



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

ORDER PO-2925

Appeals PA08-258-2 and PA08-336

Workplace Safety and Insurance Board



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NATURE OF THE APPEALS:

The appellant was injured in a workplace accident in 1984. His representative submitted two requests to the Workplace Safety and Insurance Board (the WSIB) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) relating to his claim. This order will address the appeals arising from both of those requests, which became appeal numbers PA08-258-2 and PA08-336. Because the parties are the same and the issues are similar, I have decided to join the two appeals. In this order, I will refer to all actions taken by the appellant's representative as being those of the appellant.

Appeal PA08-258-2

In this appeal, the appellant requested access to all records pertaining to the appellant in regards to a specified claim number. The request listed 17 named staff members at the WSIB who, the appellant believed, should have responsive records.

The WSIB issued two access decisions in response to this request. In its first decision, the WSIB granted access to records that did not contain the appellant's personal information. In its second decision, the WSIB indicated that full access to records pertaining to the appellant and the individuals listed in the request was granted.

The WSIB further advised as follows:

- The attached records may already be filed in the [WSIB's] claim file, and access to claim file documents can be obtained by writing to the claims adjudicator.
- Some individuals have indicated that they do not have any records beyond what is in the claim file.
- The Acting VP for the Health Services Division provided a response on behalf of [six individuals].
- There was a redaction made to one email document as it contained the personal information of an employee.

The appellant appealed the WSIB's decision on the basis that additional records should exist.

During mediation, the WSIB explained its records retention schedule, particularly as it relates to records of former employees. As well, the WSIB reiterated that all records pertaining to decisions regarding claimants are filed in the claimants' respective claims files.

During mediation, the appellant provided the mediator with information (by way of a letter) regarding additional records that he believed should exist. The appellant consented to the mediator providing this letter to the WSIB. In this letter, the appellant requested the following records:

1. Request for all back up information contained on the discs off the H-Drive for the 17 people named on the original list. Time period – (1984-2009).
2. All notes and records [from 16 secretaries of the named individuals].

Regarding #1, the WSIB indicated that it was their view that it had undertaken a reasonable search for records, including back up information of the 17 named staff members from the original request.

Regarding #2, the WSIB stated that based on the original request, it was their view that searching secretaries' notes and records was beyond the scope of this request.

The appellant's view remains that additional records should exist and that the notes and records of the identified secretaries are within the scope of this request.

No further mediation was possible on this file. Accordingly, this file was forwarded to the adjudication stage of the appeals process. The two issues that are in dispute are Reasonableness of Search and Scope of the Request.

PA08-336

In this appeal, the appellant submitted a 33-part request for documents relating to a named law firm and "all WSIB Legal Documents on Entire Case & Other Information pertaining to same" with respect to a claim and legal action involving the appellant. The appellant provided the WSIB's legal file number in his request.

The WSIB located responsive records contained in the identified legal file. In its decision letter, the WSIB advised the requester that "...considering you already have access to the claim files, the search for your records was limited to those contained in a WSIB litigation file." The WSIB further advised that access to the information requested was granted in part. Access to parts 1, 3, 4, 10, 11, 15, 16, 17, 18, 22, 23, 24, 26, and 33 of the request was refused on the basis that the documents do not exist within the WSIB.

The appellant appealed the WSIB's decision that records relating to parts of the request do not exist. In addition, the appellant contends that additional records should exist relating to other parts of the request.

During the course of mediation, the WSIB agreed to provide the appellant with a copy of the litigation file. In addition, the WSIB provided the appellant with a letter explaining why certain records do not exist, together with an affidavit describing the legal department's procedures relating to litigation files.

The appellant reviewed the correspondence and the attached legal file provided by the WSIB and then wrote to the mediator setting out the records that he contends are missing and should exist.

The appellant attached additional supporting documentation to his letter. The mediator provided the WSIB with a copy of the appellant's letter.

Also during mediation, the appellant expressed the view that the decision of the WSIB reflects an interpretation that the request is limited to information within the litigation file only. The appellant is of the view that additional records exist outside of the litigation file. Accordingly, the issue of scope of request was added as an issue in this appeal.

Further mediation was not possible and this file was also forwarded to the adjudication stage of the appeal process.

