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

ORDER PO-2424

Appeal PA-040238-1

Workplace Safety and Insurance Appeals Tribunal

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NATURE OF THE APPEAL:

The Workplace Safety and Insurance Appeals Tribunal (WSIAT) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

> Dans la décision 325-95 du tribunal, le tribunal m'a accordé des bénéfices pour le syndrome neurotoxique humain et les séquelles de la condition.
>
> 1. J'aimerais [la] description du "syndrome"
>
> 2. Quelle maladie et condition résulte du syndrome neurotoxique humain?
>
> 3. Quelles séquel[les] prévues dans la décision 325-95 ont résulté du syndrome neurotoxique humain?
>
> …
>
> Si vous avez besoin de plus amples renseignements n'hésitez pas à communiquer [avec moi.]

In response, WSIAT sent correspondence to the requester stating, amongst other things, the following:

> L'examen de votre demande indique qu'elle vise des renseignements liés à des questions décidées dans les *décisions n°S 325/95, 325/95R, 975/01 et 975/01R*. Par exemple, voici ce que précise le paragraphe 6 de la *décision n° 325/95*:
>
> > Depuis, le travailleur [vous-même] a reçu un diagnostic de syndrome neurotoxique. Le travailleur soutient que ce syndrome neurotoxique résulte de la nature de son emploi et qu'il a droit à une indemnité pour l'incapacité résultant de ce syndrome et de ses séquelles.
>
> Comme vous l'avez indiqué, le jury auteur de la *décision n° 325/95* a conclu que vous aviez droit à une indemnité pour un syndrome neurotoxique résultant de votre emploi et pour les séquelles de ce syndrome après le 27 février 1989. Dans la *décision n° 975/01*, le jury a pris en considération divers aspects de votre indemnité. Ces deux décisions ont fait l'objet d'une demande de réexamen. Je note que votre appel en instance dans le dossier du TASPAAT n° 2003-0003349 pourrait aussi donner lieu à une décision du Tribunal abordant ces questions.
>
> Une copie de ces décisions vous a déjà été envoyée. Même si le Tribunal peut exiger des frais pour le traitement de votre demande aux termes de la LAIPVP, par courtoisie, je vous renvoie votre cheque de 5 $, et je joins une copie gratuite des *décisions n°S 325/95, 325/95R, 975/01* et *975/01R*. Une fois qu'une décision

> aura été rendue dans le dossier n° 2003-0003349, vous en recevrez également une copie.

In addition, in a letter predating the request for access, WSIAT advised the requester that:

> ... Comme je vous l'ai expliqué lors de notre conversation, nous devrons procéder encore une fois à l'enregistrement de votre dossier de cas, lequel contient plusieurs milliers de pages. Vous conviendrez sans aucun doute que cette tâche exige du temps et qu'il m'est donc impossible de vous confirmer une date d'audience à ce stade-ci.

In his letter of appeal to this office, which resulted in the opening of his appeal file, the requester (now the appellant) explained that what he was seeking access to was his file at WSIAT, but in a format that was accessible to him. Specifically, the appeal letter stated that:

> 1. J'ai un examen de sedule pour le l[er] octobre 2004 au tribunal.
>
> J'aurais besoin de mon information personnelle dans mon dossier au tribunal [pour] que je puisse défendre mon cas à 1'examen du l[er] octobre 2004. J'ai besoin de 1'information sur cassette car je ne peux pas lire.
>
> 2. Je n'ai pas encore reçu accès à mon dossier de cas sur cassette du tribunal pour défendre mon cas à 1'examen du l[er] octobre 2004.
>
> Je demande au commissaire d'intervenir A.S.A.P. en vertu de la loi de l'AIPVP.

During the mediation stage of the appeal, the appellant indicated that he was no longer seeking answers to the questions set out in his initial correspondence. In addition, WSIAT confirmed that the appellant had been provided with paper copies of Decisions Nos. 325/95, 325/95R, 975/01 and 975/01R in the French language and that it had previously recorded Decisions Nos. 325/95 and 325/95R for the appellant onto audiotapes. WSIAT confirmed, however, that Decisions 975/01 and 975/01R were not provided in a recorded format to the appellant.

