

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-4526-F

Appeal PA22-00141

Workplace Safety and Insurance Board

June 25, 2024

**Summary:** This final order determines whether the Workplace Safety and Insurance Board (the WSIB) conducted a reasonable search for responsive records. In the first interim order PO-4402-I, the adjudicator ordered the WSIB to conduct a further search for responsive records. In the second interim order PO-4424-I, the adjudicator again ordered the WSIB to conduct a further search for responsive records. In this final order, the adjudicator finds that the WSIB has now conducted a reasonable search for responsive records and dismisses the appeal.

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

**Order Considered:** Interim Orders PO-4402-I and PO-4424-I.

### OVERVIEW:

[1] This final order addresses the reasonableness of the Workplace Safety and Insurance Board's (the WSIB) search for records responsive to the appellant's request, as required under section 24 of the *Freedom of Information and Protection of Privacy Act* (the *Act*), after having been ordered to conduct further searches in Interim Orders PO-4402-I and PO-4424-I.

[2] By way of background, the appellant submitted a request to the WSIB under the *Act* for access to information relating to a specified file. The appellant sought access to:

[...] all internal emails and external emails between the WSIB and 3 Parties, handwritten notes, electronic notes, reports, call recording (specifically between the WSIB and AECON, WSIB and Bayshore, WSIB and Toronto Grace Health Centre, WSIB and Uxbridge Cottage Hospital, etc.), all claim file information not normally in file like internal systems information (dates/times file accessed, by who, what actions on the file, etc.).

From the beginning of the claim to present.

[3] In Interim Order PO-4402-I, I determined that the WSIB had not met its search obligations under section 24 of the *Act* and ordered it to conduct a further search for responsive records in accordance with my findings in the interim order. I also ordered the WSIB to issue a new access decision letter.

[4] The WSIB conducted a further search, and submitted an affidavit describing its search efforts, which included a copy of a new decision letter indicating that no further records were found. The affidavit and decision letter were shared with the appellant in accordance with the IPC's *Code of Procedure*. The appellant provided responding submissions.

[5] In Interim Order PO-4424-I, I determined that the WSIB had still not met its search obligations under section 24 of the *Act* and ordered it to conduct a further search for responsive records in accordance with my findings in the interim order and to issue a new access decision. Again, I ordered the WSIB to issue a new access decision letter.

[6] The WSIB conducted a further search and located additional records. It submitted an affidavit describing its search efforts, and a copy of a new decision letter addressing access to the records located during its search. The affidavit and decision letter were again shared with the appellant in accordance with the IPC's *Code of Procedure*. Again, the appellant provided responding submissions.

[7] In this interim order, I find that the WSIB has discharged its obligations under section 24 of the *Act* and has now conducted a reasonable search for responsive records. I dismiss the appeal.

## **DISCUSSION:**

[8] The sole issue to be determined is whether the WSIB conducted a reasonable search in response to the appellant's request.

[9] The appellant maintains that further responsive records exist. If a requester 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*.<sup>1</sup>

[10] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.<sup>2</sup>

[11] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;<sup>3</sup> that is, records that are "reasonably related" to the request.<sup>4</sup>

[12] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.<sup>5</sup> 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.<sup>6</sup>

[13] In Interim Order PO-4402-I, I addressed the failure of the WSIB to search for call recordings and records requested by the appellant. At paragraphs 28 to 31, I wrote:

[28] Although the appellant did not provide a list of WSIB employees and/or business areas or directly respond to the WSIB's request for telephone numbers, I do not interpret this as the appellant agreeing to narrow the scope of the search. Instead, I find that it reflects the appellant relying on the WSIB to identify and locate responsive records, including call recordings between the WSIB and AECON, WSIB and Bayshore, WSIB and Toronto Grace Health Centre, WSIB and Uxbridge Cottage Hospital.

[29] I find that it was reasonable in the circumstances for the appellant to do so. This is because to carry out a reasonable search, the institution must task someone with sufficient knowledge of the subject matter to identify places to look. In my view, this includes identifying the responsive phone numbers and WSIB employees who may have responsive records.

[30] I pause to note here that the WSIB did not appear to request responsive call recordings from even the individuals that it did identify as potentially having responsive records. In my view, a reasonable search would have included at a minimum, searching for responsive phone call recordings relating to the individuals the WSIB contacted as well as

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

<sup>2</sup> Order MO-2246.

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

<sup>4</sup> Order PO-2554.

<sup>5</sup> Orders M-909, PO-2469 and PO-2592.

