

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3898

Appeal PA16-537

Workplace Safety and Insurance Board

November 1, 2018

Summary: The WSIB received a request for the *curriculum vitae* of a named medical consultant. It denied access to the CVs pursuant to the mandatory personal privacy exemption at section 21(1) of the *Act*. During mediation, the appellant raised the public interest override in section 23. In this order, the adjudicator finds that a large portion of the records contain personal information that is exempt under section 21(1) and that there is not a compelling public interest in the disclosure of the records that would clearly outweigh the purposes of section 21(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 21(1), and 23.

Orders and Investigation Reports Considered: Orders MO-3093, MO-2176, PO-2575, MO-2179-F, PO-187, and MO-1564.

BACKGROUND:

[1] 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 various records relating to a particular claim for benefits. The request sought included records relating to a named medical consultant who provided a medical opinion in the same claim, specifically, his "curriculum vitae and when the WSIB came into its possession".

[2] The medical consultant in question is a physician involved in the WSIB's

Physician Case File Review program. The WSIB uses medical consultants as part of its operations in adjudicating claims. Its adjudicative staff consult with medical consultants when they need an "expert medical review" to understand medical issues that arise in claims.

[3] The WSIB located responsive records and granted partial access to them. The WSIB specifically denied access in full to the medical consultant's *curriculum vitae* (CVs) and the date when the WSIB came into possession of them, citing the employment or labour relations exclusion at section 65(6)3 and the mandatory personal privacy exemption at section 21(1) of the *Act*.

[4] The requester, now the appellant, appealed the WSIB's decision to this office.

[5] During mediation, the appellant narrowed the appeal to the CVs and the date when the WSIB came into their possession. The appellant also raised the issue that there is a compelling public interest in the disclosure of the records pursuant to section 23 of the *Act*.

[6] The WSIB issued a revised decision indicating that it was no longer claiming the employment or labour relations exclusion in section 65(6)3 but continues to deny access to the CVs, pursuant to the personal privacy exemption at section 21(1). After further discussion, the WSIB issued a decision, granting access to records containing the date when it came into possession of the CVs.

[7] The mediator contacted an affected party, the named medical consultant, whose CVs were requested, but was unable to obtain consent to disclose his CVs to the appellant.

[8] As no further mediation was possible, the appeal was moved to the next stage, where an adjudicator conducts an inquiry under the *Act*.

[9] During the inquiry, I invited and received representations from the appellant, the affected party, and the WSIB. Pursuant to this office's *Code of Procedure* and *Practice Direction Number 7*, non-confidential copies of the parties' representations were shared.¹

[10] In this order, I find that a large portion of the records contain personal information, to which section 21(1) applies. I also find that there is not a compelling public interest in the disclosure of the records that would clearly outweigh the purposes of section 21(1). I order the WSIB to disclose the portions of the CVs that are not

¹ A portion of the affected party's representations was withheld as it met the criteria for withholding representations found in this office's *Practice Direction Number 7: Sharing of representations*.

exempt under section 21(1).

RECORDS:

[11] The records remaining at issue are three CVs of the affected party.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom do they relate?
- B. Does the mandatory exemption at section 21(1) apply to the information at issue?
- C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 21(1) exemption?

DISCUSSION:

A: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom do they relate?

[12] In order to determine whether section 21(1) of the *Act* applies, it is necessary to decide whether the records contain "personal information" and, if so, to whom they relate.

[13] Relevant paragraphs of the definition of "personal information" are as follows:

"personal information" means recorded information about an identifiable individual, including,

...

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

...

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[14] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.²

[15] Sections 2(2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[16] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.³

[17] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.⁴

[18] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

[19] In its representations, the WSIB submits that the information contained in the records is personal information. It submits that the information qualifies as personal information as defined under paragraph (b) of the section 2(1) definition, as it relates to the educational or employment history of the affected party. It also submits that the

² Order 11.

