Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4223

Appeal PA19-00319

Workplace Safety and Insurance Board

December 23, 2021

Summary: The requester sought access, under the *Freedom of Information and Protection of Privacy Act* (the *Act*), to audio recordings of his calls with the Workplace Safety and Insurance Board's (WSIB) employees for a specific time period. The WSIB denied access to the records, relying on the labour relations and employment records exclusion in section 65(6)3 of the *Act*, claiming that it used the responsive call recordings to support effective employee performance management at the WSIB.

In this order, the adjudicator finds that the records are not excluded from the *Act* by section 65(6)3 and she orders the WSIB to issue another access decision to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 65(6)3.

Orders Considered: Orders MO-2428, MO-2556, MO-2660, PO-2628, PO-2913, PO-3491, PO-3519, and PO-3861.

Cases Considered: *(Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355, [2001] O.J. No. 3223 (C.A.); *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.); *Ministry of Community and Social Services v. Doe*, 2014 ONSC 239 (Div. Ct.), 2015 ONCA 107.

OVERVIEW:

[1] This order determines the issue of whether recordings of calls between

Workplace Safety and Insurance Board's (WSIB)[1] clients and WSIB employees are excluded from the *Act* on the basis of the exclusion for labour relations or employment matters in section 65(6).

[2] The requester is a client of the WSIB and was involved in telephone discussions with WSIB staff concerning his medical issues. He sought access under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) to recordings of his calls with the WSIB for a specific time period between 2017 and 2019.

[3] The WSIB issued a decision denying access to the call recordings, stating that:

> Call Recordings are collected for the limited purpose of quality assurance and performance management; therefore, these records fall outside the scope of *FIPPA* pursuant to the exclusion in section 65(6) of the *Act* relating to employment and labour relations.

[4] The WSIB's position was that the labour relations and employment records exclusion in section 65(6) applies, as it uses the responsive call recordings for human resource management reasons to support effective employee performance management at the WSIB.

[5] The requester, now the appellant, appealed the WSIB's decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was appointed to work with the parties in an attempt to resolve the issues in this appeal.

[6] During the mediation process, the WSIB advised that its retention policy for telephone recordings is 90 days. Therefore, only recordings for the 90-day period prior to the request were located by the WSIB. The appellant accepted this explanation that only his calls to the WSIB made during these 90 days existed. However, he continued to seek access to those call recordings, and the WSIB maintained its position that they are excluded from the *Act* under section 65(6).

[7] The parties were unable to resolve the appeal through the mediation process. As such, this file was transferred to adjudication where an adjudicator may conduct an inquiry.

[8] I decided to conduct an inquiry. I sought and received representations from both the WSIB and the appellant, which were shared in accordance with the IPC's *Practice Direction 7* on sharing. In its representations, the WSIB indicated that it relies specifically on section 65(6)3 for its claim that the records are excluded from the *Act*.[2]

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[1] The WSIB is an agency of the Government of Ontario that is legislated to administer Ontario's no-fault workplace safety and insurance system under the *Workplace Safety and Insurance Act* (*WSIA*).

[2] I shared all of the WSIB's representations with the appellant, except for the confidential Exhibit A to the WSIB's representations, which is an internal WSIB communication to staff.

[9] In this order, I find that the call recordings are not excluded by reason of section 65(6)3 and order the WSIB to issue another access decision to the appellant respecting them.

RECORDS:

[10] At issue are 10 call recordings dated between March 22, 2019 and April 25, 2019.

DISCUSSION:

Are the call recordings excluded from the *Act* because the section 65(6)3 labour relations and employment records exclusion applies to them?

[11] The WSIB administers Ontario's no-fault workplace safety and insurance system under the *WSIA*. For people, such as the appellant, who are injured or become ill in the workplace, health care benefits and loss of earnings benefits are provided, as well as return to work and vocational services.

[12] The appellant had telephone conversations with WSIB staff and his calls were recorded. The WSIB's position is that the recordings of telephone conversations between its staff and WSIB clients are made for the exclusive purpose of quality assurance and training. As such, it relies on the exclusion in section 65(6)3 to exclude the recordings of the calls between it and the appellant (the records) from the application of *FIPPA*. Section 65(6)3 states:

> Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:
>
> > 3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[13] If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*.