At the conclusion of mediation, the Commissioner's office determined that the only issue remaining in dispute in this appeal relates to WSIAT's decision not to provide copies of Decisions Nos. 975/01 and 975/01R to the appellant in audiotape format. As it did not resolve at mediation, the appeal was moved to the adjudication stage.

Initially, the adjudicator sought and received representations from WSIAT by providing it with a Notice of Inquiry setting out the facts and issues in this appeal. In its submissions, WSIAT indicated that the appellant currently has an ongoing complaint before the Ontario Human Rights Commission involving whether the *Ontario Human Rights Code* requires that WSIAT supply

him with audiotapes of its decisions in which the appellant is involved as a party. Because of the nature of the information provided by WSIAT in response to the Notice of Inquiry, the Adjudicator determined that it was necessary to seek additional clarification through the issuance of a Supplementary Notice of Inquiry. Specifically, WSIAT was asked to address whether providing Decision Nos. 975/01 and 975/01R to the appellant in audiotape format amounts to providing him with a *copy* pursuant to section 48(3) of the *Act*. In addition, WSIAT was asked to advise as to the status of the appellant's ongoing complaint proceedings before the Ontario Human Rights Commission. WSIAT provided additional representations in response to the Supplementary Notice, addressing the issues raised therein.

This office also contacted the appellant with respect to the manner in which the appeal was proceeding and he advised that he was only interested in obtaining access to Decision Nos. 975/01 and 975/01R, in the audiotape format which he requires, as quickly as possible. The appeal was then transferred to me for adjudication.

The sole issue to be addressed in this appeal is whether the *Act* requires WSIAT to provide the appellant with audiotape versions of the paper copies of the two decisions that form the subject of his request.

DISCUSSION:

IS WSIAT OBLIGED UNDER THE *ACT* TO PROVIDE THE APPELLANT WITH AUDIOTAPED COPIES OF THE RECORDS REQUESTED?

Section 48 of the *Act* sets out the obligations of an institution which receives a request for access to a requester's own personal information, as is the case in this appeal. Where an institution determines that it will grant access to the requested information, sections 48(3) and (4) prescribe the manner in which the granting of access is to take place. These sections state:

> (3) Subject to the regulations, where an individual is to be given access to personal information requested under subsection (1), the head shall,
>
> (a) permit the individual to examine the personal information; or
>
> (b) provide the individual with a copy thereof.
>
> (4) Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used.

Section 48(3)(b) requires that institutions provide requesters with a "copy" of a record when the individual is being given access to personal information. The term "copy" is not specifically

defined in the *Act* and so, as WSIAT indicates in its representations, "its ordinary meaning must be considered in light of its use in the *Act* and the general purposes of the *Act* – to promote access to information and privacy of personal information". To assist in determining the correct interpretation to be placed on the word "copy", WSIAT provided me with two dictionary definitions which define the term as follows:

> COPY. N **1.** Thing made to look like another; written or printed specimen (of book etc.). **2.** model to be copied; page written after model (of penmanship); **fair** – written matter transcribed after correction; ROUGH *copy*. **3.** manuscript or matter to be printed (*incident* etc. **will make good** -, lends itself to interesting narration in newspapers etc.); text of advertisement . . .
>
> *Concise Oxford Dictionary* (7th ed.) (1982)
>
> COPY. N. **1.** A document written or taken from another document. **2.** A reproduction of the original **3.** In relation to any record, includes a print whether enlarged or not, from a photographic film of the record. Canada Evidence Act, R.S.C. 1985, c. C-5, s. 30(12).
>
> *The Dictionary of Canadian Law* (3rd ed.) (2004)

A further dictionary definition of the term "copy" states that:

> **COPY.** The transcript or double of an original writing; as the copy of a patent, charter, deed etc.
>
> *Black's Law Dictionary* (4th ed.) 1968
>
> [my emphasis]

In my view, the dictionary definitions of the meaning of "copy" referred to above support a broad interpretation of the term that would include within its ambit an audiotaped version of a paper record. The definitions refer to terms such as "model", "reproduction" and "transcript or double" which, in my view, do not limit the term copy to include only an exact duplicate of the record in the same format as the original.

