

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3506

Appeal MA16-569

Toronto Transit Commission

October 16, 2017

**Summary:** The TTC received a request for access to records relating to a particular TTC investigation involving a vehicle operator. The TTC located responsive records and withheld the records on the basis of the exclusion in section 52(3)3 (employment or labour relations) of the *Act*. The appellant appealed the TTC's decision. In this order, the adjudicator finds that the records fall outside the scope of the *Act* by virtue of section 52(3)3 and dismisses the appeal.

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

### BACKGROUND:

[1] The appellant made a request to the Toronto Transit Commission (the TTC) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the results of a particular TTC investigation involving a vehicle operator, stemming from a complaint filed by the appellant.

[2] The TTC located responsive records and issued a decision to withhold the entirety of the records from disclosure claiming the employment and labour relations exclusion provision in section 52(3)3 of the *Act*.

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

[4] In the course of mediation, the mediator held discussions with both the appellant and the TTC.

[5] As mediation did not resolve the dispute, this appeal was transferred to the adjudication stage, where an adjudicator conducts a written inquiry under the *Act*. I began my inquiry by seeking the representations of the parties. Representations were received and shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[6] In this order the adjudicator finds that the records fall outside the scope of the *Act* by the employment and labour relations exclusion provision in section 52(3)3 and the appeal is dismissed.

## **RECORDS:**

[7] TTC Customer Service Communication System CSC Details as described in the index of records.

## **DISCUSSION:**

[8] The sole issue in this appeal is whether the records at issue are excluded from the Act under section 52(3).

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:

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

[9] 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*.

[10] 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.<sup>1</sup>

[11] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to

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

analogous relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.<sup>2</sup>

[12] 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.<sup>3</sup>

[13] 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.<sup>4</sup>

[14] The exclusion in section 52(3) does not exclude all records concerning the actions or inactions of an employee simply because this conduct may give rise to a civil action in which the Crown may be held vicariously liable for torts caused by its employees.<sup>5</sup>

[15] 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.<sup>6</sup>

### **Section 52(3)3: Matters In Which The Institution Has An Interest**

[16] For section 52(3)3 to apply, the TTC 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.

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

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<sup>2</sup> *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.

<sup>3</sup> Order PO-2157.

<sup>4</sup> *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.

<sup>5</sup> *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

<sup>6</sup> *Ministry of Correctional Services*, cited above.

- a job competition<sup>7</sup>
- an employee's dismissal<sup>8</sup>
- a grievance under a collective agreement<sup>9</sup>
- disciplinary proceedings under the *Police Services Act*<sup>10</sup>
- a "voluntary exit program"<sup>11</sup>
- a review of "workload and working relationships"<sup>12</sup>
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.<sup>13</sup>

[18] The phrase "labour relations or employment-related matters" has been found *not* to apply in the context of:

- an organizational or operational review<sup>14</sup>
- litigation in which the institution may be found vicariously liable for the actions of its employee.<sup>15</sup>

[19] 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.<sup>16</sup>

### **Representations:**

[20] In its representations, the TTC states that the records at issue were collected, prepared, maintained or used by it in relation to an investigation into potential employee misconduct. It states that in this case the records consist of a report and hand-written notes collected, prepared, maintained and used by the TTC for the purpose of an investigation into the potential misconduct of a bus driver in the course of his employment with the TTC.

[21] In referencing section 52(3)3, the TTC notes that the records at issue were

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<sup>7</sup> Orders M-830 and PO-2123.

<sup>8</sup> Order MO-1654-I.

<sup>9</sup> Orders M-832 and PO-1769.

<sup>10</sup> Order MO-1433-F.

<sup>11</sup> Order M-1074.

<sup>12</sup> Order PO-2057.

<sup>13</sup> *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

<sup>14</sup> Orders M-941 and P-1369.

