



Information and Privacy
Commissioner/Ontario

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

ORDER 83

Appeal 890041

Workers' 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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

August 4, 1989

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order 83
Workers' Compensation Board
Appeal Number 890041

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, (the "Act").

On January 12, 1989 you wrote to the institution asking for the following information:

...a copy of the list of employers eligible [for a section 91(7) penalty] as well as those who are actually charged. I understand that such a list already exists for firms charged in 1987, for the period 1984, 1985 and 1986. I would like to receive a copy of that list, as well as the one to be produced towards the end of this month, for charges arising out of the period 1985, 1986 and 1987.

Access to the requested records was denied by the institution pursuant to subsections 17(1)(a) and (c) and section 67 of the Freedom of Information and Protection of Privacy Act, 1987. Section 67 of the Act states that confidentiality provisions contained in provincial legislation remain in force until January 1, 1990. It was the Board's position that section 102 of the Workers' Compensation Act is such a confidentiality provision and grants the Board a discretion regarding the release of the requested records.

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On February 21, 1989 you wrote to me to appeal the decision of the institution and I gave notice of the appeal to the institution on March 8, 1989.

The Appeals Officer assigned to this case obtained and reviewed a sample of the records which you requested. During the course of his investigation, I had the occasion to decide whether section 102 of the Workers' Compensation Act operates to bar the application of the Freedom of Information and Protection of Privacy Act, 1987 until January 1, 1990. A copy of my Order in Appeal Number 880138 (Order 62) was sent to you for your information. As you know, I found that section 102 was, in fact, a "confidentiality provision" for the purposes of section 67 of the Act and that the records at issue in that appeal fell within the scope of the confidentiality provision.

Given my ruling in Order 62, we wrote to you to determine whether you were interested in pursuing this appeal. As you chose to continue the appeal, I invited the parties to provide me with written representations respecting the application of section 102 of the Workers' Compensation Act to the records which you requested. I have received representations from you and the institution and I have considered them in making this Order.

Section 102 of the Workers' 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 that "the Commissioner... appears to have accepted the institution's interpretation of the word 'inquiry' in...the Workers' Compensation Act. In my view, the WCB has placed an inordinantly broad interpretation on the word, when it states that it includes '...any matter under examination by the Board.' However, even given that broad interpretation, I submit that the information to which my request pertains, does not fall within the meaning the Board has placed upon 'inquiry'."

In its representations, the institution submitted:

Section 102 refers to information obtained under this

[IPC Order 83/August 4, 1989]

'Part'. This 'Part' refers to Part I of the Act. This Part of the Act generally contains 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.

It is submitted that the inspection and inquiries referred to in section 102 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 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 this 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. Therefore, it may include the preparation of background materials and analyses, the collection of data and other reports or documents for internal Board use.

In its representations, the institution identified the requested records as a list of firms which are eligible for a subsection 91(7) penalty and those which are subject to a subsection 91(7) penalty assessment. The institution claimed that the compiling of a list of firms which may be subject to an increased assessment or penalty is necessary for the administration of its statutory obligations respecting the levying and collection of assessments to fund compensation payments.

Having reviewed the representations from both parties, I am of the view that the records which you requested from the institution fall within the scope of section 102 of the Workers' Compensation Act. Although I have found that 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 Board 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 encourage the institution to consider the release of information, such as the record in issue, to interested parties, such as the appellant. However, I have no basis on which to interfere with the head's decision to refuse disclosure.

Yours truly,

Sidney B. Linden
Commissioner

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