

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4247

Appeal MA21-00327

London Police Services Board

August 29, 2022

Summary: The London Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of records relating to the requester's interaction with two police officers on a specified date. In response to the request, the police located a record, which they withheld as excluded from the scope of the *Act* under section 52(3) (labour relations or employment matters). The adjudicator upholds the police's decision, and dismisses the appeal.

Statute Considered: The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 52(3)3 and 52(4).

OVERVIEW:

[1] The London Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the following:

"Record information about [date], I wasn't provided with the occurrence number, however, this was the exact date that two police officers attended at my residence listed above late afternoon"

[2] In response to the request, the police located a record, consisting of a computer aided dispatch report and an occurrence report, and issued an access decision, denying access to the record under section 52(3) (labour relations or employment matters) of

the *Act*. The police specifically claimed the third paragraph of section 52(3), that is, section 52(3)3.

[3] The requester, now the appellant, appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[4] The IPC appointed a mediator to explore resolution, but mediation did not resolve the dispute. Accordingly, the appeal moved to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry.

[5] As the adjudicator of this appeal, I began a written inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the police. I sought and received written representations from the police in response. I then sought and received written representations from the appellant in response to the Notice of Inquiry and the non-confidential portions of the police's representations.¹

[6] For the reasons that follow, I uphold the police's decision, and dismiss the appeal.

RECORDS:

[7] The record at issue is composed of a computer aided dispatch report and an occurrence report (42 pages total). It is withheld in its entirety.

DISCUSSION:

Does the section 52(3) exclusion for records relating to labour relations or employment matters apply to the record?

[8] By way of background, the appellant seeks information relating to an interaction that he had with certain police officers on a specific day. While this appeal involves access to records that exist because of the appellant's interaction(s) with the police, as I explain below, the records *itself* was created in the context of an internal police investigation into a police employee's alleged misconduct. Therefore, as the police submit, the record is excluded from the scope of the *Act*, under section 52(3)3 of the *Act*.

[9] Section 52(3) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in the *Act*, although the institution may choose to disclose

¹ Portions of the police's representations have been withheld due to confidentiality concerns, under *Practice Direction 7* of the IPC's *Code of Procedure*, which addresses the sharing of representations.

it outside of the *Act's* access scheme.²

[10] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.³

[11] The police rely on section 52(3)3, which says:

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.

[12] 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*.

[13] If section 52(3) applied at the time the record was collected, prepared, maintained or used, it does not stop applying at a later date.⁴

What types of records are covered by this exclusion?

[14] The type of records excluded from the *Act* by section 52(3) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.⁵

Section 52(3)3: labour relations or employment-related matters in which the institution has an interest

[15] 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 use was in relation to meetings, consultations, discussions or communications; and

² Order PO-2639.

³ *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107 (CanLII).

⁴ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509.

⁵ *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.). The CanLII citation is "2008 CanLII 2603 (ON SCDC)." In addition, I note that Section 52(3) does not exclude all records concerning the actions or inactions of an employee of the institution simply because their conduct could give rise to a civil action in which the institution could be held vicariously liable for its employees' actions (See *Ministry of Correctional Services*, cited above).

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

[16] The police submit that the record meets the three-part test, as I describe in further detail below.

[17] The appellant's representations do not directly address the three-part test. Rather, the appellant sets out his views about what he believes is the content of the record, and, in general, the reason he seeks the record. However, such matters are not relevant to whether section 52(3) applies to the record at issue. Therefore, I will only summarize the portions of the appellant's representations that relate to that issue, below.

Part 1: collected, prepared, maintained or used

[18] The police describe the record at issue as an occurrence report and a computer aided dispatch report that document an internal London Police Services Board investigation into a matter that the police described in more detail in their confidential representations. The police state that the internal investigation was conducted in accordance with the police's internal procedure, which is prepared and implemented by the Chief and applicable to all employees of the London Police Services Board. The police further describe this internal procedure as setting out expected behaviours and processes relating to various specified police matters. The police explain that, in accordance with this internal procedure, if a member of the police becomes aware of certain behaviours or deviations from police processes (explained in more detail in the police's confidential representations), the member is required to notify a supervisor. In turn, that supervisor creates a record (what the police call a "privatized occurrence"), and causes an investigation to be initiated. The contents of the investigation are documented in the privatized occurrence.

[19] The police submit that the record was *collected, prepared, maintained* and *used* by the police in relation to an internal investigation into potential employee misconduct pursuant to the police's internal procedure, implemented by the Chief and applicable to all employees.