The adjudication process

The two appeal files were transferred to the adjudication stage at different times. Initially, I sought representations from the WSIB regarding the issues in dispute in Appeal PA08-336. In seeking its representations, I specifically asked the WSIB to refer to the information identified by the appellant in the letter that the mediator sent to it (referred to above). The WSIB submitted representations. In them, the WSIB made comments regarding the records responsive to Appeal PA08-258-2. I then sought representations from the appellant, and provided him with a copy of the WSIB's submissions, in their entirety.

In the Notice of Inquiry, I asked the appellant to take note of the WSIB's comments regarding the related appeal PA08-258-2 and to explain what records he is seeking that would not also be responsive to that appeal.

The appellant made submissions in this appeal at about the same time that Appeal PA08-258-2 was transferred to the adjudication stage. After reviewing the appellant's submissions and the file in Appeal PA08-258-2, I decided to join the two files. I placed Appeal PA08-336 on hold pending receipt of first and second party representations in Appeal PA08-258-2. In preparing the Notice of Inquiry for Appeal PA08-258-2, I advised the parties that, "portions of these separate requests appear to overlap in respect of the individuals identified by the appellant. This has resulted in some confusion with respect to the searches that have been conducted and the locations of records that have been identified or which might exist."

Also in the Notice of Inquiry that was sent to both parties in Appeal PA08-258-2, I asked specific questions relating to the searches conducted by the WSIB. I also stressed that the WSIB was to clarify the nature and extent of the specific searches that were conducted for each individual identified by the appellant and to specify exactly where searches were conducted, who was contacted and where records were located. Additionally, if records have been destroyed, the WSIB was asked to provide evidence that records have been destroyed in accordance with its records retention schedule or to explain why such evidence is not forthcoming.

I also asked the WSIB to address issues arising due to confusion in the claim numbers identified in the records. In this regard, I noted that after reviewing the records that were disclosed to the appellant in Appeal PA08-336, it was apparent that the claim files refer to four different claim numbers. The WSIB was asked to explain the different references to the appellant's claim files,

and to confirm whether there are any other files regarding this appellant apart from the claims file and the legal file.

The WSIB and appellant both submitted representations in Appeal PA08-258-2.

DISCUSSION:

SCOPE OF THE REQUESTS

As I noted above, in Appeal PA08-258-2, the appellant originally requested all records pertaining to the appellant “with respect to” 17 named staff. During mediation, the appellant requested all notes and records from the 16 secretaries of the 17 staff named in the original request. The Board takes the position that the information requested during mediation falls outside the scope of the original request.

In addition, in Appeal PA08-336, the appellant takes the position that the WSIB has interpreted his request too narrowly to include only the WSIB litigation file, and maintains that records should exist outside that file.

Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

.

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester’s favour [Orders P-134, P-880]. To be considered responsive to the request, records must “reasonably relate” to the request [Order P-880].

Appeal PA08-336

Representations

In interpreting the appellant's request the WSIB notes that the appellant "requested access to 33 items of personal information records relating to his legal action [citing the legal file number], and any records relating to him held by the WSIB's Legal Branch." The WSIB explains why it interpreted the scope of the appellant's request to be limited to the litigation file:

Because the request identified the WSIB's litigation file, the request was processed as a request by a worker for access to his litigation file, and any records relating to him held by the Legal Branch.

...

When the worker re-elected to claim WSIB benefits, the WSIB followed the same practice it does for every worker: it registered the claim, opened a claim file and gave it a unique identification number [number]. It is the WSIB's practice to file all relevant information pertaining to the worker's claim into that claim file.

The WSIB notes that the appellant has, over the years, made numerous written and verbal complaints "to WSIB executives, WSIB employees who may have worked on the litigation and claim file from 1993 to the present and their management, their successors and others without any connection to the worker." The WSIB states that it does not record "every telephone conversation made" and that it "limits the collection of personal information to that which is necessary to fulfill the purposes of its legislated mandate."

The WSIB states further that the appellant was asked to make separate access requests for records relating to his complaints and to provide the names of those individuals that he had contacted, which he did. The subject matter of this request is being dealt with in Appeal PA09-258-2. In the circumstances, the WSIB submits that the scope of the request in Appeal PA09-336 should be limited to records located in the litigation file.