I find support for this interpretation of the word "copy" in the decision of the Ontario Court of Appeal in *Regina v. McMullen* (1979), 25 O.R. (2d) 301 which dealt with the issue of whether a computer print out purporting to be a statement of account with a bank is a "copy of any entry in any book or record kept in any financial institution" within the meaning of section 29(1) of the *Canada Evidence Act*. In delivering the judgment of the Court, Justice Morden cited with approval the decision of Justice Linden in the court below:

> I hold that a computer print-out is a copy of a record kept by a financial

> institution. The types of records that have been kept have varied through the ages. Human beings have used stone tablets, papyrus, quill pen entries in dusty old books, typewritten material on paper, primitive mechanical devices and now sophisticated electronic computer systems. All, however, serve the same function of recording and this had been recognized by the American authorities that were cited to me. Parliament has indicated its faith in the reliability of the records of financial institutions in whatever form they may have been kept through the years. I conclude, therefore, that the language used by Parliament in the Canada Evidence Act includes records kept in computers.
>
> Methods of copying have also changed much over the years. At one time, copies were done by scribes by hand. Then printing was invented. Eventually, primitive copying machines were designed. Now the sophisticated xeroxing equipment can produce copies that can hardly be distinguished from the original. In my view, a computer print-out is a copy of what is contained within that computer, whether it be on tape or disc, though it is in a different form than the original record. It is merely a new type of copy made from a new type of record. Though the technology changes, the underlying principles are the same.

Justice Morden further held that one of the possible meanings of the word "copy" is "transcript" which clearly involves the copying in ordinary writing of data recorded in a different form and that therefore, "copy" does not necessarily require that the copy be a duplicate, in form, of the original.

I find additional support for this interpretation in an Australian decision, *Bailey v. Hinch* [1989] V.R. 79 in which Gobbo J. of the Supreme Court of Victoria was called upon to interpret a section of the *County Court Act 1958* dealing with the granting of orders prohibiting the publication of its proceedings. At page 87, the Court addressed the question of what constitutes a "copy" as follows:

> At first sight, the question of what constitutes a copy appears to be decided by reference to the dictionary meaning of the word 'copy' as being 'an imitation, reproduction or transcript of an original' . . . In substance, the defence argument had an attractive simplicity to it, namely, that in order to have a copy there must have been an original in writing. This question is not without some difficulty, but I have come to the conclusion that . . . in order to have made a copy of the judge's order posed it is not necessary that there be an original order made in writing. I so find for the following reasons. The common or ordinary meaning of the word 'copy', namely, a reproduction, does not of itself answer the question as to what the document reproduces. It would be otherwise if the word copy was taken to mean a facsimile. *A document may in my view properly reproduce the terms of an order, even if the order is made orally or if the original order is transmitted in some mechanical form other than conventional writing.* The requirement that 'copy' meant only a copy of the original would, strictly speaking, lead to the

> absurd result that if the original signed order of the judge was posted on the door, there would not be compliance with the requirement to post a copy on the door.
>
> [my emphasis]

Adopting the reasoning contained in this decision, I specifically find that the term copy in section 48(3) must be read to include various versions of the written document, including a transcribed or audiotaped copy since it simply represents a "reproduction of the original", albeit in a different format from the original version.

This interpretation of the term "copy" is also consistent with the purposes of the *Act*. One of the purposes of the *Act*, set out in section 1(a), is to grant the public a right of access to information, subject only to limited and specific exemptions, which are not claimed in the current appeal.

