

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4038

Appeal PA18-00667

Workplace Safety and Insurance Board

March 9, 2020

Summary: This order disposes of the issues raised as a result of an appeal of a decision made by the Workplace Safety and Insurance Board (the board) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The access request was for the appellant's claim file and for correction to some of her personal information contained in the claim file. The board granted access in whole, to the claim file, but denied the request for correction. During the mediation of the appeal, the appellant raised the issue of reasonable search. In this order, the adjudicator finds that the appellant has not established the requirements for correction to her personal information, and finds that the board's search for the claim file was reasonable.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 24 and 47(2).

Orders and Investigation Reports Considered: Order MO-2354.

OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of a decision made by the Workplace Safety and Insurance Board (the board) under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The access request was for the requester's claim file, and for correction to her personal information contained in the claim file.

[2] The board granted full access to the claim file, but denied the request for

correction, stating the following:

As the case law establishes, subsection 47(2) of *FIPPA* allows an individual to request correction of factual errors or omissions in personal information. This subsection does not provide for substitution of your opinions for the opinions or the evaluations of others.

In your case, you fail to identify any factual errors or omissions in your personal information. Instead, you take issue with others' evaluations and opinions of you in relation to various aspects of your claim.

[3] The board also advised the requester that she may request the following two actions:

- Require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- Require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

[4] The requester, now the appellant, appealed the board's decision to this office.

[5] During the course of mediation, the mediator discussed with the appellant her right to have a statement of disagreement attached to the records. In response, the appellant stated that she wanted to pursue her request for corrections. The appellant also advised the mediator that she believed there were 60 pages missing from her claim file. As a result, reasonable search was added as an issue in the appeal.

[6] The board advised the mediator that it had disclosed all of the records in the appellant's claim file. The board also confirmed its decision to deny the correction request, and invited the appellant to submit a statement of disagreement.

[7] The file then moved to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. The adjudicator assigned to the appeal sought and received representations from the board and the appellant. The board's representations were shared with the appellant. The file was then transferred to me to continue the inquiry. In addition to the representations the appellant provided during the inquiry, I also reviewed the materials she provided to this office during the mediation stage of the appeal.¹

[8] For the reasons that follow, I dismiss the appeal.

¹ None of these materials were subject to mediation privilege.

RECORDS:

[9] With respect to the appellant's request for correction of her personal information, the records at issue consist of 16 pages of memoranda. With respect to reasonable search, the appellant is of the view that there are 60 pages missing from her claim file.

ISSUES:

- A. Should the board correct the appellant's personal information in the records under section 47(2)?
- B. Did the board conduct a reasonable search for records?

DISCUSSION:

Issue A: Should the board correct the appellant's personal information in the records under section 47(2)?

[10] Section 47(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 47(2) gives the individual a right to ask the institution to correct the personal information. If the institution denies the correction request, the individual may require the institution to attach a statement of disagreement to the information. Sections 47(2)(a) and (b) state:

Every individual who is given access under subsection (1) to personal information is entitled to,

(a) request correction of the personal information where the individual believes there is an error or omission therein;

(b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;

[11] Where the institution corrects the information or attaches a statement of disagreement, under section 47(2)(c), the appellant may require the institution to give notice of the correction or statement of disagreement to any person or body to whom the personal information has been disclosed within the year before the time the correction is requested or the statement of disagreement is required.

[12] This office has previously established that in order for an institution to grant a request for correction, the following three requirements must be met:

1. the information at issue must be personal and private information; and

2. the information must be inexact, incomplete or ambiguous; and
3. the correction cannot be a substitution of opinion.²

[13] In each case, the appropriate method for correcting personal information should be determined by taking into account the nature of the record, the method indicated by the requester, if any, and the most practical and reasonable method in the circumstances.³

[14] The right of correction may apply only to personal information of the appellant. The term "personal information" is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) 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;

² Orders 186 and P-382.

³ Orders P-448, MO-2250, and PO-2549.

[15] For section 47(2)(a) to apply, the information must be “inexact, incomplete or ambiguous”. This section will not apply if the information consists of an opinion.⁴

[16] Section 47(2)(a) gives the institution discretion to accept or reject a correction request.⁵ Even if the information is “inexact, incomplete or ambiguous”, this office may uphold the institution’s exercise of discretion if it is reasonable in the circumstances.⁶

[17] Records of an investigatory nature cannot be said to be “incorrect” or “in error” or “incomplete” if they simply reflect the views of the individuals whose impressions are being set out. In other words, it is not the truth of the recorded information that is determinative of whether a correction request should be granted, but rather whether or not what is recorded accurately reflects the author’s observations and impressions at the time the record was created.⁷

Representations

[18] The board submits that one of the programs it provides is a return to work program which facilitates the return to work of injured or ill persons. It goes on to state that as a starting point in the return to work process, it focuses on the workplace where the injury or illness occurred and the pre-injury job with or without accommodations, involving Case Managers, Nurse Consultants and Return to Work Specialists. Examples of the types of services the board provides include the following:

- providing onsite support;
- educating the employee and the workplace;
- arranging assessments;
- arranging work trials, short term skills training or other specialized services; and
- arranging additional services if the injured or ill employee is unable to return to work.