[20] Reviewing the appellant's representations as a whole, I find that the appellant does not dispute that the record is *prepared* or *maintained* by the police, as he discusses his desire to access to the record from the police.

[21] Based on my review of the record, I find that it is composed of an occurrence report and a computer aided dispatch report documenting an internal police investigation of employee misconduct, as the police described in their representations. Therefore, as a record generated by the police for an internal investigation and found in the police record holdings, I find that the record meets the first part of the test, as a record *prepared* and *maintained* by the police, on behalf of the police. Given the police's

explanation of the purpose of this record, to investigate an internal police matter under the police's internal procedure, I find that the record was also *used* by the police, on behalf of the police.

Part 2: meetings, consultations, discussions or communications

[22] The police submit that the record reflects discussions and statements made in support of, and in response to, an internal investigation of an employee. The police explain that the record is privatized, and access is restricted to the supervisor who prepared the file; access is limited to disciplinary purposes or legislative responsibilities. As a result, the police submit that this record was *collected, prepared* and *used* by the police in relation to *communications* about the internal investigation.

[23] The appellant does not directly address part two of the test, but does provide his views about the nature of the *discussions* or *communications* involved in the record: he argues that "absolutely no information" would be revealed from disclosure other than what he provided to the police officers, so the record should not be withheld.

[24] However, having reviewed the record myself, I can confirm that the appellant's views about the nature of the contents of the records are inaccurate, and appear to be based on mistaken assumptions. Based on my review of the record, I find that the records were *prepared, maintained, and/or used* in relation to *communications* that the police had about the internal investigation that they conducted regarding the police employee who was being internally investigated. Therefore, I find that the record meets part two of the test.

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

[25] The phrase "labour relations or employment-related matters" has been found to apply in the context of, for example, an employee's dismissal,⁶ and disciplinary proceedings under the *Police Services Act*.⁷

[26] The phrase "labour relations or employment-related matters" has been found *not* to apply in the context of an organizational or operational review⁸ or litigation in which the institution may be found vicariously liable for the actions of its employee.⁹

[27] 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

[28] The records are excluded *only* if the meetings, consultations, discussions or

⁶ Order MO-1654-I.

⁷ Order MO-1433-F.

⁸ Orders M-941 and P-1369.

⁹ Orders PO-1722, PO-1905 and *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

¹⁰ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

communications are about labour relations or “employment-related” matters in which the institution has an interest. Matters related to the actions of employees, for which an institution may be responsible are not employment-related matters for the purpose of section 52(3).¹¹

[29] The police submit that their *communications* pertain to their internal investigation of potential employee misconduct. As discussed, this investigation occurred under an internal police procedure that governs the conduct of all London Police Services Board employees. The police submit that this is clearly an “employment-related matter.”¹² The police also submit that they have “an interest” in potential misconduct of their own employees. They state that if misconduct is substantiated, the employee may be subject to disciplinary actions including suspension and/or termination of employment. The police submit that an investigation into an employee’s performance or misconduct are clearly matters in which the police have “an interest” that is more than a mere curiosity or concern.¹³

[30] The appellant asserts that the record has no relation to labour relations or employment-related matters. He also states that the names of officers or others named in the record can be redacted.

[31] Based on my review of the record, I find that the *communications* to which the record relate are about *employment-related* matters in which the police *have an interest*. By its nature, as a record of an internal police investigation into alleged misconduct on the part of a police employee, I find that the record relates to communications about an employment-related matter in which the police have an interest that is more than a curiosity or concern. As a result, I find that the record meets part three of the test for section 52(3)3.

[32] Since the record meets all three parts of the test for section 52(3)3, the *Act* does not apply to it, unless one of the exceptions at section 52(4) of the *Act* apply.

Section 52(4): exceptions to section 52(3)

[33] If the records fall within any of the exceptions in section 52(4), the records are not excluded from the application of the *Act*. Section 52(4) states that the *Act* applies to the following records:

1. An agreement between an institution and a trade union.

¹¹ *Ministry of Correctional Services*, cited above.

¹² The police cite Order PO-2157 in support of this.

¹³ The police cite *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. 509.

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.

[34] The police submit, and I find, that the record at issue does not fall within any of the exceptions listed in section 52(4) of the *Act*, as it is neither an agreement nor an expense account.

[35] Therefore, since the record meets all three parts of the test for section 52(3)3, and does not fall within any of the exceptions listed in section 52(4), the *Act* does not apply to the record.

[36] For these reasons, I uphold the police's decision, and dismiss the appeal.

ORDER:

I uphold the police's decision, and dismiss the appeal.

Original Signed By: _____
Marian Sami
Adjudicator

_____ August 29, 2022