[14] For the collection, preparation, maintenance or use of a record to be "in relation to" the subjects mentioned in paragraph 1, 2 or 3 of this section, it must be reasonable to conclude that there is "some connection" between them.[3]

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[3] Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and PrivacyCommissioner*, 2010 ONSC 991 (Div. Ct.).

[15] The "some connection" standard must involve a connection that is relevant to the statutory scheme and purpose understood in their proper context. For example, the relationship between labour relations and accounting documents that detail an institution's expenditures on legal and other services in collective bargaining negotiations is not enough to meet the "some connection" standard.[4]

[16] The term "labour relations" refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to analogous relationships. The meaning of "labour relations" is not restricted to employer-employee relationships.[5]

[17] The term "employment of a person" refers to the relationship between an employer and an employee. The term "employment-related matters" refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.[6]

[18] If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not cease to apply at a later date.[7]

[19] The type of records excluded from the *Act* by section 65(6) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. As I explain in some more detail below, employment-related matters are separate and distinct from matters related to employees' actions for which an institution may be vicariously liable.[8]

[20] For section 65(6)3 to apply, the institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;

2. this collection, preparation, maintenance or use was in relation to meetings, consultations, discussions or communications; and

3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest.

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[4] Order MO-3664, *Brockville (City) v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div. Ct.).
[5] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.); see also Order PO-2157.
[6] Order PO-2157.
[7] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R.(3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507.
[8] *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.

Part 1: collected, prepared, maintained or used

[21] The WSIB states that it collects, prepares, maintains and uses the call recordings on behalf of its Customer Experience and Service Excellence Division (the Customer Service Division).

[22] The appellant's representations focus on part 3 of the test under section 65(6)3. With regard to part 1 of this test, he agrees that the records were collected by the WSIB.

[23] Based on my review of the parties' representations and the records, I find that part 1 of the test under section 65(6)3 has been met, because I am satisfied that the call recordings were collected and maintained by the WSIB for its Customer Service Division. Concerning the 10 call recordings at issue, I do not have evidence from the WSIB that they were actually used by the WSIB in discussions with its employees. I return to this in my discussion of part 3 of the test below.

Part 2: meetings, consultations, discussions or communications

[24] The WSIB states that the records, which are call recordings, constitute "communications" that are then subsequently used for "discussions" with employees related to call quality and training.

[25] The appellant did not provide representations directly addressing part 2 of the test under section 65(6)3.

[26] I agree with the WSIB, and I find, that part 2 of the test has been met. The records are communications between the WSIB and the appellant, being recordings of the appellant's calls with the WSIB. However, as stated above, I do not have evidence that these specific records were actually used by the WSIB in or for discussions with employees.

Part 3: about labour relations or employment-related matters in which the institution has an interest

[27] The phrase "labour relations or employment-related matters" has been found to apply in the context of:

- a job competition[9]
- an employee's dismissal[10]
- a grievance under a collective agreement[11]

[9] Orders M-830 and PO-2123.
[10] Order MO-1654-I.

- disciplinary proceedings under the *Police Services Act* [12]
- a "voluntary exit program"[13]
- a review of "workload and working relationships"[14]
- the work of an advisory committee regarding the relationship between the government and physicians represented under the *Health Care Accessibility Act*.[15]

[28] The phrase "labour relations or employment-related matters" has been found *not* to apply in the context of an organizational or operational review.[16]

[29] The records collected, prepared maintained or used by the institution are excluded only if the meetings, consultations, discussions or communications are about labour relations or "employment-related" matters in which the institution has an interest. The phrase "in which the institution has an interest" means more than a "mere curiosity or concern", and refers to matters involving the institution's own workforce.[17] As stated above, employment-related matters are separate and distinct from matters related to employees' actions for which an employer may be vicariously liable.[18]

The WSIB's representations

[30] The WSIB states that telephone conversations between its clients and WSIB staff are recorded for the exclusive purpose of quality assurance and training. It states that the call recordings do not form part of an injured worker's[19] claim file and are only available to the staff within its Customer Service Division (the WSIB division responsible for the quality of client interactions with WSIB staff) and the manager of the employee involved in the specific call.

[31] The WSIB states that it collects, maintains, and uses call recordings only for the purpose of ensuring that staff are providing an optimal customer service experience and to provide correction or coaching in the event of sub-optimal customer service.

