

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4297

Appeal PA21-00135

Workplace Safety and Insurance Board

August 31, 2022

**Summary:** The Workplace Safety and Insurance Board (the WSIB) received a request under the *Freedom of Information and Protection of Privacy Act* for access to the appellant's WSIB claim file. The WSIB issued a decision granting access in full to the responsive records. The appellant appealed the WSIB's decision to the Information and Privacy Commissioner of Ontario because he believes further records responsive to his request should exist. In this order, the adjudicator finds that the WSIB conducted a reasonable search for responsive records, and dismisses the appeal.

**Statutes Considered:** The *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 24.

### OVERVIEW:

[1] This order determines whether the Workplace Safety and Insurance Board (the WSIB) conducted a reasonable search for records relating to the requester's WSIB claim file.

[2] The Ministry of Labour, Training and Skills Development (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for all records relating to the requester's WSIB claim file. The ministry forwarded the request to the WSIB because the WSIB has custody or control of the requested records.

[3] The WSIB issued a decision to the requester granting full access to the

responsive records.

[4] The appellant appealed the WSIB's decision to the Information and Privacy Commissioner of Ontario (IPC) on the basis that additional responsive records should exist, and a mediator was appointed to explore resolution.

[5] Prior to mediation, the WSIB issued a revised decision granting full access to additional records it had located.

[6] During mediation, the appellant advised that he believes further records responsive to his request should exist.

[7] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced an inquiry by inviting representations from the WSIB, initially. I received representations from the WSIB, which I shared with the appellant. I invited and received representations from the appellant, which I shared with the WSIB. I then sought and received reply representations from the WSIB.

[8] In this order, I find that the WSIB conducted a reasonable search for responsive records, and dismiss the appeal.

## **DISCUSSION:**

[9] The sole issue in this appeal is whether the WSIB conducted a reasonable search for responsive records.

[10] The appellant claims that further records responsive to his request exist. Where a requester claims 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 of the *Act*.<sup>1</sup> If I am satisfied 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.

[11] 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 it has made a reasonable effort to identify and locate responsive records.<sup>2</sup> 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 (responsive) to the request.<sup>3</sup>

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<sup>1</sup> Orders P-85, P-221 and PO-1954-I.

<sup>2</sup> Orders P-624 and PO-2559.

<sup>3</sup> Orders M-909, PO-2469 and PO-2592.

[12] 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 such records exist.<sup>4</sup>

### **Representations of the WSIB**

[13] The WSIB submits that it conducted a reasonable search for responsive records. In support of its position, the WSIB submitted the affidavit of its Privacy, Access and Risk Manager in the Privacy and Freedom of Information Office (manager). The relevant portions of the manager's evidence are as follows:

- The appellant's request was initially sent to the ministry, and then provided to the WSIB by the ministry.
- WSIB claim files are managed and housed on the WSIB's electronic Account and Claims Enterprise System (ACES). As such, the majority of records relating to a WSIB claim reside in ACES.
- WSIB employees may also retain records related to their work as hardcopy notes, hardcopy files, email, instant messages, voicemail, or documents on a shared drive(s) or hard drive(s).
- The manager requested and received a complete copy of the appellant's WSIB claim file on ACES from the WSIB Access Department, which she disclosed to the appellant in full.
- The manager then identified nine WSIB employees that had worked on the appellant's claim. She provided them with a copy of the appellant's request, and asked them to search for records responsive to the request.
- Each of the nine WSIB employees searched for records responsive to the appellant's request by checking their hardcopy notes, hardcopy files, email account, instant messages, voicemails, shared drive(s), and hard drive(s).
- These further searches carried out by the nine WSIB employees resulted in 24 additional responsive records, which the manager disclosed to the appellant in full.

[14] The WSIB submits that the appellant's request was clear and provided sufficient detail so that it was not required to seek clarification from the appellant. The WSIB submits that it responded to the appellant's request literally, and it is not aware of any responsive records that have been destroyed.

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<sup>4</sup> Order MO-2246.

## **Representations of the appellant**

[15] The appellant submits that the WSIB has not completely responded to his request, and that three types of records have not been located by the WSIB. He specifies that he seeks access to the employment records of two WSIB employees, specifically portions that relate to their dealings with his claim and their reassignment from his claim. He specifies that he also wants records from a third WSIB employee, specifically portions that relate to the two WSIB employees' reassignment from his claim.