In response to the WSIB's representations, the appellant states that the scope of the request is for:

[A]ll records in and outside the jurisdiction of the Legal department and involving any other department at the WSIB or outside parties that they shared information with in regards to [the appellant's] personal medical records file, work history files, and legal files etc. This would also include any hospitals or doctors outside the WSIB who reviewed information and or commented on it with respect to his claim issues and concerns.

Analysis and Findings

I do not accept the appellant's description of the scope of the request relating to this appeal. While it is clear that he has broken his request down into 33 separate items, they must be read in context. Having reviewed the individual items set out in the appellant's request and the WSIB's initial decision letter, it is evident that the majority of the records he is seeking in this request would only be housed in the Legal Services Department, and for the most part, in the appellant's litigation file. That being said, in my view, the scope of the request is broad enough to include not only the litigation file, but the Legal Services Department more generally and the files of the two staff members within that department named by the appellant in his request.

Although the WSIB takes the position that the scope of the request should be restricted to the litigation file, I note that it conducted a search through the general correspondence for the Legal Services Department, thus expanding the scope of the appeal to include this area. In my view, this was a reasonable approach to take in identifying the scope of the appellant's request.

I note that the WSIB located records relating to the two staff members identified by the appellant. However, it does not indicate whether these records were located in the litigation file or whether it interpreted the scope of the request to also include the staff members' own files.

As the WSIB indicates in its representations, it advised the appellant to file another access request relating to his complaints and to identify those individuals he had contact with. The appellant did so, naming 17 individuals. The issues arising from this second request are being dealt with in Appeal PA08-258-2. In the circumstances, I find that a vague request made for records in the Legal Services Department is not sufficiently clear to require that searches be conducted of the record-holdings of every lawyer in that department for records that might be responsive to the request.

Therefore, to be clear, I find that the scope of the request in appeal PA08-336 includes records located in the appellant's litigation file, the general correspondence for the department and the files of the two individuals named in the request.

Appeal PA08-258-2

Representations

In order to understand the WSIB's procedures relating to claim files, and to place the appellant's request in appeal PA08-258-2 in perspective, the WSIB provided some background relating to the appellant's request and the efforts it has made to respond to it.

To begin, the WSIB clarified the references to different claim numbers in the records. Referring to the four numbers I cited in the Notice of Inquiry, the WSIB stated that all claims registered with the WSIB are given an 8-digit number. The WSIB explains that this number is unique to the worker and serves as an identifier for the worker and the claim, which relates to a particular work-related incident. The WSIB explains further that a location code is added to the unique claim number to reflect a particular service delivery area. As is the case in three of the four

claim numbers identified in this appeal, the claim number is followed by a dash and another unique digit. The WSIB clarifies that these additions to the claim number are for internal administrative use only.

With respect to the fourth claim number identified in the records, the WSIB indicates that the manager of the service delivery team assigned to the appellant's claim confirmed that the fourth number was amalgamated with the first claim number, as there can only be one claim number assigned per worker for a specific incident. The WSIB states:

When it is determined that more than one claim has been established for the same incident then the subsequent file that was established is amalgamated into the initial claim that was established. When a claim is amalgamated our system does not allow for the claim number to be reused and for documents to be filed into it.

The WSIB explains how it collects, uses and retains information regarding an injured worker. It also describes the policies and procedures in place "to ensure that upon request the worker is provided with full access to their records." In this regard, the WSIB states:

A claim file is established for every work related incident or illness that is reported to the WSIB. This claim file is considered to be the primary record for the individual worker. Records or information collected and considered relevant to the specific incident or illness are filed or recorded into the claim file. Relevancy refers to what is necessary for entitlement decision making and case management purposes. Workers can request a copy at no cost to the worker. It should also be noted that in limited circumstances access to claim file records may be provided to the accident employer or other parties. We have very specific policies that relate to access to claim file information which are available on our web site [and attached to these representations].

The retention period for a claim file is 99 years from the date initially established. WSIB respects its legal obligation under both [the *Act*] and the *Workplace Safety and Insurance Act* (WSIA), to a worker's right of access to their own personal information. The claim file generally consists of completed forms, medical reports, memos and correspondence. Information that may exist outside of the claim file would include working draft copies or reports or letters. The final document is filed in the claim file and the working copies are deleted when they are no longer needed. Claim files vary in sizes and the one in question contains over a thousand documents.