[32] The WSIB states that callers using the WSIB's general telephone phone numbers are notified at the start of the call of WSIB's purpose in collecting, maintaining and

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[11] Orders M-832 and PO-1769.
[12] Order MO-1433-F.
[13] Order M-1074.
[14] Order PO-2057.
[15] *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.).
[16] Orders M-941 and P-1369.
[17] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner),* cited above.
[18] *Ontario (Ministry of Correctional Services) v. Goodis*, cited above.
[19] "Worker" in this context refers to an individual, like the appellant, who has applied to the WSIB for benefits because of a workplace injury. It is not a reference to employees of the WSIB.

using call recordings by the following clear message: "This call *could* be recorded for quality assurance and training purposes" (emphasis in original).

[33] The WSIB provided a copy of its 2018 internal staff communication regarding the telephone recording system launch.[20] The WSIB states that, as evidenced by this internal staff communication, the purpose of this recording system is to assist in the streamlining of processes and help the WSIB work more effectively in the following areas:

- A simpler company directory
- Access to real-time data and schedules
- Shorter wrap-up times
- Fewer drop-downs for classifying calls
- Schedule reminders

[34] The WSIB states that it records the phone calls for the purpose of ensuring that employees are delivering the best possible service for customers on the phone. It states that call recordings are used by the WSIB to:

a. Identify calls that require coaching or corrective measures involving the WSIB's employees;

b. Provide evidence [f]or areas of improvement [or] for disciplinary measures involving the employee;

c. Make decisions regarding increasing or decreasing staffing levels;

d. Make decisions regarding increasing or decreasing training for staff; and

e. Train new and existing WSIB staff.

[35] The WSIB states that the records also assist in the determination of numerous other potential employment-related actions, such as the completion of performance reviews, as well as other corrective actions for WSIB employees.

[36] The WSIB relies on Orders MO-2428, PO-2628, PO-3491 and PO-3519. It states that these orders found that:

> ...documents used in relation to corrective measures involving an employee of the institution constitute labour relations or employment-

[20] This document was not shared with the appellant during the inquiry, as I agreed to withhold it under *Practice Direction 7*.

> related matters, even if specific corrective action against the employee was not pursued in that particular instance.

[37] The WSIB states that its call recordings are also used as factual materials that assist the WSIB's human resources department in connection with WSIB customer service staffing levels.[21]

[38] The WSIB submits that call recordings embody the very confidentiality interests that the legislature intended to protect with section 65(6) of the *Act*: to provide the institution a "zone of privacy" in which to have a full and frank dialogue between employee and employer about customer service quality assurance.

The appellant's representations

[39] The appellant submits that, as he only discusses matters related to himself and his medical issues with the WSIB, there is not any connection between the content of the discussions in the records and the definition of labour relations or employment-related matters. Therefore, the appellant submits that the WSIB has not met the "some connection" standard, as required in order for the requested records to be excluded from the *Act* under section 65(6)3.

[40] In particular, the appellant states that the WSIB has no employer-employee or bargaining relationship with him. He submits that the WSIB was not acting as an employer in the discussions with him and that none of the content of the telephone recordings can be defined or described as employment-related matters.

[41] The appellant further states that his medical issues, as discussed in the records, are not related to union bargaining, external or internal operations of the WSIB or any other employment-related matters. Therefore, he submits that the content and context of the discussions in the telephone recordings are not about any terms and conditions of employment or any human resources questions.

[42] Specifically, the appellant submits that the WSIB did not use the recordings in the course of interacting with him, but used them for a secondary separate and independent purpose, to assist with its operational reviews. He submits that the fact that operational reviews were conducted after the telephone recordings were collected means that they cannot be relied on to say the *Act* does not apply.[22]

[43] The appellant further states that the WSIB has not established how the contents of the telephone recordings are about employment or labour relations. He says that the telephone recordings and the creation of employer-employee reviews are separate.

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[21] The WSIB relies on Order P-1516.
[22] The appellant relies on Orders M-349 and P-1369.

The WSIB's reply representations

[44] In reply, the WSIB states that section 65(6) pertains to the reasons why a record was created, not to the content of the record. The WSIB argues, therefore, that because the dominant purpose for the creation of the call recordings was for labour relations and/or employment-related matters (e.g. to measure performance of its employees), the section 65(6)3 exclusion applies.