[16] The appellant states that he also seeks access to medical records from two medical appointments he attended. He states that he observed six or more medical professionals taking notes during his two appointments, and he seeks access to those records.

[17] The appellant acknowledges that one of the WSIB employees he named is no longer employed by the WSIB, and another is on medical leave but he states this is not a reason for their records and performance reviews to be unavailable.

[18] The appellant submits that the records above exist, because he was present during the creation of the medical records, and it is expected that the WSIB would keep employment records of its employees.

## **WSIB's reply**

[19] The WSIB submits that the appellant's original access request did not include the types of records he requested in his representations. The WSIB submits, therefore, that these types of records are outside the scope of this appeal.

[20] The WSIB submits that it does not maintain records created during consultations, or meetings with Health Information Custodians (HIC) and third-parties – even if they are contracted parties for the WSIB. The WSIB notes that the appellant may request access to such records from the HIC and third-parties through the appropriate legislative procedures.

## **Analysis and findings**

[21] The review of the issue of whether the WSIB, as an institution under the *Act*, has conducted a reasonable search for records as required by section 24 arises where a requester claims additional records exist beyond those identified by the institution.<sup>5</sup>

[22] Based on the representations of the parties, I am satisfied that the WSIB conducted a reasonable search for records responsive to the appellant's request. My reasons follow.

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<sup>5</sup> Orders P-85, P-221 and PO-1954-I.

[23] The WSIB has described the individuals involved in the search, where it searched, and the results of its search. In my view, the WSIB's search was logical and comprehensive, and it has searched all of its record holdings. As noted above, 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.<sup>6</sup> I am satisfied that the WSIB has provided sufficient evidence to establish this to be the case here. Based on the representations of the WSIB, and in the absence of persuasive evidence to the contrary, I am satisfied that the WSIB's search for responsive records was reasonable.

[24] The appellant argues that the WSIB did not conduct a reasonable search because it did not locate three types of records he claims are responsive to his request, and should exist. These three types of records include: (1) the employment record of two WSIB employees, particularly information about their reassignment from the appellant's claim, (2) records from a third WSIB employee with respect to the reassignment of the two WSIB employees who worked on the appellant's case, and (3) medical records from two medical appointments the appellant attended.

[25] I will deal first with the appellant's arguments about the employment records that he argues should have been located by the WSIB in its search. The appellant's original request was for all records relating to his WSIB claim. The WSIB submits, and I agree, that asking the WSIB to include employment records of its employees in its search represents an expansion of the scope of the request. To be considered responsive to the request, records must "reasonably relate" to the request.<sup>7</sup> In my view, the employment records of the employees identified in the appellant's submissions expand the scope of his original request because these records do not "reasonably relate" to his WSIB claim file. As the appellant's request for this information falls outside the scope of his original request, I cannot address it in this order. However, the appellant may file a new request under the *Act* for the employment records not captured by his original request.

[26] I will now deal with the appellant's arguments about the medical records. I am not persuaded that there is a reasonable basis to conclude that further searches would result in the medical records sought by the appellant. The WSIB submits, and I accept, that it does not maintain records created during consultations, or meetings with HICs and third- parties. I am satisfied that if the WSIB had a copy of the medical records the appellant allege exists, the WSIB's searches should have located it. The *Act* does not require the WSIB to prove with absolute certainty that further records do not exist. However, the WSIB must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.<sup>8</sup> I am satisfied that the WSIB has done so. I note that the appellant can seek access to these medical records by filing an

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<sup>6</sup> Orders M-909, PO-2469 and PO-2592.

<sup>7</sup> Orders P-880 and PO-2661.

<sup>8</sup> Orders P-624 and PO-2559.

access request with the HIC under the *Personal Health Information Act*, and by filing an access request with the third-party under the *Personal Information Protection and Electronic Documents Act*.

**ORDER:**

I uphold the WSIB's search as reasonable, and dismiss the appeal.

Original Signed By: \_\_\_\_\_

Anna Truong  
Adjudicator

\_\_\_\_\_ August 31, 2022