With respect to the constituent elements of the appellant's request in this appeal, the WSIB notes that the request was very specific, in that the appellant sought records pertaining to a claim file and the involvement of 17 named individuals. I note that in his request, the appellant identified the 17 named individuals as "staff members at the WSIB."

The WSIB states that on receipt of the request it contacted the appellant and confirmed with him that he already had a copy of the complete claim file. The appellant clarified during this

conversation that the responsive records were those that the 17 named staff members retained outside of the claim file. The appellant believed that, even though the claim file was the primary file, the 17 named individuals should have additional records based on their involvement with the claim or discussions his representative had with them. The WSIB indicates further that the appellant was informed during this conversation that some of the individuals were no longer employed by the WSIB and that the request would be forwarded to the Vice President responsible for the area in which they were employed.

The steps taken by the WSIB to locate responsive records will be discussed below. In this discussion, I will focus on the discussions that took place during the mediation stage of the appeal, which led the appellant to seek additional records.

By way of background regarding this issue, I note that during mediation, the appellant provided a letter to this office in which he indicates that he contacted a secretary for one of the individuals named in the request. He later wrote to this office to indicate that the secretary advised him that she had records on her computer and that records are backed up onto an "H-Drive." Following this discussion, the appellant submitted a further request for information. In particular, he asked that all of the secretaries for the 17 named individuals be contacted as part of the search. He provided the names of three secretaries, but did not indicate any others. He also asked that the search be expanded to two additional named individuals (the WSIB General Counsel and the WSIB Chair). As well, the appellant asked for all back up information contained on the discs off the H-Drive for the 17 people named on the original list for the specified time period.

The WSIB indicates that any records that may exist with secretaries would be working copies of a final record that has already been filed in the claim file, or of correspondence that was already sent to the appellant. The WSIB notes that although the appellant identified three secretaries, it would take a considerable effort to identify the secretaries for the years specified by the appellant (1984 to 2009), particularly where the individual was no longer employed with the WSIB.

With respect to the appellant's request for a search to be conducted of the H-drive of the 17 named individuals, the WSIB explains that the H-Drive is an internal server that provides a temporary storage facility to assigned individual staff. The WSIB indicates that not all staff has access to an H-Drive, and that it is not an automatic backup system. The WSIB states that the H-Drive is used to securely store working copies of documents, and that once a document is finalized, it is filed in the claim file. The WSIB points out that there is no requirement that records be saved to the H-Drive. Finally, the WSIB notes that once information is deleted from the H-Drive, it can only be restored for a period up to 60 days.

The WSIB notes further that when an employee leaves the WSIB, they must review their H-Drive and ensure that all documents are filed. After that, there is a process in place that deactivates the former employee ID number and deletes their H-Drive contents.

The WSIB takes the position that it should not be required to expand the search parameters to include the information identified by the appellant during mediation.

The appellant has provided extensive representations in support of his position on the issues in this appeal. It is apparent that he is intimately acquainted with the minutiae of his quest for records relating to this claim. In responding to the WSIB's representations, he makes specific references to the details contained in the records and in the communications he has had with various individuals at the WSIB, as well as conversations held during the mediation stage of the appeal process. In essence, he takes the position that the WSIB is either hiding records, has destroyed records or is simply providing false information about what records it has and where they are located.

With respect to the issues arising from the additional information he requested, the appellant disputes the WSIB's contention that he asked that the search be expanded to records held by two additional individuals, as he had been seeking this information prior to submitting the access request at issue in this appeal. The appellant also expresses some confusion regarding who the Chair of the WSIB is.

The appellant notes that not all individuals named in the original request have provided records, including "the secretaries who kept notes on their computer systems and made the contacts for their bosses..."

With respect to the H-Drive, the appellant referred back to the letter in which he outlined the discussion with a secretary at the WSIB.

Analysis and Findings

In his request, the appellant asked for records held by 17 individuals, listed by name, not title. During mediation, the appellant added two additional names to this list. The WSIB confirmed that the two additional individuals held the titles "General Counsel" and "Chair" during the pertinent period. Clearly, the appellant has attempted to expand the list of individuals that he believes should have records. Although he may have communicated at an earlier date that he wanted records from other individuals, his request letter forms the basis of the search parameters. Accordingly, I find that the two additional names that the appellant added to his list fall outside the scope of this request.