Analysis and findings regarding part 3

[45] As set out above, for the collection, preparation, maintenance or use of a record to be "in relation to" one of the three subjects mentioned in section 65(6), there must be "some connection" between them. The "some connection" standard must involve a connection that is relevant to the statutory scheme and purpose understood in their proper context.

[46] I have considered the parties' representations and have listened to the call recordings between WSIB staff and the appellant that are at issue in this appeal.

[47] The WSIB's position is that the records at issue, which consist of recorded audio of telephone calls between its staff and a WSIB client, are exclusively about employment-related matters,[23] because they are used for:

- coaching or other corrective actions for WSIB employees,
- staff performance management, and
- analysis and review of staffing levels in the Call Centre and other front line staff.

[48] The WSIB's position is that it would not have recorded the phone calls if it were not using them for training purposes. However, I note that the WSIB indicates to each caller that their phone calls with the WSIB "…could be recorded <u>for quality assurance</u> and training purposes" (my emphasis).

[49] The WSIB advised all of its staff, when the call recording system was launched, that the purpose of the system was to assist in the streamlining processes, and:

> …to work more effectively in the following areas, a simpler company directory, access real time data and schedules, shorter wrap-up times, fewer drop-downs for classifying calls and schedule reminders.

[50] It is, therefore, clear to me, and the WSIB itself acknowledges, that the call recordings are related to quality assurance, specifically, to help the WSIB work more effectively in areas such as scheduling, call classification, and call wrap-up times.

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[23] The WSIB has not specifically argued that the records are about labour relations matters.

[51] I accept that the WSIB records the calls in order to monitor the quality of its customer service. However, I do not accept that customer service or quality assurance concerns are automatically employment-related matters in which the WSIB has an interest as employer.

[52] The IPC and the Divisional Court have observed in relation to the section 65(6) exclusions that all institutions operate through their employees. In Order MO-2660, I stated:

> Employees are the means by which all institutions provide services to the public. In this appeal, the record was not created to address matters in which the institution is acting as an employer, and the terms and conditions of employment or human resources questions are at issue, in the sense intended by section 52(3).[24] The record is an operational review of the Toronto Fire Service's dispatch system focusing on the efficient and timely response to communications from an operational standpoint.

[53] In my view, the call recordings at issue here are similarly directed toward the WSIB's goal of providing quality service to the parties it serves. This necessarily happens through its employees. The fact that the calls might be listened to for the purposes of improving quality of service is not enough to establish "some connection" to labour relations or employment matters for the operation of the employment records exclusion at section 65(6).

[54] In *Ontario (Ministry of Correctional Services) v. Goodis* (*Goodis*),[25] the Divisional Court canvassed the law relating to section 65(6), and in doing so, referred to the Ontario Court of Appeal case of *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (*Solicitor General*)[26] where the parties and the court accepted that a file documenting the investigation of a complaint against a police officer was employment-related.

[55] The Court in *Goodis* found, however, that the *Solicitor General* case does not stand for the proposition that all records pertaining to employee conduct are excluded from the *Act*, even if they are in files pertaining to civil litigation or complaints brought by a third party. Justice Swinton stated:

> The fact that the Act applies to the documents in sub-clauses 1 through 3 of s. 65(7) suggests that the type of records excluded from the Act by s. 65(6) are documents related to matters in which the institution is acting

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[24] Section 52(3) of the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*), the municipal equivalent to section 65(6) of *FIPPA*.

[25] *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div.Ct.).

[26] *(Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R.(3d) 355, [2001] O.J. No. 3223 (C.A.).

> as an employer, and terms and conditions of employment or human resources questions are at issue.
>
> The interpretation suggested by the Ministry in this case would seriously curtail access to government records and thus undermine the public's right to information about government. If the interpretation were accepted, it would potentially apply whenever the government is alleged to be vicariously liable because of the actions of its employees. Since government institutions necessarily act through their employees, this would potentially exclude a large number of records and undermine the public accountability purpose of the Act (*Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner*), 2005 CanLII 34228 (ON CA), [2005] O.J. No. 4047, 202 O.A.C. 379 (C.A.), at para. 28). (Emphasis added)

[56] Referring to the Ontario Court of Appeal case in *Solicitor General*, the Divisional Court stated:

> Whether or not a particular record is "employment-related" will turn on an examination of the particular document.

