Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-931

Appeal M_9700022

Metropolitan Toronto Police Services Board

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to computer data relating to Metropolitan Toronto police officers which was collected on the service's Public Complaints System (the PCS database) between 1990 and 1996. Specifically, the requesters sought access to the officers' names and rank, information about the charges or allegations made and the disposition of each complaint. In addition, the requesters sought access to a list of the data fields tracked for each of the tracking systems used. The requesters are newspaper reporters.

The Police responded to the requests by providing the requesters with a computer printout listing the data fields contained in the database used in its Public Complaints Bureau. Access to the computer data relating to individual officers was denied on the basis that this information is outside the scope of the Act, under sections 52(3)1 and 3.

The requesters, now the appellants, appealed the Police's decision. During the mediation of the appeal, the Police provided this office with a list of data field codes representing the possible entries for each of the data fields and a description of what the numeric codes represent, rather than sending paper copies of all of the data which is responsive to the request.

A Notice of Inquiry was provided to the appellants and the Police. Representations were received from both parties.

PRELIMINARY ISSUE:

Adequacy of the Decision Letter

The appellants submit that the Police are in breach of section 22(1)(b)(ii) of the Act in that they neglected to provide them with reasons why access to the records at issue was denied. They also suggest that they were prejudiced by the fact that they were not provided with any specific reasons for the denial of access, as is required by section 22(1)(b)(ii). Section 22(1)(b) of the Act sets out the requirements of the contents of a notice of refusal to give access to a record. This section reads:

> Notice of refusal to give access to a record or part under section 19 shall set out,
>
> (b) where there is such a record,
>
> (i) the specific provision of this Act under which access is refused,
>
> (ii) the reason the provision applies to the record,
>
> (iii) the name and position of the person responsible for making the decision, and

(iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

I note that in Order M-913, the appellants raised similar concerns regarding the decision letter provided to them by the same institution. In that case, Inquiry Officer Anita Fineberg found that the decision letter to the appellants from the Police was inadequate in that it simply restated the sections of the Act which contained the exemptions the Police were relying on. However, she found that no useful purpose would be served by requiring that the Police provide a new, more detailed decision letter.

In my view, the same holds true in the present situation. The decision letter provided by the Police does not explicitly state the reasons why access to the information was denied. It does, however, make reference to the sections of the Act which address the types of information which are outside its jurisdiction. I also note that the appellants did not appear to have suffered any prejudice in their ability to evaluate whether to appeal the decision to deny access or to make adequate representations. As such, I also find that no useful purpose would be served by ordering the Police to provide the appellants with another decision letter in this appeal.

DISCUSSION:

JURISDICTION

The sole issue to be determined in this appeal is whether the requested information falls within the scope of sections 52(3)1 and 3 and section 52(4) of the Act. These provisions read as follows:

(3) 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.

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

(4) 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.

The interpretation of sections 52(3) and (4) is a preliminary issue which goes to the Commissioner's jurisdiction to continue an inquiry.

Section 52(3) is record-specific and fact-specific. If this section applies to a specific record, in the circumstances of a particular appeal, and none of the exceptions listed in section 52(4) are present, then the record is excluded from the scope of the Act and not subject to the Commissioner's jurisdiction.

I will first address the application of section 52(3)3 to the information at issue in this appeal.

Section 52(3)3

In order to fall within the scope of paragraph 3 of section 52(3), the Police must establish that:

1. the record was collected, prepared, maintained or used by the Police on their behalf; **and**

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 Police have an interest.

[Orders M-835, M-899, M-922 and P-1242]

Requirements 1 and 2

The Police state that under section 76(1) of Part VI of the Police Services Act (the PSA), the Chief of Police is obliged to establish and maintain a Public Complaints Investigation Bureau within the police service to investigate public complaints against police officers. During the course of these investigations, information is gathered concerning a particular complaint and recorded and stored in various formats, including the PCS database.