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

records contain more information than just the name, title, contact information or designation of the affected party in a business, professional or official capacity, such as the individual's qualifications, medical practice, professional affiliations and activities.

[20] In his representations, the appellant states he does not dispute that the records contain the personal information of the affected party.

[21] In his representations, the affected party submits that the information contained in the records is his personal information as defined under section 2(1). He submits that the records contain education, employment and potentially other personal information, such as personal address, contact information and associations.

[22] Based on my review of the records, I am satisfied that a large portion of the records contain the personal information of the affected party as contemplated by the definition of that term in section 2(1) of the *Act*, specifically information that falls under paragraph (b) (education and employment history).

[23] I find that the other portions of the records contain information that is not "about" the individual. As mentioned above, the general rule is that information relating to an individual in a professional, official or business capacity will not be considered to be "about" the individual. In this case, I find that the name, titles and contact information of the affected party are about him in a professional capacity. Accordingly, I find that this information does not constitute the affected party's personal information as that term is defined in section 2(1). As mentioned above, section 21(1) can only apply to personal information. Since no other mandatory exemptions apply to this information, and the WSIB does not claim any discretionary exemptions for it, I will order this information disclosed.

[24] I note that there is a cellular phone number listed in two of the CVs. It is unclear whether this cellular phone number is a business number. As such, I find that it is the personal information of the affected party.

[25] I will now consider whether the information about the affected party's education and employment history, and the cellular phone number are exempt due to the mandatory personal privacy exemption in section 21(1).

B: Does the mandatory exemption at section 21(1) apply to the information at issue?

[26] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy. In this appeal, none of paragraphs (a) to (e) of section 21(1) nor section 21(4) apply to the information at issue.

[27] In these circumstances, it appears the only exception that could apply is section 21(1)(f), which allows for disclosure if it would not be an unjustified invasion of personal privacy. This section states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

[28] The factors and presumptions in sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 21(1)(f).

[29] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information at issue is presumed to be an unjustified invasion of personal privacy under section 21(1). Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.⁶

[30] In the circumstances, the presumption at section 21(3)(d) is relevant. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

Relates to employment or educational history

[31] The WSIB submits that this section applies to the information at issue as it relates to the employment and educational history of the affected party. I note that the appellant acknowledges that this section applies.

[32] Previous orders issued by this office have found that information contained in resumes⁷ and work histories⁸ falls within the scope of section 21(3)(d).

[33] As the information at issue is contained in three CVs and reveals the employment and educational history of the affected party other than the requester, I find that section 21(3)(d) applies to it.

⁶ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.) (hereinafter *John Doe*).

⁷ See Orders M-7, M-319 and M-1084.

⁸ See Orders M-1084 and MO-1257.

[34] Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2).⁹

[35] Accordingly, I find that the information at issue is exempt under the mandatory personal privacy exemption in section 21(1).

[36] With respect to the cellular phone number, none of the parties have provided any evidence with respect to the factors and/or circumstances favouring or not favouring disclosure. I find that none of the factors favouring disclosure in section 21(2) apply. Accordingly, I find that the mandatory personal privacy exemption in section 21(1) applies to exempt the cellular phone number from disclosure.

[37] As mentioned earlier, once the presumption under section 21(3) has been established, it can only be overcome by section 21(4) (which does not apply in this case) or by section 23, the public interest override. I will now consider the application of the public interest override.

C: Is there a compelling public interest in disclosure of the CVs that clearly outweighs the purpose of the section 21(1) exemption?

[38] Section 23 states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, **21** and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[39] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

Representations

[40] In its representations, the WSIB submits that there is not a compelling public interest in the disclosure of the CVs. It relies on Order P-984 for the following principle:

... In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of means of expressing public opinion or to make political choices.

⁹ *John Doe*, cited above.