[19] The board advises that the type of documentation required in the return to work program is dependent on the type of activity or intervention required.

[20] The board submits that this office has established that in order for an institution to grant a request for correction the information at issue must be personal information, which must be inexact, incomplete or ambiguous, and the correction cannot be a substitution of another’s opinion.

⁴ Orders P-186, PO-2079 and PO-2549.

⁵ Order PO-2079.

⁶ Order PO-2258.

⁷ Orders M-777, MO-1438 and PO-2549.

[21] The board submits that the first requirement has been met in that the records contain the personal information of the appellant.

[22] However, the board further argues that it is not reasonable to make corrections to the records that the appellant wishes for the following reasons:

- the information the appellant wishes to correct is not inexact, incomplete or ambiguous;
- the corrections that the appellant wished to be made are the opinions of case managers and other board staff, which are exempt from the right of correction;
- the appellant disputes the “truth”, rather than the accurate reflection of the author’s observations and impressions at the time the record was created;
- the records are investigatory in nature and accurately reflect the author’s observations and impressions at the time the record was created;
- an individual who requests correction of personal information must establish an error or omission in the record. In this case, the appellant has merely made assertions;
- the appellant’s request is unclear and ambiguous and was made before she received the records; and
- the board provided the appellant with the opportunity to make a statement of disagreement, which she has declined.

[23] Lastly, the board argues that section 47(2)(a) of the *Act* provides it with the discretion to accept or reject a correction request even if the information is inexact, incomplete or ambiguous. In this case, the board submits, the head took into consideration the relevant sections of the *Act*, as well as other factors, including the appellant’s position. In the head’s opinion, it would not be reasonable in this case to accept a correction request because it would require the board to investigate the veracity of the evaluative opinion made by the board staff, which is outside the scope of section 47(2). The board also notes that the adequacy and correctness of its decisions regarding claims are subject to review before other bodies.

[24] The appellant advises that she was injured at work as a result of a fall, and participated in a return to work program with a specific employer. In her representations, the appellant makes a number of allegations against the employer, and submits that the board did not assist her with the difficulties encountered with the employer.

[25] The appellant provided the board and this office with a number of corrections and additions that she would like to be made to some of the records in her claim file,

namely to a number of specified memoranda. I will not re-produce the requested corrections in this order because to do so would reveal the content of the records. The appellant also submits that she has already submitted a 16-page statement of disagreement to the board.

[26] Lastly, in her representations, the appellant states that she wishes me to allow the corrections to be made to her claim file, to grant loss of earnings for a specified time period, to consider loss of earnings for a subsequent time period, and to order the board to offer her return to work options.

Analysis and findings

[27] At the outset, I will address the appellant's proposed remedy that I order the board to take actions above and beyond correction of the information at issue. I do not have the jurisdiction to order the board, for example, to grant loss of earnings or to offer the appellant return to work options. The scope of this appeal is limited to determining whether the appellant's request for corrections should be granted under the *Act* (and reasonable search under Issue B, below). Further, it is not for this office to engage in a review of the adequacy or the correctness of the decisions or findings of fact of a decision-making entity such as the board. The board's decisions are subject to review before other bodies.⁸

[28] As previously stated, past orders of this office have found that in order for the right of correction to arise, a three-part test must be met. First, the information must be personal; second, the information must be inexact, incomplete or ambiguous; and third, the correction cannot be a substitution of opinion. I find that the information contained in the records at issue qualifies as the appellant's personal information within the meaning paragraphs (g) and (h) of the definition of "personal information" in section 2(1) of the *Act*, because this information relates to the views or opinions of another individual about the appellant (g), and because the appellant's name appears with other personal information relating to her (h).

[29] Turning to the second part of the test, past orders of this office have found that the issue is not whether the statements at issue are consistent with other information, but whether they reflect the views or observations of the individual who made them, at the time they were made. If so, they cannot be categorized as "inexact," "incomplete" or "ambiguous." I find that the information that the appellant wishes to be corrected to be the views or observations of the individual who made them at the time they were made and, therefore, is not inexact, incomplete or ambiguous, and the second part of the test has not been met.

[30] In addition, based on my review of the appellant's representations, it appears that she would like to add information to the records at issue. In Order MO-2354,

⁸ See, for example, Orders PO-2079 and PO-2258.

Adjudicator Donald Hale found that the correction provisions contained in the municipal equivalent of section 47(1)⁹ were not intended to address situations where an appellant seeks to include further information into a record.

