

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4429

Appeal PA21-00623

Workplace Safety and Insurance Board

August 22, 2023

Summary: The appellant submitted an access request to the Workplace Safety and Insurance Board (WSIB) for call logs and emails relating to a specific claim file. The WSIB located responsive records and provided the appellant with access to them. The appellant appealed the WSIB's decision because she believes additional responsive records should exist. In this order, the adjudicator finds that the WSIB conducted a reasonable search for responsive records. The appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, section 24.

OVERVIEW:

[1] The Workplace Safety and Insurance Board (WSIB) received a request, under the *Freedom of Information and Protection of Privacy Act* (the *Act*), for access to the following:

... [A] report of all call logs and emails, incoming, outgoing calls and emails, from the beginning of the claim file to present. Columns - Date, Subject, Duration, and Origination (Incoming Call or outgoing Call or Email Correspondence).

[2] The request included the following verified phone numbers:

[specified number]

[specified number]

[3] The WSIB issued a decision granting full access to the records for the verified numbers provided.

[4] The requester, now the appellant, appealed the WSIB's decision to the Information and Privacy Commissioner of Ontario (IPC).

[5] During mediation, the appellant provided an example of a call that was placed on a specific date that she believed she did not receive. In response, the WSIB provided a copy of the spreadsheet that was shared with the appellant that included the specific call referred to by the appellant.

[6] As further mediation was not possible, this appeal was transferred to the adjudication stage of the appeal process, where I decided to conduct an inquiry under the *Act*. I invited and received representations from the parties.¹

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

DISCUSSION:

[8] The sole issue in this appeal is whether the WSIB conducted a reasonable search for responsive records. In particular, the appellant claims that further records should exist as the call logs did not include a specific date. As well, the appellant states that her request was for all emails from the beginning of the claim to the present but the disclosure was limited to two calendar years.

[9] 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 24.² If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the WSIB's decision. If I am not satisfied, I may order further searches.

[10] The *Act* does not require the WSIB to prove with absolute certainty that further records exist. However, the WSIB must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.³ 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

¹ The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Practice Direction 7* and section 7.07 of the IPC's *Code of Procedure*.

² Orders P-85, P-221 and PO-1954-I.

³ Orders P-624 and PO-2559.

(responsive) to the request.⁴

[11] 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.⁵

Representations of the parties

[12] The WSIB submits that it conducted a reasonable search for responsive records. In support of its position, the WSIB submitted an affidavit from its Director of Privacy and Freedom of Information Office. The affidavit described the individuals involved in the search, where they searched, and the results of their search.

[13] The appellant submits that as the April 24, 2020 call can be retrieved, it therefore should be identified on the call logs prepared by the WSIB. She also submits that the appellant's representative underwent a number of conference calls which were not reflected in the disclosed call logs by the WSIB. In particular, the appellant states that a call on August 23, 2021 was not included in the call logs.

[14] In addition, the appellant submits that her request was for all emails from the beginning of the claim to the present but the disclosure was limited to two calendar years. As such, she believes that further records exist.

Analysis and findings

[15] I am satisfied that the WSIB conducted a reasonable search for records responsive to the appellant's request for the following reasons.

[16] 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. 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.⁶ I am satisfied that WSIB has provided sufficient evidence to establish this.

[17] I have reviewed the appellant's representations, and I am not persuaded that she has established a reasonable basis for concluding that further responsive records exist. As noted above, 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.⁷

[18] The appellant argues that as the April 24, 2020 call can be retrieved it should be

⁴ Orders M-909, PO-2469 and PO-2592.

⁵ Order MO-2246.

⁶ Orders M-909, PO-2469 and PO-2592.

⁷ Order MO-2246.

identified on the call log prepared by the WSIB. In its affidavit, the WSIB explained that the April 24, 2020 call was a conference call. In particular, that call was first initiated between two WSIB employees and then the appellant was later added to the call. As such, the WSIB explained that the call does not appear as an outbound call for the appellant's phone number and in turn does not appear on the call log production. In sum, the WSIB's call recording software does not identify conference calls involving the appellant's phone number where the appellant's phone number is not one of the first two phone numbers involved in the conference call. In my view, this is a reasonable explanation for why the April 24, 2020 call and other conference calls (such as the one on August 23, 2021) do not appear on the call log production.

[19] The appellant also argues that her request was for all emails from the beginning of the claim to the present but the disclosure was limited to two calendar years. The WSIB explained that it uses Proofpoint Enterprise, an email gateway software, to search for email data. The WSIB also explained that Proofpoint Enterprise's search function is limited to two calendar years from the date of search. As such, it is not the WSIB limiting its search for emails to the last two calendar years of the date of search but the system it uses. I find the WSIB's explanation to be reasonable.

[20] For the reasons above, I find that the WSIB conducted a reasonable search for responsive records.

ORDER:

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

Original signed by: _____
Lan An
Adjudicator

_____ August 22, 2023