[41] The WSIB submits that the disclosure of the CVs will not enhance openness or improve transparency into the inner workings of the Government of Ontario, nor does it outweigh the privacy interests of the affected party. It points out that, as contemplated in Order P-159, the public's benefit in knowing the affected party's qualifications and associations, beyond what is publicly available, does not outweigh the purposes of the personal information exemption. It also points out that the "importance of the section 21(1) exemption is reflected by the fact that it is a mandatory exemption that institutions are required to apply."¹⁰

[42] In addition, the WSIB submits that the appellant failed to provide any detailed or supporting evidence that the compelling public interest he argues exists clearly outweighs the purpose of the personal privacy exemption.

[43] Finally, the WSIB submits that an alternate disclosure mechanism by way of the Workplace Safety and Insurance Appeals Tribunal (WSIAT) exists, should the WSIAT believe the CVs are relevant for the appeal before it.¹¹ (The WSIAT is the final level of appeal to which workers and employers may bring disputes concerning workplace safety and insurance matters in Ontario. It is separate from and independent of the WSIB.)

[44] In his representations, the affected party asserts that there is not a compelling public interest in the disclosure of his CVs that clearly outweighs the purpose of section 21(1) of the *Act*. He asserts that there is no logical or concrete connection between a physician's CVs and the operations of the government, especially the quasi-governmental operation of a workplace insurance arm of the government. He also asserts that if the appellant is acting out of personal interest then there is a presumption that there is no public interest present, while if the appellant is seeking this information in response to a WSIB claim that was denied then it is presumably a personal interest that influences this disclosure.

[45] The appellant on the other hand asserts in his representations that there is a compelling public interest in disclosing the CVs. He asserts that there is a close relationship between the CVs and the *Act's* central purpose of shedding light on the operations of the WSIB. He explains that the WSIB terminated his entitlement to benefits on the basis of the affected party's medical opinion. He further explains that he can only assess whether the affected party's opinion was within the scope of the affected party's professional expertise if he has meaningful information about the affected party's knowledge, skill, education, experience and training.

[46] The appellant also asserts the following:

¹⁰ See Order PO-3290.

¹¹ See Orders M-249 and M-317.

The same applies for all 10,000 of the injured workers per year, in whose claims the WSIB obtains a Medical Consultant's report to assist its adjudicative staff. If [I] succeed in [my] appeal [I] will, at the least, have created a precedent for other workers to use to obtain the information they need to assess whether their claims were adjudicated on the basis of sound and defensible medical evidence. More optimistically, success in the appeal may result in change in the WSIB's practices that will ensure that light is automatically shed on all Medical Consultants' opinions in the future. For instance the WSIB could require Medical Consultants to append their *curriculum vitae* to every opinion they provide.

[47] He acknowledges that his request for the affected party's CVs arises from a private interest, the adjudication of his own WSIB claim. However, he points out that as the WSIB uses medical consultants in over 10,000 claims per year, his request raises issues that are of interest to injured workers generally.

[48] In support of his argument, the appellant cites Order MO-1564, where former Assistant Commissioner Tom Mitchinson found that public interest override applied, even though the request arose from a dispute about the assessment of the taxes on the requester's private property. He submits that the subject matter of the two requests is different, but the interests involved in Order MO-1564 and his appeal are very similar for the following reasons:

- Although [the appellant] has "requested access to records specific to his own" claim, like the MPAC appellant, "he has raised issues that have general application...throughout the province."
- [The appellant's] purpose in requesting the CV is to "satisfy himself" that his claim was adjudicated on the basis of a medical opinion he can "both understand and accept" was within the scope of the expertise of the Medical Consultant from whom it was obtained – and if he is not satisfied, to challenge the opinion in an appeal.
- In this sense, [the appellant] "has raised concerns that are shared by other" injured workers: Medical Consultants' opinions are used by the WSIB in over 10,000 individual workers' claims every year. They "are connected to one of the main points of intersection between" the WSIB and injured workers, namely the adjudication of entitlement to benefits under the *WSIA's* insurance plan.
- Like MPAC, the WSIB "performs an important public function" (providing vital health-care and income replacement benefits to injured workers), and it "does so from a monopoly position established by statute" (injured workers cannot go to court, because the *WSIA* takes away their right to sue).

