



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

ORDER 84

Appeal 890069

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 84
Workers' Compensation Board
Appeal Number 890069

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 January 26, 1989 you wrote to the institution and requested access to "...copies of all the Workers' Compensation Board's corporate board's minutes and agenda for the past two years, pursuant to the Freedom of Information Act."

On February 24, 1989, the institution's former Freedom of Information and Privacy Co-ordinator wrote to you and advised that "access is denied to the minutes of the Board of Directors' meetings for the past two years 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 March 15, 1989, you appealed the institution's decision and I gave notice of the appeal to the institution on March 21, 1989.

[IPC Order 84/August 4, 1989]

The Appeals Officer assigned to this case attended at the institution and reviewed the records in question. In the course of his investigation, however, I had the occasion to consider section 102 of the Workers' Compensation Act in Appeal Number 880138 (Order 62), a copy of which was provided to you.

As you will recall, I found that section 102 of the Workers' Compensation Act is a "confidentiality provision" for the purposes of section 67 of the Act. I also went on to find that the records in question in Appeal Number 880138 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. 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 Worker's Compensation Act to the records which you requested. I received representations from you and the institution and 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 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 information obtained under this '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 noted that various procedures pertaining to the meetings and to the powers of the Board of Directors are set out in section 71 of the Workers' Compensation Act. The institution submitted that "the conduct of the meetings of the Board of Directors falls within the expressed statutory authority of section 71(1)(f). Any materials which flow from the meetings, including a record of the meeting, constitute materials which pertain to an 'inquiry' pursuant to Part I of the Act and would therefore fall within the scope of section 102 of the Act."

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

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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