



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER P-603**

**Appeal P-9200677**

**Workers' Compensation Board**



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# ORDER

## BACKGROUND:

The Workers' Compensation Board (the Board) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the Board's audit reports.

The Board denied access to the responsive records in their entirety, relying upon one or more of the exemptions in sections 13(1), 14(1)(i), 17(1), 18(1)(f) and 21 of the Act. The Board also raised the application of section 23 of the Act, which it indicated was not applicable to the records covered by the request. The requester appealed the Board's denial of access.

During mediation, the appellant agreed to eliminate from the appeal any third party or personal information which the Board had severed from the reports pursuant to sections 17 and 21 of the Act. The Board agreed that one reference in Record 7, at page 36 was incorrectly severed under section 17, as it was not information from a third party.

Further mediation was not successful and notice that an inquiry was being conducted to review the Board's decision was sent to the Board, the appellant and the authors of the reports. Representations were received from the Board and the appellant. A list of the records at issue is set out in Appendix A.

## ISSUES:

The issues arising in this appeal are:

- A. Whether the discretionary exemption provided by section 18(1)(f) of the Act applies.
- B. Whether the discretionary exemption provided by section 13(1) of the Act applies.
- C. Whether the discretionary exemption provided by section 14(1)(i) of the Act applies.
- D. If the answer to Issues A, B or C is yes, whether there is a compelling public interest in the disclosure of the records which clearly outweighs the purpose of the exemption.

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the discretionary exemption provided by section 18(1)(f) of the Act applies.**

The Board submits that section 18(1)(f) of the Act applies to Records 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11. This section reads:

A head may refuse to disclose a record that contains,

plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;

In order to qualify for exemption under section 18(1)(f) of the Act, the Board must establish that a record satisfies each element of the following three part test:

1. the record must contain a plan or plans, **and**
2. the plan or plans must relate to:
  - (i) the management of personnel or
  - (ii) the administration of an institution,  
**and**
3. the plan or plans must not yet have been put into operation or made public.

[Order P-229]

Part one of the test requires that the record contain a "plan". The Eighth Edition of the Concise Oxford Dictionary defines "plan" as "a formulated and especially detailed method by which a thing is to be done; a design or scheme" (Orders M-77, M-90, M-92, P-229, P-348 and P-555).

The Board takes the position that a "plan", within the meaning of section 18(1)(f), includes preliminary or discussion drafts or proposed plans or the outline of a plan. The Board submits:

... the detailed Findings, Conclusions and Recommendations contained in audit reports contain the essential elements of a plan. The problem identified or Findings is the thing to be done. The audit recommendations can be the formulated and detailed method, the scheme by which the thing is to be done. The scheme can be adopted directly as an action plan by management.

Order P-348 dealt with a consultant's report concerning a school at one campus of Humber College of Applied Arts and Technology. The report contained sections entitled: "Recommendations and Rationale", "Conclusion" and "Recommendations Recap". Former Assistant Commissioner Tom Mitchinson commented on the applicability of section 18(1)(f) as follows:

[the report] contains certain recommendations which, if adopted and implemented by the institution, might involve the formulation of a detailed plan, but the record itself is not a plan or a proposed plan. Therefore, in my view, the record does not qualify for exemption under either section 18(1)(f) or (g).

Other orders have considered section 11(f) of the Municipal Freedom of Information and Protection of Privacy Act, which corresponds to section 18(1)(f) of the Act. These orders found that observations and recommendations for improved municipal fire services contained in a consultant's report were not a "plan" (Order M-90) nor were observations and recommendations for change in a report analyzing a municipal transit contract (Order M-92).

In this appeal, it is my view that the recommendations contained in the reports do not themselves constitute a "plan" for the purposes of section 18(1)(f). In my view these reports were not intended to be an "especially detailed method" for carrying out the recommendations, rather, they would form the basis for the development of a plan which would then set out the detailed methods and actions required to accomplish the recommendations.

For this reason, I find that Records 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11 do not meet the first part of the test and accordingly, they are not exempt under section 18(1)(f) of the Act.

**ISSUE B: Whether the discretionary exemption provided by section 13(1) of the Act applies.**

The Board submits that section 13(1) of the Act applies to Records 1, 3, 5, 6, 7, 9, 10 and 11. This section reads:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process (Orders 118, P-304, P-348, P-356 and P-529).

The Board submits that the audit reports contain advice and recommendations of a consultant, an auditor, retained by the Board. Having reviewed Records 1, 3, 5, 6, 7, 9, 10 and 11, I am satisfied that they contain recommendations which relate to courses of action, communicated to persons within the Board.

Section 13(2)(f) provides:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;

The Board submits that, in the context of this appeal, this section only applies to reports on the performance or efficiency of the Board **as a whole** or in respect of a particular program or policy of the Board, but is not applicable to a report concerning **part** of the Board, such as a branch, division, office, department or section.