WSIAT takes the position that it complied with the requirements of the *Act* when it granted the appellant access to a French-language paper copy of Decision NOs. 975/01 and 975/01R. WSIAT argues that requiring it to prepare an audiotape version of the same record would be akin to requiring it to create "a new record", something that a long line of decisions of this office have found to be unnecessary when responding to a request under the *Act*. Essentially, WSIAT takes the view that the provision of a "copy" under section 48(3)(b) means that institutions are only required to reproduce the existing record, in its existing format. It suggests that if the Legislature had intended to provide for a right of access to records in alternative formats, it would have used language similar to that in section 17(3) of the federal *Privacy Act*, which speaks to providing access to personal information in alternative formats for individuals with sensory disabilities.

I cannot agree with this position. In my view, the appellant is not seeking access to a record which requires WSIAT to create something new. The record already exists, albeit in paper form only. Rather, what is sought are audiotaped copies of the same records, i.e. the two WSIAT decisions requested, which already exist in paper format. The paper versions of Decision Nos. 975/01 and 975/01R are the same, in substance, as audiotaped versions. They differ only in format. The information which they contain is identical.

The question is whether the *Act* requires that WSIAT provide the two decisions in audiotape format to the appellant.

I addressed a similar situation in Order M-1153 which involved a request for electronic versions of certain paper records that were maintained by the City of Kanata. In that case, I found that it would be "reasonably practicable" for the City to:

> . . . identify the paper records which are responsive to Parts 2, 4 and 5 of the first request and the second request and make them available to an outside firm, as referred to in its representations, to effect the transfer from paper copies to the desired electronic format, through the use of scanning technology. Although the issue of fees is not before me and I cannot, therefore, make a finding in this

> regard, the City may wish to take the position that it is entitled to rely on the fee provisions of the *Act* and the regulations, and on this basis provide the appellant with an interim fee estimate of the cost to effect the transfer of the records in accordance with the principles in Order 81 of this office, prior to actually incurring this expense.
>
> One of the purposes of the *Act*, as set forth in section 1(a), is to provide the public with a right of access to information under an institution's control. *Where a requester seeks access to records in a format different from that in which the records now exist, and it is reasonably practicable for the institution to effect the change in format, the institution is required to do so.* By way of summary, I find that, in the absence of some extraordinary circumstances, it is reasonably practicable for an institution to provide electronic copies of records which exist only in paper form through the use of scanning technology. [my emphasis]

I find that the circumstances of the present appeal are analogous to those in Order M-1153. Here, the appellant is seeking access to records that exist in paper form in audiotape form. Adopting the logic expressed in Order M-1153, in my view WSIAT is required to provide the records to the appellant in the format he wishes.

I addressed a similar situation in Order PO-1775, an order involving the same parties as those in the present appeal. In that case, WSIAT had already agreed to provide the appellant with the requested records in an audiotape format, as requested, so long as he paid a fee, as required by section 57(1) of the *Act*. In the circumstances of that appeal, I found that it was reasonably practicable for WSIAT to "transfer the information sought from the existing paper copies to the audiotape format sought by the appellant". As a result, I found that WSIAT had met its obligations under section 48(3), since it agreed to grant access to the records in the format requested by the appellant.

In support of its argument that creating an audiotape version of Decision Nos. 975/01 and 975/01R would result in the creation of a new record as opposed to a copy, WSIAT further argues that:

> . . . there is a significant difference between creating an electronic version of a written record by scanning technology and creating an audiotape by having someone from a paper record into a recording device. The use of scanning technology allows a new version to be created simply and consistently, without significant labour, manipulation of the original record, or potential for error. Where the paper version was initially created electronically, it could even by argues that the original format is effectively being re-created.
>
> Creation of an audiotape, on the other hand, is a time-consuming process which requires considerable effort and results in a change from a legible medium to an audible one. Listening to the tape and comparing to the written page requires

> significant additional individual effort and does not guarantee consistency with the original. There may be variations due to such thing as the quality of the tapes, the difference between the recording devices used to create and listen to the tapes, and the speaking voice of the readers. The audiocassette has its own individual characteristics and is not a copy or reproduction of the paper record.