Similarly, the appellant has identified, after the fact, that a number of (mostly) unidentified secretaries should also be contacted in the search for records responsive to his request. In my view, the appellant's request was specific in seeking records that the 17 named individuals retained relating to the claim. I am not persuaded that the addition of their secretaries is reasonably related to this clearly written request, particularly in this case, where the request covers a long period of time and the majority of those secretaries are not identified. Therefore, I find that the appellant cannot expand his request to include the secretaries of the 17 individuals he identified in his request.

As far as the H-Drive is concerned, however, different considerations apply. The WSIB has indicated that the H-Drive is available to staff to use while they are preparing documents. It appears that its use is discretionary and controlled by the individual staff that uses it, except when that staff leaves employment. Since deleted information can be restored for only a 60 day

period, it is unlikely that deleted information would be retrievable since the request is looking for records that existed from 1984 to 2009. However, in my view, records contained on an individual staff's H-Drive are reasonably related to the request, and should be included in the scope of the request.

Having established the scope of the requests, I will now turn to the steps taken by the WSIB to search for responsive records.

SEARCH FOR RESPONSIVE RECORDS

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

During the mediation stages of these two appeals, the appellant made extensive representations regarding the records that he believes should exist and the searches that should have been conducted. After considering the appellant's position during the mediation stage of the appeals, I made some comments and asked specific questions in the Notices of Inquiry that were sent to the parties.

With respect to Appeal PA08-258-2, I noted that:

[D]uring mediation, the appellant requested all back up information contained on the discs off the H-Drive for the 17 people named on the original list for the time period 1984-2009. The Board responded that it was their view that they had undertaken a reasonable search for records, including back up information of the 17 named staff members from the original request. The Board was asked to clarify this statement. In particular, the Board was asked to indicate whether the H-Drive for the 17 people named in the original request was searched, and if not, to explain why not.

In Appeal PA08-336, the WSIB was asked, in particular, to explain what steps were taken to obtain records from the named legal counsel that was originally retained by the appellant and was subsequently retained by the WSIB to complete the matter.

Representations

Appeal PA08-336

In its representations, the Board submits that it has conducted a reasonable search for responsive records, and relies on its decision letter dated October 23, 2009, the affidavit of one of its litigation lawyers and a letter sent by the Freedom of Information Co-ordinator (FOIC) to the appellant during mediation. The Board also states that “the Executive Assistant to the Vice-President, Legal Services confirmed that no executive complaint files are kept within the Legal Services Division.”

In regard to these submissions, I note that during the mediation stage of the appeal, the WSIB provided a letter to the appellant explaining the nature and extent of the search that was undertaken, and why records do not exist. Attached to this letter was an affidavit sworn by a litigation lawyer employed in WSIB’s Legal Services Department. Also attached to this letter was a copy of the appellant’s complete litigation file, which I assume may have contained additional records beyond those requested by the appellant. In the letter, the FOIC asked the appellant to review the file to determine whether he thought additional records should exist.

In this letter, the FOIC explains that other than records filed in the litigation file, “[t]he Legal Branch or the Lawyer responsible for the file does not keep any records or documents about that file outside the file.” In the affidavit attached to the letter, the affiant attests to this practice.

The FOIC also points to a letter contained in the litigation file, which she states clearly indicates that the legal matter had been completed and there was to be no further communication with the appellant regarding complaints. The FOIC indicates that the litigation file was closed in October 1994 and any further communications regarding the appellant would have been subsequently placed in his claim file. According to the WSIB’s representations in Appeal PA08-258-2, the appellant was in possession of his entire claim file prior to submitting his access requests.

The FOIC also indicated that in addition to searching the litigation file, the General Counsel responsible for the legal branch directed that a search of general correspondence be conducted to determine whether there were any responsive records in that location. The search produced negative results.

In explaining why certain records concerning the lawyer retained to represent the appellant do not exist, the WSIB states:

As he is permitted to do under certain circumstances, the worker did not make a claim for benefits under the Workplace Safety and Insurance Act for a 1984 workplace accident but elected to sue and hired his own lawyer [named]. When the worker later re-elected to claim WSIB benefits, the WSIB’s Legal Branch opened a litigation file ... assigned it a unique identification number [number] and filed all documents received or generated about the legal action into that file. The Legal Branch continued using the services of [named lawyer] as its agent to conclude the legal action. In accordance with its practice, the Legal Branch did

not request nor receive a copy of the legal file held by [named lawyer]. After the matter was settled in 1993, the legal file [number] was closed on October 18, 1994 and stored off-site. According to the WSIB's records retention schedule for Subrogated personal Injury Actions, this file was scheduled and should have been destroyed in October 2004.