- As with MPAC, there is “an inherent public interest in some level of transparency provided...through the disclosure of information sufficient to satisfy [working people] throughout the province” that workers compensation claims are adjudicated “on the basis of sound and defensible” medical evidence.

[49] In addition, the appellant asserts that the public interest is “compelling”. He points out that for several years, injured workers, the health care professionals who treat them, and labour and injured worker advocacy groups have been making public complaints about the WSIB’s use of medical consultants. He also points out that the Ontario Federation of Labour (OFL) and the Ontario Network of Injured Workers Group (ONIWG)’s complaints to the Ontario Ombudsman received considerable attention in the mainstream media, including in at least one story on CBC, and six articles in the *Toronto Star*.

[50] Finally, the appellant asserts that the fundamental purpose of section 21 (“to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified”) is being served weakly, if at all, in the case of the affected party’s CVs, and therefore is “clearly outweighed” by public interest in its disclosure. He asserts that the affected party has freely contracted his services as a medical expert to the WSIB, in exchange for payment, for the purpose of providing medical opinions that he knows will be used in the adjudication of workers’ claims by a government agency. He also asserts:

- We have a government agency, the WSIB, sheltering an important part of its adjudicative operations from scrutiny by the people directly affected by them, and
- We have a group of physicians, who freely choose to engage in providing expert medical opinions knowing they will be used in the adjudication of benefits under the *WSIA*, avoiding scrutiny of the scope of their professional expertise by the people directly affected by their work.

[51] The appellant finally asserts that the purpose of section 21 is not to assist a government agency to achieve the above results.

[52] In its reply representations, the WSIB submits that this appeal is not about “shedding light on the operations of government” (as the appellant states in his representations) but is about the appellant’s private interest. It submits that the affected party’s CVs are not of public interest, and the CVs themselves do not enlighten the public on the WSIB’s operations or the Physician Case File Review program. It also submits that the circumstances in Order MO-1564 are very different from this appeal as the request in that order was not for personal information and there was no affected party (who did not consent to the disclosure of said personal information).

[53] In his reply representations, the affected party submits that the relationship

between the CVs and the central purpose of transparency of the WSIB are not closely related. He submits that the personal information and work history contained in the CVs of a medical consultant are in no way related to the operation of the WSIB. The affected party also submits that this is not a request for the mechanics or documents outlining the operation of the WSIB in order to shed light on the operation of the government, but it is for the CVs of a physician. The affected party finally submits that there is no comparison between the facts in Order MO-1564 and this appeal. He asserts that the appellant in Order MO-1564 is arguing for records related to the data and analysis on his property assessment, and is not interested in the CV of the person who created the data.

[54] In his sur-reply representations, the appellant reiterates that the facts show¹² that the purpose of the exemption is being served weakly here, if at all. He also asserts:

... The way that the WSIB has set up the Physician Case File Review program gave [the FOIC] no choice but to apply the exemption and put [him] to the strict test of the public interest override (unless [the affected party] had consented to its disclosure in mediation, which as the WSIB states, he did not).

...

If the WSIB wanted to operate the Physician Case File Review program in accordance with the basic legal norms of fairness and natural justice in this province, it could make it a requirement that, as a condition of working in the program, every physician the contractor assigns to do the work must consent to the WSIB disclosing his or her *curriculum vitae* to the workers whose claims they review.

An instructive example of this comes from another program in which the WSIB has retained experts to assist in the administration of the insurance plan, the *Drug Advisory Committee*. The DAC's terms of Reference contain a requirement that, as a condition of joining the DAC, an expert must consent to the WSIB making his or her *curriculum vitae* public, including by publication on the WSIB's website...

