

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-4467

Appeal PA22-00286

Workplace Safety and Insurance Board

December 15, 2023

**Summary:** The Workplace Safety and Insurance Board (the WSIB) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to recordings of WSIB phone calls for a particular claim number. The WSIB issued a decision stating that records responsive to the appellant's request do not exist, claiming that the WSIB only retains phone call recordings for a 90-day period. The appellant appealed the WSIB's decision to the Information and Privacy Commissioner of Ontario, because he believes recordings should exist. The appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*.

Based on her review of the file, the adjudicator is satisfied that ordering the WSIB to conduct further searches would not yield any records because of the WSIB's 90-day retention policy for recordings. In this order, the adjudicator exercises her discretion under section 52(1) of the *Act* to not conduct an inquiry and dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 24 and 52(1).

### OVERVIEW:

[1] The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Workplace Safety and Insurance Board (the WSIB) for access to all recorded phone calls (recordings), between him and two named individuals at the WSIB, relating to a particular claim number. The appellant subsequently provided

additional information about the calls, including the date range of when they were made.

[2] The WSIB issued a decision denying access, stating no recordings responsive to the appellant's request were located. It also informed him that recordings are only retained for a 90-day period.

[3] The appellant appealed the WSIB's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[4] During mediation, the appellant clarified certain information, and the WSIB provided additional information about its search that was shared with him. The appellant confirmed he was not satisfied and intended to pursue his appeal at the adjudication stage of the IPC's appeal process. The only issue remaining for adjudication in this appeal is reasonable search.

[5] After considering the information in the file, I determined on a preliminary basis that this appeal does not warrant an inquiry under section 52(1) of the *Act*, because there is no reasonable basis to conclude that recordings responsive to the appellant's request may be located as a result of the WSIB conducting further searches. I invited and received representations from the appellant about my preliminary determination.

[6] After considering the appellant's representations and other information in the file, I have reached a final decision that an inquiry is not warranted. I dismiss the appeal. My reasons are set out below.

## **DISCUSSION:**

### **Should the appellant's reasonable search appeal proceed to an inquiry under the *Act*?**

[7] Section 52(1) of the *Act* gives me discretion as to whether an inquiry will be conducted. It uses permissive rather than mandatory language, stating, "The Commissioner may conduct an inquiry to review the head's decision[.]"

[8] Similarly, Article 7.02 of the IPC's *Code of Procedure* states:

At the Adjudication stage, an Adjudicator may conduct an inquiry to dispose of some or all of the issues in the appeal.

[9] The IPC has extensively canvassed the issue of reasonable search for responsive records in orders issued under the *Act* and its municipal counterpart, the *Municipal*

*Freedom of Information and Protection of Privacy Act.*<sup>1</sup>

[10] 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.<sup>2</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>3</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>4</sup>

[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>5</sup>

***Representations, analysis and findings***

[13] The only possible outcome in favour of the appellant that may result from this appeal is an order that the WSIB conduct further searches for records responsive to the appellant's request.

[14] After considering the appellant's representations and other information in the file, I have determined that this appeal does not warrant an inquiry under section 52(1) of the *Act*, because there is no reasonable basis to conclude that recordings responsive to the appellant's request may be located as a result of the WSIB conducting further searches.

[15] The appellant states that his request is for phone calls that took place between August 24, 2021 to January 30, 2022, and he made his request under the *Act* on June 1, 2022. The appellant states, however, that he made earlier requests to the WSIB verbally in December 2021 and March 2022. The appellant submits that having been alerted to the need to disclose the records at that time, the WSIB should have preserved the recordings.

[16] The rest of the appellant's representations delve into the substance of whether the WSIB conducted a reasonable search for responsive records, which is not relevant

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<sup>1</sup> The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 17.

<sup>2</sup> Orders P-85, P-221 and PO-1954-I.

<sup>3</sup> Orders P-624 and PO-2559.

<sup>4</sup> Orders M-909, PO-2469 and PO-2592.

<sup>5</sup> Order MO-2246.

to my determination of whether I should conduct an inquiry under the *Act* in this appeal.

[17] The appellant's request under the *Act* was received by the WSIB on June 1, 2022, well outside the 90-day retention period cited by the WSIB in its decision letter. Since the appellant requested records under the *Act* beyond the WSIB's 90-day retention period for recordings, there is no reasonable basis to conclude that were I to order the WSIB to conduct a further search, it would yield the recordings that the appellant is seeking.

[18] I acknowledge that the appellant states that he made a request for records to the WSIB verbally in December 2021 and March 2022. However, to make an access request under the *Act*, the request must be made in writing.<sup>6</sup> Any verbal requests for records the appellant made to the WSIB outside of the *Act* are not relevant to my determination of the issue in this appeal. For the reasons above, I exercise my discretion under section 52(1) of the *Act* to decline to conduct an inquiry, and I dismiss the appeal.

**ORDER:**

Under section 52(1) of the *Act*, I decline to conduct an inquiry and I dismiss the appeal.

Original Signed By: \_\_\_\_\_  
Anna Truong  
Adjudicator

December 15, 2023 \_\_\_\_\_

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<sup>6</sup> Section 24(1)(a) states: a person seeking access to a record shall, make a request in writing to the institution that the person believes has custody or control of the record, and specify that the request is being made under this *Act*.