[57] In other words, in *Goodis*, the Court recognized that investigations into complaints brought by third parties that may result in disciplinary action *may* be employment-related, but may not, depending on the record itself.

[58] The WSIB has not provided any evidence to the effect that the records at issue were used for discussions or communications about employment-related matters. The IPC has previously found that even in situations where a complaint has been made to an institution about customer service, this alone is not enough for the section 65(6) exclusion to apply.

[59] For example, in Order PO-3861, the adjudicator examined a number of records for which the exclusion in section 65(6)3 had been claimed by a hospital. The records related to complaints made by the appellant (in that appeal) to The Ottawa Hospital (the hospital) and the College of Physicians and Surgeons (the CPSO) about a medical resident and the hospital's Chief of Staff. In that order, the adjudicator found that records that contained information that had some connection to the overall performance appraisal of the medical resident by their supervising physician, as well as records that detailed the overall responsibility of the position of a medical resident, qualified as relating to an employment-related matter in which the hospital had an interest.

[60] However, she found that the records relating to the appellant's complaints did not meet the third part of the three-part test. In making that finding, she stated:

> I find that these records relate to the appellant's complaints and involve discussions surrounding the existence of the complaints, how to gather information to respond to the complaints, how to respond to the CPSO, and how to respond to the appellant in response to the complaints. In my view, the records were created in order to respond to the complaints made by the appellant, and were not created in order to enable the hospital to determine whether to take disciplinary or other workplace action against either the medical resident or the Medical Chief of Staff.

[61] In other words, applying the reasoning above to this appeal, the mere fact that the records at issue might one day be used for discipline, or other employment-related purposes, does not, on its own, mean that they are records in which the WSIB has an interest as employer. In my view, the WSIB's interest in the records before me is as an institution tasked with providing quality services to the public it serves.

[62] Although the calls were recorded and may have been listened to afterwards by the WSIB, I agree with the appellant, and I find, that the "some connection" standard between the collection of the telephone call recordings and any discussions about labour relations or employment-related matters in which the institution has an interest is not met.

[63] The purpose of each phone call was to discuss the appellant's medical condition. The purpose of recording and maintaining the calls was to assist in the streamlining of processes and help the WSIB work more effectively.

[64] The phrase "in which the institution has an interest" means more than a "mere curiosity or concern," and refers to matters involving the institution's own workforce.[27] I accept that the WSIB recorded calls because it wanted to monitor the quality of service of its employees on the phone. However, the calls themselves are not about labour-relations or employment-related matters involving the institution's own workforce and I am not satisfied that the role they play in quality assurance amounts to an employment or labour relations matter.

[65] A key case that I considered in reaching the conclusion above is *Ministry of Community and Social Services v. Doe* (*Doe*).[28] In that case, the names of employees of the ministry's Family Responsibility Office (FRO) contained in the requester's file were at issue. The ministry had relied on section 65(6)3 to deny access to these names, claiming that they were excluded under this section. It claimed that the names of the FRO employees and management's use of documents containing the names of employees were related to communications about labour relations matters because both a Grievance Settlement Board order and a collective agreement required the employer to take measures to protect the identity of FRO employees. The IPC rejected

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[27] *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.
[28] *Ministry of Community and Social Services v. Doe*, 2014 ONSC 239 (Div. Ct.), upheld in *Ontario (Community and Social Services) v. John Doe*, 2015 ONCA 107.

the ministry's position and found that the records at issue were prepared by FRO staff as part of the normal business of that office and were "about" enforcing a support order in accordance with FRO processes. The adjudicator concluded that these records were not "about" employment or labour relations matters in which the ministry had an interest and found that the exclusion in section 65(6)3 did not apply to the FRO employees' names.

