91, which relate to the Youth in Policing program's structure and funding;
- Pages 96-97, which relate to the police's processing of the appellant's access request; and
- Portions of pages 116-139. These pages consist of agendas and minutes of the Youth in Policing Steering Committee. Some of the content relates to the recruitment of students for the 2012 Youth in Policing program, while the remainder of the content relates to other aspects of that program.

[24] I will not address these records further in this order.

[25] The records at issue in this appeal, therefore, consist of pages 4-14, 67-72, 92-95, 98-115, portions of pages 116-139, and pages 161-177.

[26] I make this finding without prejudice to the appellant's right to make a further freedom of information request to the police for access to the documents that are outside the scope of this appeal.

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

[27] The police take the position that the *Act* does not apply to any of the records at issue because they fall within paragraph 3 of the exclusion for employment-related records at section 52(3). That paragraph states:

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:

...

3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

[28] 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 and 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.

[29] 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*.

[30] 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.⁴

[31] 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.⁵

[32] 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.⁶

[33] 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

⁴ Order MO-2589; see also *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991 (Div. Ct.).

⁵ Order PO-2157.

⁶ *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.

conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions.⁷

[34] The exclusion in section 52(3) applies equally to publicly available documents.⁸

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

[35] 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

[36] The police submit that they posted an employment opportunity for students, the Youth in Policing Program, on its website, along with an application package that was to be filled out and submitted with a resume and cover letter to the Human Resource Unit in February of 2012. The police submit that the responsive records were prepared for the purpose of employing summer students and were completed by the applicants, then collected by the police, and were to be used as an application for employment with the police.

[37] The appellant states that the records in dispute relate to the integrity of the provincially funded Youth in Policing program. He states that he only seeks his daughter's information, not that of other candidates, and that his daughter has given her consent. He submits that the intent of the *Act* is to provide, not exclude, personal information.

[38] The police's submissions appear to relate only to the application package. However, having reviewed the parties' submissions and the records themselves, I find that all of the records at issue relate to the police's recruitment of students for its Youth in Policing program. They include the website printouts referred to above, consisting of job descriptions, application deadlines, and an application package. They also include the following:

⁷ *Ibid.*

⁸ Order P-1255.

- The applicant's daughter's application and the police's response;
- a timeline document prepared by police staff relating to the Youth in Policing recruitment process;
- interview schedules;
- notes from the Youth in Policing Steering Committee meetings as they relate to recruitment of the 2012 candidates;
- a list of the successful candidates; and
- emails and other correspondence collected, prepared, maintained or used by police staff in the course of the competition.

[39] 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 or used by the police. Accordingly, I find that part 1 of the section 52(3)3 test has been satisfied.

Part 2: meetings, consultations, discussions or communications

[40] The police submit that once the application packages were received by the Human Resource Unit, they were reviewed and checked for completeness and eligibility requirements, then entered into the job competition process, which included meetings, consultations, discussion and communications, including interviews, by the police to determine who would be the successful applicants for the Youth in Policing employment opportunity.

[41] The applicant does not make any representations specifically relating to this part of the test.

[42] In Order PO-1242, former Assistant Commissioner Tom Mitchinson interpreted part 2 of the test in the context of a job recruitment process as follows:

[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.

[43] In the current appeal, the appellant's daughter was a candidate for a summer employment opportunity known as the Youth in Policing Program. The records at issue are all related to the police's solicitation of applications, selection of candidates to interview, the employment interviews themselves 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 police staff regarding the recruitment process for the Youth in Policing positions. Therefore, I find that the second part of the section 52(3)3 test has also been satisfied.

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

[44] 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."

[45] The phrase "labour relations or employment-related matters" has been found to apply in the context of a job competition.⁹

[46] 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.¹⁰ 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)3.¹¹

[47] The police submit that the records at issue all relate to an employment competition for the position as a summer student with the Youth in Policing Program. The police submit that the institution has a great interest in the outcome of this employment competition, as the youth hired for this position would be representing the police in the community.

[48] The applicant does not make any representations specifically relating to this part of the test.

⁹ Orders M-830 and PO-2123.

¹⁰ *Solicitor General, supra*, note 7.

¹¹ Orders M-830 and PO-2123.

[49] From my review, it is clear that all of the records at issue relate to a job competition conducted by the police. I agree with previous orders issued by this office which have concluded that a job competition is a labour relations or employment-related matter in which the institution, as employer, has an interest.¹² As a result, I find that the third requirement of the exclusion under section 52(3)3 has been met.

Conclusion

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

[51] As I have found that the records in issue are excluded from the scope of the *Act*, I need not consider the possible application of section 15(a) of the *Act* relating to any publicly available documents.

ORDER:

1. I find that the records at issue in this appeal are the following pages of the package of documents provided by the police to this office: pages 4-14, 67-72, 92-95, 98-115, portions of pages 116-139, and pages 161-177.
2. I uphold the ministry's decision that the records in issue are excluded from the *Act* under section 52(3).

Original Signed by: _____
Gillian Shaw
Adjudicator

_____ August 20, 2014

¹² See Orders M-830 and PO-2123.