<sup>6</sup> Order MO-2185.

requesting responsive records from the individuals listed in the appellant's representations in this appeal.

[31] Accordingly, I will order that the WSIB conduct further searches in accordance with the findings in this order and to issue a new access decision.

[14] The WSIB conducted a further search and after reviewing the materials provided by the parties, in Interim Order PO-4424-I, I found that although the WSIB has complied with its obligations under the *Act* with respect to making reasonable efforts to locate records responsive to the appellant's request for call recordings, it had failed to request other responsive records from the 14 individuals the appellant identified. At paragraphs 18 to 20, I wrote:

[18] I find that the WSIB made a reasonable effort to locate call recordings that are responsive to the appellant's request. Based on the searches it conducted and who was tasked with conducting them, I find that the WSIB has now complied with its obligations under the Act with respect to making reasonable efforts to locate records responsive to the appellant's request for call recordings.

[19] I also find the date range used by the WSIB for call recordings is reasonable because of WSIB's policy to retain call recordings for 90 days.

[20] However, it appears that the WSIB has not conducted a reasonable search for other responsive records from the 14 individuals the appellant identified as potentially having responsive records. Accordingly, I will order that the WSIB conduct further searches for responsive records from the individuals the appellant identified and to issue a new access decision. To the extent that responsive records relating to those 14 individuals have already been obtained and identified as a result of the WSIB's initial search and in its initial access decision, the WSIB should indicate this in its decision letter. The time frame of the search will be for the time period from January 17, 2012 to February 15, 2022.

[15] The sole remaining issue is therefore whether the WSIB has now carried out a reasonable search for responsive records.

### **The representations**

[16] The affidavit provided by the WSIB's Director of the Privacy and Freedom of Information Office (the Director) indicates that after receiving Interim Order PO-4424-I, he undertook a further search for records by sending an email to the 14 individuals the appellant identified as potentially having responsive records asking them to search for responsive records. He says that based on the replies he received, 6 of the individuals were no longer employed by the WSIB. He says that the remaining 8 employed individuals

conducted a search for responsive records, including checking their respective hardcopy notes, hardcopy files, email accounts, shared drive(s) and hard drive(s). He states he was then advised that 7 of those 8 employed individuals did not locate responsive records. The remaining employed individual located responsive records which were provided to the Director.

[17] The Director further states that that when he reviewed the records provided by the individual, he noted that another individual who was not listed among the original 14, and who had earlier indicated had no responsive records, might actually be in possession of responsive records. Taking his own initiative, he recontacted this individual who then conducted another search and located responsive records. These records were also provided to the Director.

[18] The Director states that he then contacted the WSIB's Director of Operations who had direct involvement in the claim at issue and who was aware of the various claim activities of the 6 individuals who were listed but no longer employed at the WSIB. He states that the Director of Operations provided an email outlining the individuals' roles and how they would have kept records regarding the claim. The email indicated only one individual as possibly having records not already in the claim file. He says he then asked that the WSIB Information Technology Department conduct a search of the individual's email account and was advised that the email account had been deleted when she left the WSIB's employ and that no records existed.

[19] The Director then sent a supplementary decision letter to the appellant addressing the located responsive records.

[20] The appellant maintains that the WSIB's search was inadequate because the WSIB did not have its Information Technology Department conduct a search of the other former employees' email accounts nor provide details of when the individual's email account was deleted. The appellant also points to the other individual who the Director recontacted noting that this individual initially said that he had no responsive records. The appellant further asserts that the WSIB must not have used the correct search parameters because more records should have been found.

### **Analysis and finding**

[21] I find that the WSIB has now conducted a reasonable search for responsive records in compliance with my Interim Order PO-4424-I, in accordance with its obligations under section 24 of the *Act*.

[22] I find that the WSIB made a reasonable effort to conduct a reasonable search for responsive records from the 14 individuals the appellant identified. I also note that the Director went so far as to recontact an unlisted individual who had initially said that they did not have responsive records. I find that based on the information the Director received, it was reasonable for him to conclude that the emails of 5 of the 6 formerly

employed individuals would not contain responsive records. Finally, I accept that the WSIB used reasonable parameters in conducting its search in accordance with my interim Order PO-4424-I. Based on the searches it conducted and the individuals who were tasked with conducting them, I find that the WSIB has now complied with its obligations under the *Act* with respect to making reasonable efforts to locate responsive records.

**ORDER:**

I find that the WSIB has conducted a reasonable search for responsive records and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

\_\_\_\_\_ June 25, 2024