During mediation, the Appellant was advised that [the named lawyer] was not able to comply with the Legal Branch's request for a copy of its litigation file because it had been destroyed in August 2005 in accordance with its records retention schedule...

The WSIB's representations were shared with the appellant. In his representations, the appellant explains that "I have been attempting for years on end to identify medical letters and other important information that were missing from the claim files/by bringing them to the attention of the adjudicators involved, managers, etc. etc. but to no avail."

The appellant describes in detail the attempts that have been made to elicit the aid of various politicians and the Ombudsman in his quest to locate the documents which he states, "are critical to the 'fair and due' process that [the appellant] the injured worker is entitled to." The appellant appears to believe that the WSIB is deliberately withholding relevant documents "for 'fear' of a pending investigation into the gross mishandling of his legal case issues and the ineffective counselling that the WSIB retained on [the appellant's] behalf," which resulted in the termination of benefits and entitlements.

The appellant states that the WSIB has taken legal action against the lawyer retained to represent the appellant and therefore believes that the WSIB has a copy of the entire file from this lawyer.

The appellant refers to documents that were located in the records that he had received, which he believes support his contention that additional records exist. The appellant states:

These records are being withheld from [the appellant] which would contain his ongoing complaints, follow-ups and treatments for his respiratory diseases related directly to [the injury]. These records would dispute the WSIB's claim..

The appellant also questions the reasonableness of the search conducted by the WSIB due to the confusion caused by the use of different claim numbers.

PA08-258-2

As I indicated above, after receiving the appellant's submissions in Appeal PA08-336, I placed this file on hold in order to proceed with Appeal PA08-258-2. In the Notice of Inquiry that I sent to the WSIB for Appeal PA08-258-2, I asked it to address a number of issues, and in particular, issues arising due to confusion in the claim numbers identified in the records. I noted that after reviewing the records that were disclosed to the appellant in Appeal PA08-336, it was apparent that the claim files refer to four different claim numbers. The WSIB was asked to explain the

different references to the appellant's claim files, and to confirm whether there are any other files regarding this appellant apart from the claims file and the legal file.

In response, the WSIB explained the identifying number for the appellant's claim:

All claims that are registered with the WSIB are assigned an 8-digit number. This number is unique and serves as an identifier for the worker and their claim for a particular work related incident. We also use location coding to identify the service delivery area where the claim is managed. This location code can be a number of a letter that is separated with a dash from the 8 digit unique claim number. Those numbers or letters are for internal administrative use only and may be indicated in some WSIB documentation.

Therefore, [three identified numbers, some with a dash and additional number] are all the same claim. Over the years responsibility has been reassigned to different service delivery teams and the location code reflects that. As for claim number [different number], I have confirmed with the manager of the service delivery team assigned that this claim has been amalgamated into [previously cited number]. There can only be one claim number assigned per worker for a specific incident. When it is determined that more than one claim has been established for the same incident then the subsequent file that was established is amalgamated into the initial claim that was established. When a claim is amalgamated our system does not allow for the claim number to be reused and for documents to be filed into it.

With respect to the steps taken to search for records responsive to the appellant's request, the WSIB states that it contacted the appellant after receiving his request. The WSIB notes that the appellant confirmed that he believed that the 17 individuals named in the request should have records additional to those contained in the claim file due to their involvement with the claim or discussions the appellant had with them.

The WSIB indicates that it then sent out an e-mail to the employees named in the request asking them to search their records and identify those that pertain to the appellant or to confirm that they did not have any responsive records. The WSIB notes that six individuals that are no longer employed at the WSIB were at one time employed in the Health Services Division and the Vice President of that division was asked to search for responsive records.

The WSIB indicates that not only did it provide the responsive records to the appellant, but it attached the e-mails that were sent to the individuals named and their responses. The WSIB included as an attachment to its representations, all of the documentation that was sent to the appellant in response to his request. The WSIB states:

[W]ith the exception of those that are no longer employed with WSIB, each individual that the requester listed responded to the request. They either provided records they had, or an explanation that any record created would be filed in the

claim file. The response is consistent with WSIB practice and processes regarding worker's information.