WSIAT also provided me with an explanation of its past experience with providing audiotaped copies of written records for the purpose of enabling the appellant to prepare for a hearing before it. It also alludes to the appellant's dissatisfaction with the qualify of the audiotapes it has provided to him in the past as evidence that that the "creation of the tapes was not creation of a 'copy' which could be reproduced easily and consistently, but rather creation of a record in a new format which had its own characteristics."

I cannot agree that the preparation of an audiotaped version of a written document requires any specialized equipment or skills. Recording equipment of the sort required is ubiquitous today and does not require any undue expense or expertise to use. Decision Nos 975/01 and 975/01R already exist in paper format in the French language; all that is required is for someone to read them into a recording device. As a result, I disagree with the arguments put forward by WSIAT in this regard.

In my view, a requester is entitled under the *Act* to request access to information in whatever reasonably practicable format he or she wishes, subject to the fee provisions in section 57(1). In the present situation, I find that the appellant is entitled to request access to information in the format sought and WSIAT is obliged to provide them to him in that manner in accordance with section 48(3)(b).

SHOULD THIS APPEAL BE DISMISSED ON THE BASIS THAT THE PROCEEDING BEFORE THE ONTARIO HUMAN RIGHTS COMMISSION IS THE MOST APPROPRIATE FORUM?

WSIAT indicates that the appellant has filed a complaint with the Ontario Human Rights Commission alleging a breach of the *Ontario Human Rights Code* (the *Code)* on the basis that it has failed to provide him with audiotaped versions of the Case Record and Addendum (which includes copies of the decisions sought in the appeal before this office). Accordingly, WSIAT argues that whether it is required to provide the appellant with Decision Nos. 975/01 and 975/01R in audiotape format is at issue in both the appeal before this office and in the proceedings before the Ontario Human Rights Commission and therefore, the issue is most appropriately dealt with by the Ontario Human Rights Commission given the essential nature of the dispute between the Appellant and WSIAT is a human rights complaint.

I disagree. The essential nature of the dispute between the appellant and WSIAT in the appeal before our office is one of access. That is, whether the appellant is entitled to have access to his personal information, in the form of Decision Nos. 975/01 and 975/01R, and to be provided a

copy of these decisions pursuant to section 48(3) of the *Act* in audiotape format. I find that the interpretation of section 48(3) of the *Act* is within the jurisdiction of this office.

In Order PO-1775 I determined that the Ontario Human Rights Commission was the most appropriate forum for determination of the issue of WSIAT's legal obligation to accommodate the appellant's special needs. In the appeal giving rise to Order PO-1775, WSIAT had agreed to provide the appellant with access to the decisions that he sought in an audiotaped format and subject to a fee. The appellant appealed the fee estimate on the basis of the *Ontario Human Rights Code* but did not apply for a fee waiver under the *Act*. Accordingly, in Order PO-1775 the essential nature of the dispute was the duty to accommodate pursuant to the *Code*. In the present appeal, however, the essential nature of the dispute is access to personal information and the interpretation of section 48(3) of the *Act*. The interpretation of section 48(3) of the *Act* is not dependent on whether or not the appellant has a disability; section 48(3) is applicable to any requester seeking access to personal information in the custody or control of an institution regardless of whether or not the requester has a disability.

ORDER:

1. I do not uphold WSIAT's decision to refuse to provide the appellant with audiotape copies of WSIAT Decisions Nos. 975/01 and 975/01R, in the French language.

2. I order WSIAT, on or before **November 16, 2005** to either:

   (a) provide the appellant with audiotape copies of WSIAT Decisions Nos. 975/01 and 975/01R, in the French language: or

   (b) provide the appellant with a fee decision for the audiotape copies of WSIAT decisions 975/01 and 975/01R in the French language in accordance with section 57 of the *Act* and sections 6.1, 7, 8 and 9 of Regulation 460.

Original signed by: October 25, 2005
Donald Hale
Adjudicator