

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-4416

Appeal MA20-00483

City of Hamilton

July 25, 2023

**Summary:** The City of Hamilton (the city) received a request under the *Act* for access to the requester's employment file and records of correspondence. The city informed the requester that their employment file was available for inspection with the city's human resources division but that access to the employment file was denied under the access regime of the *Act*. The requester appealed the city's decision to the IPC. During the appeal, the city issued a decision denying access to the employment file and claiming that it is excluded from the *Act* under the labour relations and employment records exclusion in section 52(3)3.

In this order, the adjudicator finds that the employment records exclusion applies to the employment file so that it is outside the scope of the *Act*. The adjudicator upholds the city's decision not to disclose the employment file to the requester.

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

### OVERVIEW:

[1] This order concerns whether the requester's employment file is excluded from the access regime of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The City of Hamilton (the city) received a two-part request under the *Act* for access to the following:

1. All correspondence from 2006 to present in regards to [the requester's] name and personal information.
2. All correspondence in regards to [a named individual].

[3] The city wrote to the requester seeking clarification regarding the scope of part 1 of the request and refusing to confirm or deny the existence of records responsive to part 2 of the request, pursuant to section 14(5) of the *Act*.

[4] The requester clarified that in part 1 of the request they are seeking access to their employment file.

[5] The city informed the requester that their employment file was available for inspection by contacting staff in the city's Human Resources division and providing government issued identification.

[6] The requester, now appellant, appealed to the Information and Privacy Commissioner of Ontario (IPC) claiming that the city was in a deemed refusal position because it had not issued an access decision regarding the first part of the request. (The second part of the access request is not at issue in this appeal.)

[7] A mediator was appointed to explore mediation. During mediation, the city issued a decision denying the appellant access to their employment file citing the labour relations and employment records exclusion in section 52(3)3 of the *Act*. Regarding the availability of the appellant's employment file for inspection at its Human Resources division, the city advised that accessibility to the city's offices was restricted at that time due to the COVID-19 pandemic.

[8] The appellant advised that they wished to pursue access to their employment file based on their view that section 52(3) does not apply to exclude their employment file from the *Act*.

[9] As a mediated resolution was not achieved, the appeal was transferred to the adjudication stage. I decided to conduct an inquiry, which I began by inviting and receiving written representations from the city addressing the facts and issues set out in a Notice of Inquiry.

[10] I then wrote to the appellant, enclosing the city's representations and a modified Notice of Inquiry. I invited the appellant to make submissions addressing the facts and issues in this appeal and to respond to the city's representations.

[11] From my review of the file, I understood the scope of the appeal to be limited to the city's decision not to grant the appellant access to their employment file through the access regime of the *Act*. In the Notice of Inquiry, I asked the appellant to confirm the scope of the appeal.

[12] The appellant did not provide representations by the given deadline nor did they seek an extension of time for doing so. Having not heard further, I wrote to the appellant asking whether they still wished to pursue access to their employment file. The appellant responded asking why their appeal file had been closed.<sup>1</sup>

[13] I understood the appellant's response to be an indication that they wished to continue the appeal process and to pursue access to their employment file held by the city.

[14] I provided the appellant with another opportunity to provide representations addressing the issues in this appeal, including the scope of the appeal. The appellant did not respond and I decided to close my inquiry.

[15] In order to review the city's decision to exclude the employment file from the *Act*, I determined that I required the city to produce a copy of the records at issue.<sup>2</sup> The city did not provide copies of the records at issue and so, in order to adjudicate this appeal, I conducted a site visit to the city's Human Resources division and inspected the records.

[16] In this order, I find that the employment and labour relations exclusion in section 52(3)3 applies to exclude the appellant's employment file from the scope of the *Act*. Accordingly, I uphold the city's decision not to grant the appellant access to their employment file pursuant to the access provisions of the *Act*.

## **RECORDS:**

[17] The records at issue comprise the appellant's employment file.

## **DISCUSSION:**

[18] The sole issue in this appeal is the application of the labour relations and employment records exclusion in section 52(3)3 of the *Act* to the appellant's employment file. For the reasons that follow, I find the employment file is excluded from the scope of the *Act*.

[19] Section 52(3) 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 it outside

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<sup>1</sup> The appeal file had not been closed. In my letter, the appellant was told that if he indicated that he no longer wished to pursue the appeal, the file would then be closed.