The Police submit that the information contained in the PCS database is collected, prepared, maintained and used by the Police in relation to the preparation of a report for the Chief of Police, who will then make a decision as to the disposition of the complaint under section 90(3)

of the PSA. In this way, the Police submit that the investigating officers communicate the results of their investigation into a public complaint to the Chief of Police by way of a final report.

In Order P-1223, former Assistant Commissioner Tom Mitchinson made the following comments regarding the interpretation of the phrase "in relation to" in section 65(6) of the provincial Freedom of Information and Protection of Privacy Act, the equivalent to section 52(3) of the Act:

> In the context of section 65(6), I am of the view that if the preparation (or collection, maintenance, or use) of a record was **for the purpose of, as a result of, or substantially connected to** an activity listed in sections 65(6)1, 2, or 3, it would be "in relation to" that activity. (emphasis added)

In my view, the information contained in the PCS database was collected, prepared, maintained and/or used by the investigating police officers **in relation to** the preparation of a final report on the results of their investigation, which they then communicated to the Chief of Police. Therefore, I find that the first and second requirements of section 52(3)3 have been established.

Requirement 3

The Police submit that, in Orders M-835 and M-899, a finding was made that proceedings under Part V of the PSA "relate to employment" for the purposes of paragraph 3 of section 52(3). The Police argue that proceedings under Part VI of the PSA similarly relate to the employment of the police officer who is the subject of such an investigation.

Investigations conducted under Part V of the PSA are undertaken by the Professional Standards Section of a police service in order to determine if there was any wrongdoing by the officers who were the subject of the complaint and to lay a charge under the PSA, if warranted.

Investigations under Part VI of the PSA are conducted by the Public Complaints Investigation Bureau within a police service. Such investigations are begun following the receipt of a complaint from a member of the public against a police officer. A number of consequences may flow from an adverse finding against an officer by the Chief of Police under section 90(3) of the PSA. For example, a Board of Inquiry may be convened pursuant to section 60 of the PSA, which may impose sanctions, including discipline, dismissal, suspension, forfeiture of pay or time against the officer under investigation.

In Order M-922, Inquiry Officer Anita Fineberg discussed the issue of the application of section 52(3)3 to records relating to proceedings under Part V of the PSA. She held that:

> In Order M-835, the former Assistant Commissioner addressed the claim of a police force that disciplinary records related to PSA charges fell within the parameters of section 52(3)1 of the Act, and therefore outside the scope of the Act. In considering the issue of whether proceedings under the PSA "related to a person employed by the Police", for the purposes of section 52(3)1, he stated:

> In the circumstances of this appeal, the disciplinary hearing was initiated as a result of an internal complaint under Part V of the PSA, not under the public complaints part of the statute (Part VI). Despite what I acknowledge to be a general public interest in policing matters, I find that these Part V proceedings do in fact "relate to the employment of a person by the institution". The penalties outlined in section 61(1), which may be imposed after a finding of misconduct, involve dismissal, demotion, suspension, and the forfeiting of pay and time. In my view, these can only reasonably be characterized as employment-related actions, despite the fact that they are contained in a statute and applied to police officers.

The former Assistant Commissioner also followed this reasoning in Order M-840. Order M-835 was subsequently the subject of a request for reconsideration on the grounds that police officers are not "employees". In rejecting the request for reconsideration and thus confirming the findings in Order M-835, Inquiry Officer Laurel Cropley stated:

> While it appears that the Courts are clear that, generally speaking, police officers are not "employees", in the context of the PSA, the legislature has made it abundantly clear that what police officers do for Police Services Boards constitutes "employment". In my view, the statutory context of the PSA is the governing factor, and I find that proceedings under Part V of the PSA relate to "employment". [Order M-899]

I agree with this finding.

The language of sections 52(3)1 and 3 on this point is slightly different. Section 52(3)1 refers to **the employment of a person by an institution** while section 52(3)3 includes the phrase **employment-related matters**. However, in my view, the finding in Orders M-835 and M-840, confirmed in Order M-899, also supports the view that records prepared, maintained etc. in relation to meetings, discussions and communications concerning PSA charges are about employment-related matters.

