

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER PO-4436-F

Appeal PA21-00358

Workplace Safety and Insurance Board

August 31, 2023

Summary: In Interim Order PO-4386-I, the adjudicator did not uphold the reasonableness of the search efforts of the Workplace Safety and Insurance Board (WSIB) in response to a request for records made under the *Freedom of Information and Protection of Privacy Act*. In this final order, the adjudicator finds that the WSIB conducted another search and provided sufficient evidence that its search was reasonable in the circumstances. As a result, she upholds the WSIB's search, and dismisses the appeal.

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

Order Considered: Order PO-4386-I.

OVERVIEW:

[1] In Interim Order PO-4386-I, I ordered the Workplace Safety and Insurance Board (the WSIB) to conduct a search in response to a request for records made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). In that order, I found that the WSIB had not provided sufficient evidence that it had conducted a reasonable search. After Interim Order PO-4386-I was issued, the WSIB conducted a further search and provided affidavit evidence regarding its search efforts. The parties exchanged representations about this.

[2] For the reasons that follow, I uphold the WSIB's search as reasonable, and

dismiss the appeal.

DISCUSSION:

[3] If a requester (as the appellant does here) claims that additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 24 of the *Act*.¹ If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's search.² For the following reasons, that is the case here.

[4] A reasonable search appeal examines whether an institution has provided enough evidence to show that it made a reasonable effort to identify and locate responsive records.³ The *Act* does not require an institution to prove with certainty that further records do not exist.

[5] The IPC will order a further search if the institution does not provide enough evidence to show that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁴ In Interim Order PO-4386-I, I found that the WSIB's evidence was insufficient.

[6] As noted in Interim Order PO-4386-I, the relevant portion of the request says:

In 2014 your organization sent me for an IME by Neurosurgeon [named physician]. I need to know how many IME's he performed in 2013, 2014 and 2015 and what the results were for those assessments. Also any complaints that your organization received about this Doctor.

[7] After Interim Order PO-4386-I was issued, the WSIB conducted a search and released further records to the appellant, in full or in part.⁵

[8] The WSIB's Director of Privacy and Freedom of Information Office (the director) provided affidavit evidence with supporting exhibits describing the details of the WSIB's search efforts after Interim Order PO-4386-I was issued. He described the employees involved in the searches conducted (and why those employees were asked to search), the locations searched, and the results of the searches. As these details were shared with the appellant, there is no need to set them all out here.

[9] I wish to also state that in Interim Order PO-4386-I, I noted that the WSIB had not provided reply representations in response to the points made by the appellant,

¹ Orders P-85, P-221 and PO-1954-I.

² Otherwise, it may order the institution to conduct another search for records.

³ Orders P-624 and PO-2559.

⁴ Order MO-2185.

⁵ The WSIB responsive records and released them to the appellant, in full or in part, as described in the WSIB's affidavit.

when given the opportunity to do so. The director's affidavit clarified that the WSIB had not replied to the appellant's representations because the email had been inadvertently missed.

[10] The appellant's representations in response to the WSIB's representations and affidavit do not persuade me that any aspect of the WSIB's further search efforts were unreasonable in the circumstances.

[11] While I acknowledge that he was previously advised that a search could not be conducted without a WSIB number, and other doctors' names came up in the WSIB's search without a number, this does not establish that the WSIB's search efforts conducted after I issued Interim Order PO-4386-I were unreasonable in the circumstances. In any event, I dealt with the issues relating to the WSIB number in that interim order, and I am satisfied that any defect in the initial search efforts due to this question have been remedied by that order.

[12] The appellant also questions practices that are outside the scope of this appeal, and indeed, the *Act*, such as the billing of doctors who work for hospitals and the WSIB's handling complaints against doctors.

[13] The appellant's representations also contain several assertions (for example, about his awareness of there being several other WSIB cases like his own), but I find that these assertions do not provide a reasonable basis for believing that there must be additional responsive records. They are insufficiently supported assertions that do not persuade me to question the reasonableness of the search efforts described by the WSIB after the interim order was issued.

[14] For these reasons, I uphold the reasonableness of the WSIB's search following Interim Order PO-4386-I, and dismiss the appeal.

ORDER:

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

Original signed by: _____

Marian Sami
Adjudicator

August 31, 2023