



Information and Privacy
Commissioner/Ontario

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

ORDER 96

Appeal 890120

Workers' Compensation Board



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September 25, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 96
Appeal Number 890120
Workers' Compensation Board

I am writing to you about your appeal of the decision of the Workers' Compensation Board (the "institution") regarding your request for information under the Freedom of Information and Protection of Privacy Act, 1987.

On March 15, 1989, you wrote to the institution and requested access to "...forecast of 1989 revenue and expenditures".

On April 18, 1989, the institution's Freedom of Information and Privacy Co-ordinator wrote to you and advised you that "Access is denied to the Forecast of 1989 Revenues and Expenditures under section 67(2)(3) of the FIPPA. These sections state that the confidentiality provisions contained in other acts remain in force for a period of two years following the enactment of the FIPPA i.e. until January 1, 1990. It is the Board's position that section 102 of the Workers' Compensation Act is such a confidentiality provision and, thereby, grants the Board the authority to deny the release of these documents."

On May 3, 1989, you appealed the institution's decision and I gave notice of the appeal to the institution on May 9, 1989.

The Appeals Officer assigned to this case obtained and reviewed a copy of the record that you had requested. In the course of her

[IPC Order 96/September 25, 1989]

investigation, however, I had the occasion to consider section 102 of the Workers' Compensation Act in Order 62 (Appeal Number 880138), a copy of which was provided to you.

In Order 62, I found that section 102 of the Workers' Compensation Act is a "confidentiality provision" for the purposes of section 67 of the Freedom of Information and Protection of Privacy Act, 1987.

I also went on to find that the records in question in that appeal fell within the scope of the confidentiality provision with the result that section 102 of the Workers' Compensation Act barred the application of the Freedom of Information and Protection of Privacy Act, 1987 until January 1, 1990.

Given my finding in Order 62, we wrote to you to determine whether you were interested in pursuing this appeal and if so, inviting you to provide me with written representations respecting the applicability of section 102 of the Workers' Compensation Act to the records which you requested. As you chose to proceed with the appeal and to provide me with your written representations on the matter, the institution was similarly provided with the opportunity to make written representations to me. I have considered the representations I received from you and the institution in making this Order.

Section 102 of the Worker's Compensation Act reads as follows:

No officer of the Board and no person authorized to make an inquiry under this Part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the Board, any information obtained by him or that has come to his knowledge in making or in connection with an inspection or inquiry under this Part.

In your representations you wrote "the documents I am interested in are internal studies prepared by the staff of the Workers' Compensation Board relating to current policies in place which the Board refuses to divulge. Therefore, these materials are not included in the provisions noted in the said Information and Privacy Commissioner decision."

In its representations, the institution submitted:

Section 102 refers to "any information" obtained under this "Part". This "Part" refers to Part I of the Act. Part I of the Act includes provisions regarding the Board's obligations to process compensation claims, to raise the required funds from employers and to administer the affairs of the organization.

With respect to matters of administration, the Act

establishes a board of directors for the "management and government of the corporation" (section 56). Except as otherwise provided by the Act, the Board is given "exclusive jurisdiction to examine into, hear and determine all matters and questions" arising under Part I of the Act (subsection 75(1)). Further specific

powers are conferred on the Board under section 71, which includes the power to establish assessment policies of the Board (subsection 71(3)(a)); review and approve major changes in programs of the Board (subsection 71(3)(e)); consider and approve annual operating and capital budgets (subsection 71(3)(c)); and review and approve investment policies of the Board (subsection 71(3)(e)).

As Part I provides for the Board's administrative responsibilities, it is submitted that the inspection and inquiries referred to in section 102 would apply to any reports, records or materials prepared as part of the Board's obligations under Part I of the Act. This view is supported by the fact that the section is intended to cover "any information" obtained in making an inquiry or inspection under Part I.

The view that the term inquiry is broad in scope is also supported by a consideration of subsection 68(2) of the Act, which states:

68(2) Any inquiry that the Board considers necessary to make may be made by any director or officer of the Board or by some other person appointed by the Board to make the inquiry, and the Board may act upon his report as to the result of the inquiry.

As section 102 applies to an inquiry made under Part I, in which subsection 68(2) is included, it is submitted that the meaning of inquiry as used in subsection 68(2) is also relevant to determining its meaning in section 102. It is apparent that the term "inquiry" in subsection 68(2) applies to a broad range of information and could include any matter under examination by the Board or any request for information made by the Board. Therefore, it may include the preparation of background materials and analyses, the collection of data and other reports or documents prepared for internal Board use.

The institution noted that the record in question contains a projection of the general sources of revenue available to the

institution throughout 1989 and also a projection of the institution's expenditures in 1989. They argue that the institution has the power (pursuant to subsection 71(3)) to deal with the financial administration of the institution and that the subject matter of the record contains information that was collected further to the institution's obligation to administer the workers' compensation scheme and pursuant to its specific statutory authority to establish annual budgets. They submit

that the information in the record was prepared as a result of an "inquiry" contemplated by section 102 and was gathered and analyzed by staff at the institution authorized by section 102 to make such inquiries.

Having reviewed the representations from both parties, I am of the view that the record that you requested falls within the scope of section 102 of the Workers' Compensation Act. Although subsection 102(1) of the Workers' Compensation Act prohibits disclosure in this case, it also contains a discretionary power that has been accorded to officers of the institution and persons authorized to make inquiries under Part I of that Act, to disclose certain information. In other words, it is not an absolute prohibition against disclosure of information and, in fact, provides a means whereby information that would otherwise be subject to the "confidentiality provision" can be disclosed by the institution.

I have no basis for interfering with the institution's decision to refuse disclosure of the record in this matter but I would and I can do no more than ask the institution to consider its exercise of discretion under section 102 of the Workers' Compensation Act in the spirit of the Freedom of Information and Protection of Privacy Act, 1987.

Yours truly,

Sidney B. Linden
Commissioner

cc: Dr. Robert G. Elgie, Chairman of the Board
Ms Luisa Giacometti, FOI Co-ordinator