...

... As example of the DAC shows, if the WSIB want to operate the Physician Case File Review program in accordance with the basic legal norms of fairness, it could have set it up in a way that allowed for

¹² As set out in paragraphs 72-79 of the appellant's representations.

disclosure of its Medical Consultants' CVs. The mandatory exemption applies because of a choice that the WSIB made, which allow it to shelter the program from precisely the kind of scrutiny that *FIPPA* is supposed to make.

[55] In addition, the appellant asserts that the refusal to disclose the CVs limits his ability to receive a fair appeal at the WSIB's Appeals Services Division (ASD) because it prevents him from assessing whether the affected party's opinion is within the scope of his expertise, and whether he has grounds to challenge the affected party's opinion. (The ASD is an appeal process within the WSIB.) He explains:

... To determine if a WSIB decision is "consistent with *WSIA* and WSIB policy," Appeal Resolution Officers routinely weigh medical evidence, including the expert opinions provided by the WSIB's Medical Consultants. There can be no dispute that this is, in practice, what goes on in a WSIB appeal...

[56] The appellant asserts that the purpose of the section 21 exemption is being weakly served because an infringement is justified: without the CVs, he will be denied a crucial means of challenging the evidence against him in the ASD appeal.

[57] Finally, the appellant submits that the affected party is inviting public attention to his professional knowledge, education and experience. He points out that both his counsel and the affected were scheduled to speak at a conference on WSIB issues in October 2017. He also points out that in the speakers' biographies included in the conference material, the affected party consented to the publication of three paragraphs of the type of information he refused to consent to disclose in this proceeding.

Analysis and findings

[58] As mentioned earlier, for section 23 to apply, there must be a compelling public interest in disclosure of the records, and this interest must clearly outweigh the purpose of the exemption.

[59] In considering whether there is a "public interest" in disclosure of the records, the first question to ask is whether there is a relationship between the records and the *Act's* central purpose of shedding light on the operation of the government.¹³ Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the records must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to

¹³ Orders P-984, PO-2607, MO-2179 and PO-3290.

the information the public has to make effective use of the means of expressing public opinion or to make political choices.¹⁴

[60] The word "compelling" has been defined in previous orders as "rousing strong interest or attention."¹⁵

[61] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation¹⁶
- the integrity of the criminal justice system has been called into question¹⁷
- public safety issues relating to the operation of nuclear facilities have been raised¹⁸
- disclosure would shed light on the safe operation of petrochemical facilities¹⁹ or the province's ability to prepare for a nuclear emergency²⁰
- the records contain information about contributions to municipal election campaigns²¹

[62] A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations²²
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations²³
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding²⁴

¹⁴ Orders P-984, PO-2556, MO-2179 and PO-3290.

¹⁵ Order P-984.

¹⁶ Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).

¹⁷ Order PO-1779.

¹⁸ Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.) and Order PO-1805.

¹⁹ Order P-1175.

²⁰ Order P-901.

²¹ *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.

²² Orders P-123/124, P-391 and M-539.

²³ Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter²⁵
- the records do not respond to the applicable public interest raised by appellant²⁶

[63] As explained above, the appellant submits that there is a compelling public interest in the disclosure of the affected party's CVs. As the WSIB terminated his entitlement to benefits on the basis of the affected party's medical opinion, he wants the affected party's CVs to assess whether the affected party's opinion was within the scope of his professional expertise. Moreover, he asserts that he needs the CVs in order to prepare for an appeal to the WSIB's ASD. Furthermore, the appellant submits that the same applies for all 10,000 of the injured workers per year, in whose claims the WSIB obtains a medical consultant's report to assist its adjudicative staff. As such, the appellant argues that the disclosure of the affected party's CVs would shed light on *all* the medical consultants' opinions in the future.

[64] For the following reasons, I find that the public interest override at section 23 does not apply.