<sup>15</sup> Orders PO-1722, PO-1905 and *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

<sup>16</sup> *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

collected, prepared, maintained and used by it. It notes that the records were created by its customer service department after receiving a complaint and the hand-written note was created by a TTC supervisor in the course of investigating the complaint documented by the customer service department.

[22] Regarding parts 1 and 2 of the test, the TTC submits that the records at issue were collected, prepared, maintained and used by it in relation to meetings, consultations, discussions and communications. The TTC states that its customer service department received the complaint regarding an alleged incident and created a report documenting the complaint for the employee's division to use in investigating the matter. It was noted that the employee's supervisor used the report for discussions at a meeting with the employee, and, as is common practice, the supervisor made hand-written notes on the report documenting the meeting.

[23] In relation to part 3, the TTC states that the meetings, consultations, discussion or communications were about labour relations or employment-related matters in which the TTC has an interest. It refers to Order MO-2694 and MO-3227 where it was found that records relating to an investigation into the potential misconduct of an employee constituted "labour relations or employee-related matters." In this instance, the TTC submits that the records at issue were used for the purpose of an investigation by the TTC, as an employee, into the potential misconduct of an employee. The TTC submits that it has an interest in the matter as it involves the alleged misconduct of one of its employees in the course of their employment.

[24] In referencing section 52(4) of the Act, the TTC confirmed that the records are not:

1. An agreement between an institution and trade union.
2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entitle 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.

[25] The appellant also provided representations in this appeal. He states that all he wants to know is if the person in question (the TTC employee) was disciplined or reprimanded. The appellant stated that his concern is whether this action, that he witnessed, may happen again to another rider or to himself by the same employee or another TTC employee simply due to no disciplinary action taking place. The appellant

representations focus around the actual event that he witnessed on the TTC bus. The appellant does not specifically speak to the issues and questions that were set out in the Notice of Inquiry that he received. The appellant does refer to the case law provided by the TTC and states that his hope is that the issue will be treated differently "because the merit of every case is different from each other."

**Analysis and finding:**

[26] As stated, for section 52(3)3 to apply, the TTC 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.

[27] From my review of the records at issue, it is clear that the TTC satisfies the requirements for the application of the exclusion in section 52(3)3 of the *Act*.

[28] The TTC, through its customer service department collected, prepared, maintained or used the records so that the TTC could investigate a complaint made by the appellant regarding an alleged incident. The report (the records at issue) documents the complaint so that the employee's division could use it in their investigation into the matter. In addition, the employee's supervisor used the report in discussions at a meeting with the employee, the supervisor's hand-written notes appear on the report and document their meeting. Therefore, I find that the first requirement of section 52(3)3 is satisfied.

[29] In addition, I find that the TTC collected, maintained and used the records in relation to meeting, consultations, discussion or communications relating to the investigation into the alleged incident. From a review of the TTC's representations, it is clear that the records were prepared by the customer service department after it received the appellant's complaint and they were created for the TTC's employee division to use in investigating the matter. In addition, the employee's supervisor used the records for discussion at a meeting with the employee and the supervisor made hand-written notes on one record documenting the meeting. Accordingly, I find that the second requirement of section 52(3)3 is satisfied.

[30] Finally, I am satisfied that these meetings, consultations, discussions or communications are about employment-related matters in which the TTC has an interest as an employer. The TTC has more than a mere curiosity or concern about the information contained in the records, as these records relate to an investigation into an allegation of misconduct by one of its employees in the course of their employment. Accordingly, I find that the records relate to meetings, consultations, discussion or communications about

employment-related matters and that the TTC, as the employer, has an interest in the information at issue.

[31] I have reviewed the exceptions listed in section 52(4) and find that none applies.

[32] In conclusion, I find that the TTC established all of the requirements of section 52(3)3 and the records at issues falls outside the scope of the *Act*.

**ORDER:**

I uphold the TTC's decision and dismiss the appeal.

Original Signed by: \_\_\_\_\_

Alec Fadel  
Adjudicator

October 16, 2017 \_\_\_\_\_