<sup>2</sup> Section 41(4) of the *Act* gives the IPC (and an adjudicator, as delegate) power to require an institution to produce records for inspection during an inquiry.

of the *Act's* access scheme.<sup>3</sup>

[20] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.<sup>4</sup>

[21] 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.

[22] 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*.

[23] For section 52(3)3 to apply, the records must satisfy the following three-part test:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
2. the collection, preparation, maintenance or use 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.

[24] The city claims that section 52(3)3 applies to the records at issue in this appeal. During my inquiry, I sent the city a Notice of Inquiry that included the three-part test for the application of section 52(3)3 set out above. I invited the city to address the test in its representations. The city's submissions do not directly address the test for the application of section 52(3)3.

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<sup>3</sup> Order PO-2639.

<sup>4</sup> *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107 (CanLII).

[25] In support of its position that the employment and labour relations exclusion applies to the appellant's employment file, the city relies upon its Employment Files Policy. The city submits that the Employment Files Policy authorizes its Human Resources division to collect, use, disclose and retain employees' personal information for stipulated purposes set out in the policy and only to the extent required for the city to fulfil its legal obligations.

[26] The city submits that the Employment Files Policy lists the types of information kept in a city employee's file and the list includes records relating to hiring, benefits and copies of performance reviews etc. The city states that the collection, preparation, maintenance and use of this information is necessary for the hiring and management of its employees, in accordance with relevant provincial legislation.

[27] The city states that it has a system, outside the access regime of the *Act*, for an employee to access their own employment file. The process for using this system is explained in the Employment Files Policy.

[28] The city submits that none of the exceptions in section 52(4) of the *Act* apply in this appeal.

[29] As noted above, the appellant has not provided representations.

### **Analysis and findings**

[30] For the reasons that follow, I am satisfied that the employment and labour relations exclusion applies to the appellant's employment file so that it is outside the scope of the *Act*.

[31] These findings are made on the basis of my review of the records at issue in this appeal as neither party provided representations directly addressing the three-part test for the application of the exclusion in section 52(3)3.

[32] From my review of the records in the employment file, I am satisfied that these records were collected, prepared, maintained or used by the city in its capacity as the appellant's employer. Without disclosing the contents of the file, I note that employment files typically contain information relating to the recruitment of employees, payroll and the payment of employment related benefits and performance reviews. This is the type of information identified by the city in its Employment Files Policy as that held by the Human Resources division and I am satisfied that the records at issue in this appeal include this type of information.

[33] This kind of information is typically collected, prepared, maintained or used by an employer. Accordingly, I find that the first part of the section 53(3)3 test is met.

[34] From my review of the records in the appellant's employment file, I am satisfied that the records were collected, prepared, maintained or used in relation to meetings,

consultations, discussions or communications. I find that the second part of the section 53(3)3 test is met.

[35] For the third part of the test for section 52(3)3 to apply, the meetings, consultations, discussions or communications referred to above must be about labour relations or employment-related matters in which the city has an interest.

[36] The phrase "labour relations or employment-related matters" has been held to apply in the context of a job competition,<sup>5</sup> an employee's dismissal,<sup>6</sup> disciplinary proceedings under the *Police Services Act*,<sup>7</sup> and a review of "workload and working relationships."<sup>8</sup>

[37] Previous orders of the IPC have found that the phrase "labour relations or employment-related matters" does not apply in the context of broader organizational or operational matters.<sup>9</sup>

[38] From my review of the appellant's employment file, I find that the city has an interest in the employment matters to which the records relate. In my view, the management of the appellant's employment relationship with the city is a matter in which the city has an interest. I am satisfied that the management of the specific employee relationship between the appellant and the city is a personnel matter and is not an operational matter.

[39] Accordingly, I find that the three parts of the test are met and the exclusion in section 52(3)3 of the *Act* applies. I also agree with the city that none of the exceptions in section 52(3)4 of the *Act* apply in this appeal.

## **ORDER:**

I uphold the city's decision that the appellant's employment file is excluded from the scope of the *Act* and dismiss this appeal.

Original signed by: \_\_\_\_\_

Katherine Ball  
Adjudicator

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July 25, 2023

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<sup>5</sup> Orders M-830 and PO-2123.

<sup>6</sup> Order MO-1654-I.

<sup>7</sup> Order MO-1433-F.

<sup>8</sup> Order PO-2057.

<sup>9</sup> Orders M-941 and P1369.