



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

# ORDER PO-1800

Appeal PA\_990264\_1

Criminal Injuries Compensation 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/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Criminal Injuries Compensation Board (the Board). The request was for access to all copies of documents in his file.

The Board identified approximately 177 pages of records as responsive to the appellant's request, and provided the appellant with partial access to them. Records 10-12 (and duplicate Records 89\_91), 15 (and its duplicate Record 42), 140-145, 153-155 and 168 were withheld from the appellant on the basis of the exemptions in sections 13(1), 14(1)(l), 21, 49(a) and/or 49(b) of the Act. The Board also did not disclose Records 140-145, 150-152 and 157-158 as they were not responsive to the request. The Board explained that Record 169 was missing due to a numbering error.

The appellant appealed the denial of access. He also indicated that the Board had disclosed 107 pages of records to him prior to his making a request under the Act, and that some of those records were missing from the 177 records identified as responsive to his request. He contended, therefore, that additional records existed. The appellant also submitted that there were discrepancies respecting the order in which the records were compiled in the first and second disclosures made to him.

During the mediation stage of the appeal, a further search for responsive records was conducted by the Board. Approximately 777 pages of records were identified during this search. In the Board's decision letter dated January 7, 2000, the Board granted access to the records it had previously denied in its initial decision, although these records were renumbered (Records 10-12, 15, 140\_145, 150-155, 157-158 and 168 are now Records 134-136, 139, 274-279, 281-282 and 292).

In its decision regarding access made on January 7, 2000, the Board refused to disclose one record (Record 48) on the basis that it was not responsive to the request. Access was denied to Record 63 (and its duplicates, Records 73 and 432) and Record 671 on the basis of the exemptions in sections 13(1) and 49(a) of the Act. Accordingly, the exemptions in sections 14(1)(l), 21 and 49(b) are no longer at issue in this appeal.

The appellant continued his appeal of the Board's decision to deny him access to Records 48, 63, and 671. He also contends that additional responsive records exist and has concerns about the order of the records.

Initially, this office provided the Board with a Notice of Inquiry seeking its representations on the remaining issues in this appeal. In its representations, which were shared with the appellant, the Board agreed to provide the appellant with copies of Records 48 and 671, leaving only Record 63 (which is duplicated at Records 73 and 432) at issue. The representations of the appellant were also solicited by way of a Notice of Inquiry. The appellant has made a number of submissions to me with respect to this appeal. These representations address the reasonable search issue and the manner in which the appeal was processed by the Board and this office. The appellant's submissions do not specifically address the application of the exemptions claimed by the Board to apply to the record remaining at issue, however.

The sole record remaining at issue consists of Record 63, e-mail correspondence between staff members of the Board and the Ministry of the Attorney General (the Ministry) relating to the appellant's contact with both offices. Because Records 73 and 432 are duplicates of Record 63, my decision with respect to Record 63 will apply equally to them, and I will not address these records further in this decision.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual (section 2(1)(h)).

The appellant's name appears in Record 63, along with other personal information relating to him and his contacts with the Ministry and the Board. Accordingly, I find that Record 63 contains information which qualifies as the personal information of the appellant within the definition of that term in section 2(1)(h).

### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/ADVICE OR RECOMMENDATIONS**

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49(a) provides an exception to this general right of access.

The Board relies on section 49(a) to deny access to the undisclosed portions of Record 63. Under section 49(a), an institution has the discretion to deny access to an individual's own personal information in instances where the exemptions in sections 12, **13**, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information. [my emphasis]

#### **Advice or Recommendations - Section 13(1)**

The Board claims the application of the exemption in section 13(1) to the information in Record 63. This section states:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice or recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must reveal a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process [Orders 118, P-348, P-363 and P-883].

In Order 94, former Commissioner Sidney B. Linden commented on the scope of this exemption. He stated that it "... purports to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making".

The Board submits that the record at issue reflects communications between its staff and that of the Ministry whereby advice and recommendations are provided. It indicates that the information was clearly provided for the consideration of a decision maker and contains a suggested course of action. The Board relies on the decision in Order P-233 where former Commissioner Tom Wright held that a record may qualify for exemption under section 13(1) if its disclosure would reveal advice or recommendations, even if the record itself is not advisory in nature.

In my view, the disclosure of the information contained in Record 63 would reveal a suggested course of action which had been provided to a Board staff member by a Ministry employee during a deliberative process. Accordingly, I find that Record 63 qualifies for exemption under section 13(1) and is, therefore, exempt from disclosure under section 49(a).

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient detail about the records which he is seeking and the Board indicates that further records do not exist, it is my responsibility to ensure that the Board has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Board to prove with absolute certainty that further 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 to show that it has made a **reasonable** effort to identify and locate records responsive to the request (Orders M-282, P-458 and P-535, for example).

A reasonable search would be one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (Order M-909).

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in the Board's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist (Order M-686).

### **The Appellant's Position**

The appellant is of the view that additional records responsive to his request should exist. He submits that:

The missing documents are a set of pages numbered in order in my application as #4, 5, 6 and 7 which I considered to be substantial evidence in my application for compensation from the Criminal Injuries Compensation Board (C.I.C.B.). I also submitted a medical receipt for medical attention I received from Branson Hospital Emergency Department, after I left Police headquarters this medical receipt is still missing at the C.I.C.B. office.

A copy of the receipt referred to by the appellant, which relates to services provided to him at Branson Hospital on September 12, 1997 was included in the appellant's submissions to this office.

The appellant also has concerns about the discrepancy in the page numbering between the earlier disclosures of records to him and the final set of 777 pages of records which were ultimately provided to him. In my view, the Board has adequately addressed this issue by providing the appellant with the entire contents of his file, with the exception of Record 63, and I will not address this issue further.

### **The Board's Position**

The Board has provided me with detailed submissions respecting the three searches which it undertook for the medical records referred to by the appellant, twice in October 1999 and again in December 1999. In each case, the appellant's entire file was reviewed and at no time were the attachments alleged to have been submitted by the appellant with the application located. The Board emphasizes that the Treatment Form which accompanied the appellant's application for benefits does not make any reference to any such records, though the hospital's reference number is listed and corresponds to that on the medical receipt referred to above. Nor is there any reference in the Board's Case Management database to the medical records or to the Branson Hospital receipt sought by the appellant, according to the Board.

With reference to the adequacy of the Board's search for the remaining records responsive to the request, it submits that all of the documents contained in the appellant's paper file and the Case Management database maintained by it, with the exception of Record 63, have now been made available to him. There were no additional records located in the office of the Board's Chair or the former Manager of Client Services and Claims Processing following a search of those locations by the Board's Freedom of Information Co-ordinator.

### **Findings**

As noted above, the searches undertaken by the Board of its paper files and databases revealed a total of 777 pages of documents, all of which have been provided to the appellant (with the exception of Record 63). I am satisfied that all records in the custody or control of the Board relating to the appellant's application to it have now been provided to him. The Board indicates that none of the pages which the appellant submits were included with his application for compensation, including the Branson Hospital receipt, is contained in the appellant's files at its offices.

Accordingly, based on the Board's submissions with respect to the nature and extent of the searches which it has undertaken for the requested records, I am satisfied that it has conducted a reasonable search and I dismiss that part of the appeal.

### **ORDER:**

1. I uphold the Ministry's decision to deny access to Record 63 (and its duplicates at Records 73 and 432).

2. I find that the Ministry's search for responsive records was reasonable in the circumstances and I dismiss that part of the appeal.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ July 7, 2000