[31] Lastly, concerning the third part of the test, given that opinions are subjective, generally this office will not substitute an appellant's judgement or opinion for that of the opinion expressed in the record. I find that much of the information the appellant wishes to be corrected consists of the opinions of various board employees, as well as the opinion of an employer. As a result, I decline to order the board to substitute these individuals' opinions with the opinion of the appellant. As a result, the appellant's request for correction to her personal information is denied, as she has not met the requirements of section 47(2). I also note that the appellant has exercised her right under section 47(2)(b) to append a statement of disagreement to her claim file.

Issue B: Did the board conduct a reasonable search for records?

[32] 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 24.¹⁰ 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.

[33] 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.¹¹ To be responsive, a record must be "reasonably related" to the request.¹²

[34] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.¹³

[35] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.¹⁴

[36] 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.¹⁵

⁹ Section 36(2) of the *Municipal Freedom of Information and Protection of Privacy Act*.

¹⁰ Orders P-85, P-221 and PO-1954-I.

¹¹ Orders P-624 and PO-2559.

¹² Order PO-2554.

¹³ Orders M-909, PO-2469 and PO-2592.

¹⁴ Order MO-2185.

¹⁵ Order MO-2246.

[37] The board was required to provide a written summary of all steps taken in response to the request. In particular, the board was asked:

1. Did the board contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the board did not contact the requester to clarify the request, did it:
 - a. choose to respond literally to the request?
 - b. choose to define the scope of the request unilaterally? If so, did the board outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the board inform the requester of this decision? Did the board explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

Representations

[38] The board submits that it made a reasonable effort to identify, locate and disclose all records responsive to the request. In particular, the board states that the appellant made a straightforward request for her claim file, in addition to a correction request. The board advises that it did not contact the appellant to clarify the request because it was clear and could be responded to literally. The board then contacted the appropriate record holders in accordance with their internal policies. The board goes on to submit that the search for records was conducted by an experienced employee knowledgeable in the subject matter of the request, who expended a reasonable effort to locate the records. The board states that it provided the appellant with access to the records, in whole. The board further submits that in subsequent communications with the appellant, she did not provide a reasonable basis for concluding that additional records in the claim file exist.

[39] The board provided an affidavit, sworn by a records clerk who submits that she has extensive experience at the board, and has a reasonable understanding of the board's processes and procedures related to accessing and reproducing injured workers' claims files. She states that, in this case, she received the appellant's request from the

board's Freedom of Information Office, and then searched for all records in the board's electronic claims file system folder. She states that she then downloaded all of the records and sent them to the Freedom of Information Office.

[40] With respect to the records contained in the claim file, the board states:

WSIB¹⁶ released all records "reasonably related" to the request by releasing all responsive records in the appellant's claims files. Not all records pertaining to the appellant are within the requested claims files. Only those records considered pertinent to the decision-making of a claim are within the requested claims files. There may be other records within the custodianship of the WSIB that pertain to the appellant that are not within the claims files. If the appellant wishes all personal information that is within the custodianship of the WSIB, the appellant must make a formal request under the FOI procedure.

. . .

. . . The appellant had previously made a request for a copy of claims files through an administrative procedure by the provision of the *Workplace Safety and Insurance Act (WSIA)*. There are no discrepancies between the access to the copies of claims files produced by the WSIA administrative procedure and the formal request through the FOI procedure.¹⁷

[41] In her representations, the appellant submits that many "enclosures" went missing or were not scanned at the board. She then states that she re-submitted these enclosures to both the board and this office. I note that during the mediation of the appeal, the appellant advised the mediator that there were 60 pages missing from her claim file, which she in turn hand delivered to the board. These pages, the appellant advised the mediator, consisted of intent to object forms, emails from her employer to her, cheques from her employer, and correspondence that she sent to her case manager.

Analysis and findings

[42] I have reviewed the appellant's request that she made to the board. I find that the access component¹⁸ of the appellant's request was for a copy of her claim file with the board. In response, the board downloaded the records it kept in the appellant's claim file and provided her with a copy of those records. The appellant's position is that other records relating to her claim with the board exist, copies of which she provided to the board and to this office.

¹⁶ For purposes of this order, I refer to WSIB as "the board."

¹⁷ I note, based on my review of the appellant's access request, that she sought access to a singular claim file.

¹⁸ The appellant's access request also included her request for correction to 16 pages of records.

[43] The board's position is that a claim file contains only those records that the board deems to be pertinent to the decision-making of a claim, and that there may be other records within the custody of the board that pertain to the appellant that are not within her claim file. The board went on to argue that if the appellant wishes all personal information that is within the custody of the board, the appellant must make a new formal access request.

[44] I find, regarding the claim file, which was the subject matter of the access request, that the board conducted a reasonable search for the records contained within it. I am satisfied with the affidavit evidence that a staff member experienced in responding to access requests downloaded the contents of the claim file in its entirety, which were then provided to the appellant. I note that the appellant may choose to file a new access request for records relating to her in the board's custody that are located outside the claim file.

ORDER:

I dismiss the appeal.

Original Signed By _____

Cathy Hamilton

Adjudicator

_____ March 9, 2020