[65] While I accept that there may be public interest in the qualifications of medical consultants retained by the WSIB, I do not find that the appellant has established there is a compelling public interest in disclosure of the affected party's CVs that clearly outweighs the purpose of the mandatory personal privacy exemption.

[66] I understand that the appellant is interested in the WSIB's reliance on or favouring of the medical consultants' opinions over the advice provided by doctors treating injured workers. I acknowledge that there is some public interest in this topic, as seen by the articles provided by the appellant. However, the affected party's CVs in of themselves do not respond to this interest.

[67] As mentioned above, the appellant relies on Order MO-1564. In my view, the circumstances in Order MO-1564 are different from the current appeal. In the former, the requester was seeking the valuation model in which the Municipal Property Assessment Corporation (MPAC) uses to calculate property taxes. As former Assistant Commissioner Mitchinson states:

If I were satisfied that the appellant's request was directed at information that could only be used on an assessment appeal of his particular property, and had nothing to do with the process of valuation and how it

²⁴ Orders M-249 and M-317.

²⁵ Order P-613.

²⁶ Orders MO-1994 and PO-2607.

works generally, I would find that the interest in disclosure was of a private, rather than public nature.

[68] In this case, I am satisfied that the appellant's request is directed at information that could be used on his appeal to the WSIB's ASD or to the WSIAT. I note that he states that he requires the CVs for his appeal to the ASD and possibly to the WSIAT. As such, the appellant's interest in disclosure is primarily of a private, rather than public nature. I do accept that, however, there will be other claimants, whose entitlement to benefits were terminated due to the WSIB's reliance on the affected party's medical opinion, who would be interested in receiving the affected party's CVs. To the extent that there can be said to be a public interest in the disclosure of the medical consultant's biographical information, however, I find that such an interest has largely been satisfied through the appellant's possession of much of the affected party's biographical information.²⁷

[69] I accept that there is a public interest in the fact that the WSIB does not disclose its medical consultants' CVs to the workers whose benefit claims are decided based on those medical consultants' opinions. However, in my view, disclosure of one physician's CVs, specifically the affected party's CVs, would not assist in informing the debate on this issue.

[70] In my view, therefore, any public interest in disclosure of the affected party's CVs does not rise to the level of "compelling". Accordingly, I find that the public interest override in section 23 does not apply in the circumstances of this appeal.

[71] As final notes, I appreciate that the appellant would like the WSIB to operate its Physician Case File Review in a similar fashion to how it operates its Drug Advisory Committee, in that it would require the medical consultants to agree, prior to working in the program, to consent to the WSIB disclosing their CVs to the workers whose claims they review.

[72] I also note that some of the arguments raised by the appellant raise issues about the potential application of the factors in favour of disclosure listed in section 21(2) of the *Act*. However as noted above, the Divisional Court has found that a presumption listed in section 21(3), once established, cannot be overcome by the factors listed in section 21(2).²⁸ As such, I am unable to come to a different finding with respect to the application of section 21(1), and as explained above, I am not satisfied that the appellant has established a compelling public interest in the disclosure of the affected party's CVs.

²⁷ It appears that the appellant's counsel obtained this biographical information from the speakers' biographies included in the conference material.

²⁸ See *John Doe*, cited above.

ORDER:

1. I uphold the WSIB's decision to deny access to the affected party's education and employment history, and the cellular phone number contained in the CVs.
2. I order the WSIB to disclose the name, titles and contact information contained in the CVs by **December 6, 2018** but not before **December 1, 2018** in accordance with the highlighted records I have enclosed with the WSIB's copy of this order. To be clear, the highlighted information should not be disclosed to the appellant.
3. I find that the public interest override at section 23 of the *Act* does not apply to the portions of the CVs I found exempt under section 21(1) of the *Act*.
4. I reserve the right to require the WSIB to provide me with a copy of the records disclosed to the appellant.

Original Signed by: _____
Lan An
Adjudicator

_____ November 1, 2018