The WSIB provides submissions regarding the mediation stage of the process and discussions relating to records held by the secretaries of the individuals named in the request. However, as I have found that records held by the secretaries do not fall within the scope of the appeal, I will not address this portion of the representations.

With respect to the back-up information contained on the discs of the H-Drive, the WSIB notes that, although "there is no requirement for staff to save records on their 'H-drive', the 17 named individuals would have checked it if they use it to save their working copies of documents." The WSIB states that staff would have searched their e-mail, hardcopy, and electronically stored files in response to a request that they search their files for responsive records. The WSIB notes that it offered to conduct a second search for these records if the appellant would agree to accept the results of the search. He did not agree to do so and a second search was not conducted.

The WSIB concluded:

The primary record for an injured worker is their claim file and some of the individuals named on the request would not generally have access to it. The claim file contains sensitive and personal information and staff access is limited to a need to know basis. The WSIB has processes in place to ensure that the claim file is accurate and as up to date as possible. As outlined in our Code of Business Ethics (Appendix C) employees must at all times respect the privacy of our workers by accessing personal information only when it is necessary for the performance of their job duties, and understanding when collection, use and disclosure is permitted.

Throughout the processing of this appeal, and in his representations, the appellant has provided reasons for his belief that more records exist. Due to their length and detail, I will only briefly refer to them in this order. The appellant's representations can be summed up in three points:

1. In order to decide this issue, I must review the entire file of approximately 1,000 pages, record by record in order to understand the conflicting statements made by the WSIB in its representations.
2. The appellant provides copies of records that do not contain references to the identifying number(s) referred to above, and suggests that they were therefore not included in the claim file, contrary to the statement made by the WSIB. Also, he notes that some documents from the law firm named in his request (which resulted in Appeal PA08-336) refer to different identifying numbers but do not include the claim file number and asserts that this is evidence that his records are filed in different ways within the WSIB, notably, by his name, by the numbers assigned, by his social insurance number, by the legal department's number and by subject matter. Because of this, he believes a search of the entire WSIB should be ordered, which would include the operational department, the executive

department, the medical department, the appeals department and the legal department.

3. The appellant believes that the records themselves establish that some records were initiated by different individuals, copied or forwarded to other individuals, which he claims indicates that records are contained elsewhere than in the claim file. The appellant notes that some documents over the years covered by his request had been misdirected (for example, mailed to a wrong address). In addition, the appellant asserts that some records refer to another identified individual and maintains that records relating to him are contained in this other individual's file. The appellant submits that where the record indicates that another individual was copied, the files of that individual should also have been searched.

Analysis and Findings (Appeals PA08-258-2 and PA08-336 combined)

In determining the issues in these two appeals, I note that there is some clear overlap in the two requests submitted by the appellant. In particular, the individuals named in items 1 and 4 of the request in Appeal PA08-258-2 are also referred to in items 16, 20 and 23 of Appeal PA08-336. Given the close relationship between the information requested in both files, it may well be that some information responsive to one is also responsive to the other.

It is also very apparent from my review of these two files and the submissions made by the appellant, in particular, that the appellant has become obsessed with what he believes to be unfair treatment by the WSIB regarding the claim he made as a result of a workplace accident. The WSIB matter has been closed for approximately 16 years, yet it appears that he has persistently contacted various individuals within the WSIB and has made numerous complaints.

However, it is clear that the records he is seeking in these two appeals relate primarily to the information that would typically be contained in either his claim file or the litigation file. It is also clear that the WSIB has an established procedure for the creation of, and inclusion of information into files relating to claims made by workers.

As I noted above, the appellant has provided extensive representations in both appeals. His representations often make reference to details within various documents, which he submits as proof that more records should exist. Keeping in mind the extent of the appellant's request, and the overlap between the two appeals, in approaching this issue I have decided that there are four questions to be addressed:

1. How are a claimant's files maintained at the WSIB, and how many files does the WSIB have in the appellant's name?
2. Is it likely that the requested records might exist outside the particular files identified by the WSIB?
3. Have searches been conducted of those files in a satisfactory manner?