If section 13(2)(f) is given the narrow interpretation proposed by the Board, this would restrict access to a large number of reports and studies which do not consider an entire institution. A broader interpretation was adopted in Order P-348 where section 13(2)(f) was found to apply to a consultant's report which reviewed not the entire institution, but a particular school at one campus of Humber College of Applied Arts and Technology. This interpretation is consistent with the general principle of providing a general right of access to government information and, in my view, section 13(2)(f) should be given this broader interpretation rather than the narrow interpretation suggested by the Board.

The Board submits that the audit reports are not reports on "performance or efficiency" of the Board, because:

... value for money audits and operational reviews are by definition, not considered by the Provincial Auditor as evaluations of the effectiveness or efficiency of programs or program delivery

The Board describes the audit reports and indicates that the value for money audits are carried out to examine and assess if resources are being managed for "economy, efficiency and effectiveness". An operational review is similar to a value for money audit. It examines the process set up to achieve an established objective and the resulting report would recommend "how to improve the effectiveness of the process".

In my view, a report which considers effectiveness, efficiency and economy is one which considers the "performance" and "efficiency" of an institution, and I find that Records 1, 3, 5, 6, 7, 9, 10 and 11 fall within the mandatory exception in section 13(2)(f) and accordingly, are not exempt under section 13(1) of the Act.

**ISSUE C: Whether the discretionary exemption provided by section 14(1)(i) of the Act applies.**

The Board submits that section 14(1)(i) of the Act applies to Records 3, 4 and 11. This section reads:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

In my view, the exceptions to access set out in section 14(1) of the Act require that there exists a reasonable expectation of probable harm. The mere possibility of harm is not sufficient. At a minimum, the Board must establish a clear and direct linkage between the disclosure of the information and the harm alleged (Orders M-202 and P-557).

The Board submits:

... system and operational controls are established for the protection of Board assets and cash, for which protection is reasonably required. The purpose of the system and operational controls is to guard against misappropriation and errors.

... Detailed information on system and operational controls could provide knowledge to perpetrate fraud. Mere knowledge of system weaknesses and procedures undermines and endangers the system or procedure.

Record 3 is a 1990 Audit Review of the "Survivors System", a computer system which, according to the Audit Review, "was developed to monitor claims and authorize payments to the dependant Survivors of the deceased worker".

Record 4 is a 1989 value for money audit of "Health Care Benefits" activities which refers, in part, to computer systems used for these activities. The report recommends more effective use of the computer system in the day to day processing of information relative to Health Care Benefits activities but does not provide details as to the function of the system itself.

Record 11 is a 1982 value for money report on the "Revenue Area Services, Field Audit Section". The role of the section is to perform audits of employers' payroll records and to confirm their industry classifications. The report itself concerns, in addition to accountability relationships, planning and training, how to better use the computer system to target employers for audits.

Having reviewed these reports, I am not persuaded that Records 3, 4 and 11 contain information that would be exempt under section 14(1)(i) of the Act. Accordingly, I find that they should be released to the appellant.

Since I have found that the exemptions claimed do not apply to the records, it is not necessary to consider Issue D.

## **ORDER:**

1. I order the Board to disclose those portions of the records which are at issue to the appellant, within 15 days of the date of this order.
2. In order to verify compliance with this order, I order the Board to provide me with copies of the records disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ December 21, 1993

## APPENDIX A

RECORD	DESCRIPTION	EXEMPTIONS CLAIMED
1	Coopers Lybrand report on the Corporate Services Division, 1987	13(1), 18(1)(f)
2	Review of internal audit function; Arthur Andersen & Co., 1991	18(1)(f)
3	Survivors of the system audit review; Arthur Andersen & Co., 1990	13(1), 14(1)(i)
4	Value for money audit of health care benefits; Deloitte Haskins & Sells, 1989	14(1)(i), 18(1)(f)
5	Comprehensive audit of the Hamilton Regional Office; Deloitte Haskins & Sells, 1988	13(1), 18(1)(f)
6	Comprehensive Audit of the Downsview Rehabilitation Centre; Deloitte Haskins & Sells, 1987	13(1), 18(1)(f)
7	Comprehensive audit of the management information systems division; Deloitte Haskins & Sells, 1986	13(1), 18(1)(f)
8	Comprehensive audit of the first aid program; Deloitte Haskins & Sells, 1985	18(1)(f)
9	Comprehensive audit of the medical aid branch; Deloitte Haskins & Sells, 1984	13(1), 18(1)(f)
10	Comprehensive audit of the human resources division; Deloitte Haskins & Sells, 1983	13(1), 18(1)(f)
11	Value for money report on the revenue area services, field audit section; Deloitte Haskins & Sells, 1982	13(1), 14(1)(i), 18(1)(f)