



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

# **ORDER P-695**

**Appeal P-9300503**

**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 all information relating to the involvement of a company for which the requester was acting, which led to the Board seeking a Court Order for the search and seizure of the company's employment records pursuant to section 111(2) of the Workers' Compensation Act. The request included information from specific employees of the Board and any other information touching on the company.

The Board responded that "access cannot be provided because the record does not exist," and also that the appellant had "been provided with copies of all the information held by the Board on your client." The Board further stated that "a thorough search was made and no additional information was found." The requester appealed the decision.

During the mediation of the appeal, the appellant supplied the Appeals Officer with two affidavits containing additional information, which were forwarded to the Board. In the affidavits, the appellant described certain records which he claimed exist and had not been provided to him in response to the request. He further stated that he had requested that the Board provide the names and affidavits of individuals who had indicated that no record or documentation existed, and that it had failed to do so. The appellant also stated that he was aware that there had been an internal investigation at the Board which contained references to the company which he represented, and that a file referring to the company existed.

In response, the Board supplied further records to the appellant, specifically, a complete copy of the files on the company from the Board's Revenue Branch, Special Investigations Unit and the Audit Branch. The Board also agreed to disclose certain information relating to several fired employees and records held by its outside counsel relating to the subject matter which gave rise to the Search and Seizure Order.

The appellant maintains his position that the Board has still not provided all records in its possession concerning the company which he represents. He states that the Board "has failed to provide substantial documentation, particularly as it relates to the search and seizure motion, and the investigation carried out by the Board prior to instituting that procedure." The appellant has agreed to limit this appeal to the issue of adequacy of the search undertaken by the Board for records responsive to his request.

## SUBMISSIONS/CONCLUSIONS:

The sole issue to be determined in this appeal is whether the Board has conducted a reasonable search for records responsive to the request, as is required by section 24 of the Act.

The Act does not require the Board to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Board must provide me with sufficient evidence which shows that it has made a **reasonable** effort to identify and locate records responsive to the request (Order M-275).

In his representations, the appellant points out that his request was worded broadly but that, in order to give effect to a request, a requester must advise the Board specifically as to the nature of the information being sought. For this reason, he feels he is disadvantaged in his ability to comment on what, if any, additional records might exist. The appellant indicates that he has not yet received access to all of the information which he feels must exist as to the circumstances which resulted in the Board obtaining a Search and Seizure Order against his client.

In its representations, the Board has supplied an affidavit sworn by its Freedom of Information and Protection of Privacy Co-ordinator in which she lists the individuals who were contacted regarding the existence of records relating to the appellant's client. She further deposes that the appellant has been provided with complete copies of files involving his client in the Revenue, Audit and Special Investigations Branches of the Board. She concludes by adding that to the best of her knowledge, all documents generated or received by the Board pertaining to the appellant's client have been provided to the company or to the appellant.

In addition to the affidavit provided, the Board indicates that records relating to the court proceeding for a Search and Seizure Order under section 111(2) of the Workers' Compensation Act consisted solely of the affidavit filed with the Court. The Order was sought from the Court to assist the Board's investigation into allegations of wrongdoing by several of its employees and the subject company. I find that, at the time of the ex parte proceeding, the Board had no evidence other than that which the appellant has already received, through his own efforts and as a result of disclosure by the Board pursuant to the Act.

Based on the evidence before me, and upon my review of the records which have been disclosed to the appellant, I am satisfied that all records maintained by the Board which relate specifically to the appellant's client have been disclosed to him. Accordingly, I find that, in the circumstances of this appeal, the search for records responsive to the request was reasonable. I wish to express my concern, however, for the manner in which the request was processed by the Board. It was only due to the diligence of the appellant, by reference to information obtained from other sources, that the Board was forced to respond to this request in a comprehensive way.

## **ORDER:**

I uphold the decision of the Board.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_  
June 3, 1994