4. Did the WSIB conduct a reasonable search for responsive records in locations at which records might reasonably be found?

Before addressing these four questions, I have a number of observations and comments to make regarding the appellant's expectations and submissions in these two appeals.

First, it is not necessary for me to review all of the records contained in the appellant's files. As I noted above, the *Act* does not require the institution to provide with absolute certainty that further records do not exist. It is sufficient for me to consider the representations made by the parties, along with their documentary evidence, to determine the issues that I have identified above.

Second, the appellant has throughout his representations referred to comments made by the FOIC for the WSIB as evidence of deceit, contradictions or misrepresentations. I am not inclined to reach such a conclusion. For example, with respect to references to the identifying number in the WSIB's submissions, I note that they are simply clarifying my question regarding the different numbers or variations of the same number. The WSIB does not state that all records will have one of these numbers. In my view, there is nothing contradictory in the WSIB's representations relating to this issue or any other.

Third, the appellant's request in Appeal PA08-258 was specific to the individuals named in the request. It is not reasonable to expand the request to include others who may have received e-mails or been copied on them. There is no reasonable basis to conclude, as the appellant has done, that a search for records responsive to this request should be expanded to the entire WSIB in the circumstances.

Finally, even if I were to find that the appellant's request in Appeal PA08-336 was not restricted to the files of specific named individuals, I am not persuaded by the evidence presented by the appellant that a search should be expanded to include all areas of the WSIB. As I noted above, the scope of the appellant's request in this appeal is restricted to the litigation file, the general correspondence in the legal department and the two individuals named in the request that resulted in this appeal.

With respect to the four questions I asked above, I find the following:

1. I accept the WSIB's position that the claim and litigation files are the only "official files" for records relating to a worker's claim for benefits. While it may be that a record was misfiled or otherwise improperly identified, this does not establish that another file containing records pertaining to the appellant must exist. I accept the WSIB's position that it only has a claim and litigation file relating to the appellant's claim for benefits.
2. Based on the practices and procedures established by the WSIB, I find it unlikely that records would routinely be housed in locations other than the identified files. I accept that certain staff members involved in processing his claim might retain some records in their respective files, particularly in the circumstances of these requests, where it is apparent that the appellant has initiated numerous calls to individuals subsequent to the

closure of his files. The appellant was asked to identify those individuals that he has had contact with, and he did so. The appellant has not persuaded me that locations other than those identified in this order would likely contain responsive records. With respect to the named law firm, I accept the WSIB's explanation for the absence of records relating to the time that the law firm represented the appellant outside of the WSIB's processes, and conclude that such records do not exist within its records holdings. Moreover, I accept the WSIB's explanation for not being able to obtain the named lawyer's records relating to that time period long after the matter in question was concluded. I accept that any responsive records in the hands of the named lawyer have been destroyed in accordance with that firm's records retention schedule.

3. Based on the WSIB's representations, I am satisfied that an appropriate search was conducted for records in the two files maintained by it relating to the appellant's claim for benefits. The files were properly identified, searched and were provided to the appellant in their entirety.
4. I am satisfied that the WSIB has conducted a satisfactory search for records held by the 17 individuals named in the request that resulted in Appeal PA08-258-2, and that the appropriate individuals were contacted, including those contacted to search for files maintained by former employees. I am also satisfied that, pursuant to established procedure, the identified individuals properly searched their e-mail, hardcopy and electronically stored files, including the H-drive.

I am also satisfied that the WSIB has conducted a satisfactory search for records responsive to the request that led to Appeal PA08-336. I find that the WSIB satisfied its obligation to search for responsive records within the Legal Services Department by searching through its general correspondence file. Although the WSIB does not specifically state that it requested the two individuals named in this request to search through their personal files for responsive records, I find that, based on established procedures, it is more likely than not that these two individuals were asked to search their own files in a manner similar to that which was undertaken in Appeal PA08-258-2.

Accordingly, I find that the WSIB conducted a reasonable search for records responsive to the requests in Appeals PA08-258-2 and PA08-336 in locations at which records might reasonably be found.

Based on my consideration of the representations and documentation submitted in this appeal, I am satisfied that the WSIB's search for records responsive to both appeals was reasonable.

ORDER:

The WSIB's search for responsive records was reasonable and Appeals PA08-258-2 and PA08-336 are dismissed.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ October 28, 2010