[66] In upholding the IPC's decision finding that the records were not "about" employment matters and therefore were not excluded from the *Act* under section 65(6)3, the Divisional Court in *Doe* stated:

> Adopting the Ministry's broad interpretation of "about" would mean that a routine operational record or portion of a record connected with the core mandate of a government institution could be excluded from the scope of the Act because such a record could potentially be connected to an employment-related concern, is touched upon in a collective agreement, or could become the subject of a grievance. This interpretation would subvert the principle of openness and public accountability that the Act is designed to foster….
>
> Accordingly, a purposive reading of the *Act* dictates that if the records in question arise in the context of a provincial institution's operational mandate, such as pursuing enforcement measures against individuals, rather than in the context of the institution discharging its mandate *qua* employer, the s. 65(6)3 exclusion does not apply. Excluding records that are created by government institutions in the course of discharging public responsibilities does not necessarily advance the legislature's objective of ensuring the confidentiality of labour relations information. However, it could have the effect of shielding government officials from public accountability, an effect that is contrary to the purpose of the *Act*. The government's legitimate confidentiality interests in records created for the purposes of discharging a government institution's specific mandate may be protected under exemptions in the *Act*, but not under s. 65(6).

[67] The Court's observations are relevant here. In my view, the recordings of the WSIB calls at issue in this appeal are operational records connected with the WSIB's core mandate of providing services to injured workers. The fact that the records might one day be the subject of employment-related communications or discussions with WSIB staff is not sufficient to find that they are "about" employment matters for the purpose of section 65(6)3. The records at issue were prepared by WSIB staff as part of the normal business of the WSIB in interacting with its clients, in this case the appellant, and in keeping with the WSIB's operational mandate.

[68] In making this determination, I have considered the orders referred to by the WSIB. In most of those orders, unlike in the present appeal, the factual information in

the records was specifically used to assist in the determinations, contained in the other parts of the records, of whether the conduct of the institutions' employees was improper and necessitated taking disciplinary action against them. As such, the adjudicator determined that the records at issue related to labour relations or employment-matters.

[69] Some of the orders relied on by the WSIB pre-date *Ministry of Community and Social Services v. Doe.* In any event, they are all distinguishable from the facts before me. Specifically, these orders concerned the following:

> In Order MO-2428, the records were 911 calls by a police officer that gave rise to discreditable conduct charges and disciplinary proceedings against him. In the present appeal, there is no evidence that the call recordings in question are part of any disciplinary proceeding against a WSIB employee.[29]
>
> In Order PO-2628, the records contained allegations of misconduct on the part of an identified Ontario Provincial Police (OPP) officer who was being investigated by the OPP's Professional Standards Bureau. The records in the appeal before me contain no such allegations.
>
> In Order PO-3491, the records related to the conduct of and interaction between specific OPP officers to determine whether or not disciplinary action should be taken against an officer. In the appeal before me, there is no such relationship to discipline.
>
> In Order PO-3519, the records were about collisions involving OPP officer-operated vehicles. The records contained determinations as to whether or not a collision was preventable and whether disciplinary action should be taken against the vehicle operators. The records before me contain no such determinations.

[70] In the appeal before me, the factual information in the records is not about the WSIB's own employees; it is about the appellant. I find that just because one of these records might later have been used for employment-related purposes (of which there is no evidence before me) does not mean that the exclusion applies. In this case, I find that the records were generated in the context of the WSIB's operational mandate of

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[29] In this regard, I also note that previous IPC orders have found that the exclusion does not apply to operational records, such as occurrence reports, even where those records are later used for employment purposes. For example, see Order MO-2556, where Senior Adjudicator Frank Devries stated:

> In my view, a distinction can be made between the collection, preparation, maintenance and use of records that relate exclusively to an initial police investigation, like the records at issue in this appeal, and records that were collected, prepared, maintained and used by others who subsequently investigate complaints or other matters involving the original investigating officer's activities.

See also the Divisional Court's discussion in *Ministry of Community and Social Services v. Doe*, supra.

providing services to its clients. Although the records could be used for general training and quality assurance purposes, I find that they are not employment-related within the meaning of section 65(6)3.

[71] The WSIB's representations have not satisfied me that the records relate to communications about employment-related matters in which WSIB has an interest as employer, as required by section 65(6)3. Therefore, I find that the records do not meet the requirements of part 3 of the test for exclusion under section 65(6) and are not excluded from the *Act* on that basis. As the records are not excluded from the *Act*, I will order the WSIB to issue another access decision to the appellant.

ORDER:

I order the WSIB to issue another access decision to the appellant, without relying on the exclusion at section 65(6), and treating the date of this order as the date of the request for the purposes of the procedural requirements in the *Act* relating to its access decision.

Original Signed by: December 23, 2021

Diane Smith
Adjudicator