



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-1419

Appeal P\_9700078

Workers' Compensation Board



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## **NATURE OF THE APPEAL:**

The Workers' Compensation Board (the WCB) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The requester, an injured worker, sought access to the contents of his WCB claim file. The WCB responded by providing the requester with the entire contents of his claim file.

The requester, now the appellant, appealed the WCB's decision on the basis that additional records responsive to his request exist. Specifically, the appellant submitted that further records respecting an audit of his employer's payroll records, dated April 14, 1994, should have been located in the WCB's search. In addition, he submits that a further 139 pages of documents which he sent to the WCB by registered mail on September 6, 1995 have not been identified by the WCB and were not disclosed to him.

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

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient details about the records which he is seeking and the WCB indicates that such a record does not exist, it is my responsibility to ensure that the WCB has made a reasonable search to identify any records which are responsive to the request. The Act does not require the WCB to prove with absolute certainty that the requested record does not exist. However, in my view, in order to properly discharge its obligations under the Act, the WCB must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

The appellant has provided me with extremely detailed submissions containing his reasons for believing that additional records responsive to his request should exist. He argues that a package containing 139 pages of documents, consisting of 15 pages of handwritten notes for his upcoming WCB hearing, a 51 page computer printout of his 1995 wages, a further 20 pages of printouts of wages and 53 pages of memoranda and letters were sent to the WCB on September 6, 1995 by registered mail. The appellant indicates that this information was not included in the materials provided to him by the WCB in response to his request. In addition, the appellant argues that further records with respect to an audit of his employer's payroll records should exist.

The WCB submits that the entire contents of the appellant's claim file, Number 18338980-L, have been provided to him on two occasions. It further submits that when an injured worker files a claim with the WCB, all documents pertaining to the claim are maintained in the same numbered claim file. It also indicates that it never destroys records which are contained in an injured worker's claim file.

The WCB submits an affidavit from the auditor who performed the audit of the appellant's employer's payroll records in 1994 in which the auditor attests that the only document obtained or generated by him pertaining to the audit is included in the three-page audit report dated April 14, 1994, which has been disclosed to the appellant.

A second affidavit was submitted by the WCB's Freedom of Information and Privacy Protection Co-ordinator in which she describes the nature and extent of the search which she undertook for records responsive to the appellant's request. She summarizes her evidence by concluding that the WCB has never had in its possession, control or power any document relating to the appellant's claim other than those included in his claim file.

I have considered the representations of the parties and I find that the WCB's search for responsive records was reasonable in the circumstances of this appeal.

**ORDER:**

I find that the WCB's search for responsive records was reasonable and dismiss the appeal.

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

\_\_\_\_\_  
July 8, 1997