



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

ORDER P-599

Appeal P-9300252

Workers' Compensation Board



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ORDER

BACKGROUND:

The Workers' Compensation Board (the Board) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to certain named records and for the correction of certain information concerning the requester contained in the Board's files. The Board located two claim files pertaining to the requester and released all of the documents found in these files to him. The requester appealed the Board's decision on the basis that, in his opinion, the Board withheld information from his files.

During the mediation of the appeal, the Board made the requested correction to the appellant's personal information by removing documents which did not relate to him from his files and provided him with an additional copy of his files. The appellant also reviewed the original version of his files, in person, at the office of the Workers' Compensation Appeals Tribunal (WCAT) where they were then located and narrowed his request to records which he believed existed in the custody or control of the Board. These relate to:

- (1) A visit by the appellant to the MedCentre in Brampton, between June and August 1986;
- (2) A visit by the appellant to the Workers's Compensation Board's Rehabilitation Department on March 26, 1990;
- (3) A comprehensive assessment report prepared by the Read Clinic Centre (The Centre for Reading Education Assessment and Development) dated June 1, 1990 including any background information, tests, evaluations or attachments;
- (4) Visits by the appellant to the Humber Memorial Hospital Emergency Department on November 23, 1987 and March 20, 1991;
- (5) A Registered letter dated March 26, 1990 to the appellant from a caseworker in the Construction Integrated Service Unit, Workers' Compensation Board, as well as any fact sheets and notes taken at a follow-up interview at the Board on April 25, 1990; and
- (6) A six page computer print-out dated January 7, 1992 prepared by OHIP and entitled "List of Services for [the appellant] Sorted By Doctor".

Subsequently, the Board obtained a copy of the record described under Item 3 from the Read Clinic Centre and provided it to the appellant.

Further mediation was not successful and notice that an inquiry was being conducted to review the Board's decision was sent to the Board and the appellant. Representations were received from both parties.

The sole issue in this appeal is whether the Board's search for the specific records referred to by the appellant above was reasonable in the circumstances of this case.

In the Notice of Inquiry, the Board was asked to address a number of specific questions regarding the nature and extent of the search it had undertaken to locate records which are responsive to the appellant's request. In particular, the Board was asked to comment on the evidence provided by the appellant regarding the existence of additional records or information specifically prepared by or for the Board.

In his representations, the appellant indicates that the only records which he wishes to pursue in this appeal are those described as Items 1, 4 and 5 of his narrowed request.

The appellant further clarifies that the information referred to under Item 1 refers to the name of a medical centre in the Bramalea City Centre where, in August of 1986, he received a medical examination as part of the terms of his employment. He states that the contents of Item 4 refer to reports prepared by the Emergency Department of Humber Memorial Hospital dated November 21 and 23, 1987 and March 20, 1991. The appellant also indicates that Item 5 is a registered letter to him from a caseworker in the Construction Services Unit at the Board which includes fact sheets and information concerning a follow-up interview at the Board on April 25, 1990. The appellant submits that five pages of fact sheets are missing.

With respect to Item 5, the Director of the Board's Legal Branch indicates that all records within the custody or control of the Board relating to this portion of the request were located in one of the appellant's files and have been released to him. The Director further states that information obtained by the caseworker from the appellant, which appears to include information contained in the five pages of fact sheets referred to by the appellant, was incorporated into the nine page interview report of April 25, 1990, a copy of which the appellant has also received. The Director maintains that the five pages of fact sheets, along with a number of other documents, are not located in the appellant's claim files as they were taken by the appellant following the interview.

With respect to Items 1 and 4, the Freedom of Information and Protection of Privacy Co-ordinator advises that as they were not prepared by or on behalf of the Board, copies of these records may not have been provided to the Board.

As part of its representations, the Board provided an affidavit sworn by its Freedom of Information and Protection of Privacy Co-ordinator. There, the Co-ordinator states that she searched the Board's records and made appropriate inquiries of other individuals for the records sought by the appellant. She states that to the full extent of her knowledge, information and belief, all documents generated or received by the Board pertaining to the appellant's two claim files are in those files and that complete copies have been provided to the appellant.

Where a requester provides sufficient details about the records which he or she is seeking and an institution indicates that additional records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records which are responsive to the request. While the Act does not require that an institution prove to the degree of absolute certainty that such records do not exist, the search which an institution undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

I have reviewed the representations of the Board and, in my view, the searches conducted by the Board for additional records which are responsive to the request were reasonable in the circumstances of this case.

ORDER:

I uphold the decision of the Board.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ December 15, 1993