Similarly, I agree with the conclusions reached by Inquiry Officer Fineberg with respect to records relating to proceedings under Part V of the PSA. Adopting the logic expressed above, I have no difficulty in finding that records which were prepared, maintained, collected or used in relation to communications about an investigation under Part VI of the PSA, including information used by investigating officers, similarly are about employment-related matters. The consequences which may be visited upon an officer who is subject to proceedings under Part VI are similar to those which may follow an adverse finding under Part V. In my view, to find otherwise would be placing a distinction between these proceedings which the language of the Act cannot bear.

I must now determine if these investigations are employment-related matters "in which the Police have an interest".

In Order P-1242, the former Assistant Commissioner reviewed a number of legal sources regarding the meaning of the term "has an interest", as well as several court decisions which considered its application in the context of civil proceedings. He concluded as follows:

> Taken together, these [previously discussed] authorities support the position that an "interest" is more than mere curiosity or concern. An "interest" must be a legal interest in the sense that the matter in which the Ministry has an interest must have the capacity to affect the Ministry's legal rights or obligations.

I agree with this interpretation and adopt it for the purposes of this appeal.

The appellants argue that while the matters dealt with in investigations conducted under Part VI of the PSA may affect the legal rights of the officers charged, the investigations, and any subsequent proceedings do not impact on the legal rights of the Police in any way. For this reason, the appellants submit that the Police do not "have an interest" in the matters which are addressed through the Part VI proceedings.

The Police have not made any submissions on this aspect of the third requirement under section 52(3)3. However, because the applicability of section 52(3)3 goes to the jurisdiction of the Commissioner's office over the subject records, I am obliged to examine the provisions of Part VI of the PSA in order to determine whether the legal rights and obligations of the Police are affected in circumstances where a complaint under Part VI is received.

Sections 76(1) and (2) of the PSA requires that every Chief of Police establish and maintain a public complaints investigation bureau and that it be adequately staffed to perform its duties effectively. Sections 78 and 79 of the PSA oblige the Police to provide certain notices to the complainant and the officer who is the subject of the complaint at the commencement of an investigation. Similar reporting is required by section 86(2) on a monthly basis as an investigation is under way.

In my view, Part VI of the PSA requires that a number of other statutory obligations be met by a police service, generally through its Chief of Police. I find, therefore, that Part VI investigations are matters in which the Police have certain legal obligations and that they have, accordingly, an interest in them within the meaning of section 52(3)3.

Therefore, the third requirement of section 52(3)3 has also been established.

By way of summary, I find that the information contained in the Public Complaints System was collected, prepared, maintained and/or used by the Police in relation to communications about employment-related matters in which the Police have an interest. All of the requirements of section 52(3)3 of the Act have thereby been established by the Police. None of the exceptions contained in section 52(4) are present in the circumstances of this appeal, and I find that the information falls within the parameters of this section, and is therefore, excluded from the scope of the Act.

Because I have found that the information is outside the scope of the Act under section 52(3)3, it is not necessary for me to address the possible application of section 52(3)1 to it.

PUBLIC INTEREST IN DISCLOSURE

The appellants also submit that there exists a compelling public interest in the release of the information included in the request. They rely specifically on section 16 of the Act and on several decisions of the Office of the Information and Privacy Commissioner for the Province of British Columbia. In my view, because the information requested by the appellants is outside the scope of the Act, section 16 can have no application to it.

The B.C. cases relied upon by the appellants may be distinguished by pointing out that the B.C. Freedom of Information and Protection of Privacy Act has no jurisdiction-limiting provision which is equivalent to section 52(3) of the Municipal Freedom of Information and Protection of Privacy Act. Having found above that the information requested is outside the jurisdiction of the Act, the B.C. decisions referred to by the appellants have no application in this case.

ORDER:

I uphold the decision of the Police.

Original signed by: April 24, 1997
Donald Hale
Inquiry Officer