

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4329

Appeal PA20-00222

Workplace Safety and Insurance Board

December 21, 2022

Summary: The Workplace Safety and Insurance Board received a request under the *Freedom of Information and Protection of Privacy Act* for access to a specified audio recording. The WSIB issued a decision denying access to the responsive record. The appellant appealed the WSIB's decision to the Information and Privacy Commissioner of Ontario. The appellant believes that further records responsive to her request should exist. In this order, the adjudicator finds that the WSIB conducted a reasonable search for responsive records and dismisses the appeal.

Statutes Considered: The *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 24.

OVERVIEW:

[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 a specified audio recording of a conference call between the requester, a nurse consultant, and a nursing manager (the recording).

[2] The WSIB issued a decision denying access to the responsive recording in full under section 65(6) (employment or labour relations) of the *Act*.

[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] The WSIB then issued a revised decision granting full access to the recording.

[5] During mediation, the appellant claimed that the recording is incomplete and that an additional portion should exist. The WSIB maintained its position that the recording was disclosed to the appellant in full and no further responsive records exist. Accordingly, reasonable search is the only issue in this appeal.

[6] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I decided to commence an inquiry by inviting representations from the WSIB, initially. I received representations from the WSIB, which I shared with the appellant, and invited her representations. The appellant submitted representations, which I shared with the WSIB. I then invited and received reply representations from the WSIB.

[7] In this order, I uphold the WSIB's search as reasonable and dismiss the appeal.

DISCUSSION:

Did the WSIB conduct a reasonable search for responsive records?

[8] The appellant claims that further records responsive to her request exist. 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 24.¹ 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.

[9] 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.² 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.³

[10] 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.⁴

Representations of the parties

[11] The WSIB submits that it conducted a reasonable search for responsive records

¹ Orders P-85, P-221 and PO-1954-I.

² Orders P-624 and PO-2559.

³ Orders M-909, PO-2469 and PO-2592.

⁴ Order MO-2246.

and that it has disclosed the responsive recording in full to the appellant. In support of its position, the WSIB submitted an affidavit from its Director of the Privacy and Freedom of Information Office. The affidavit described the individuals involved in the search, where they searched, and the results of their search.

[12] The appellant submits that the WSIB did not detail the full discovery timeline of the recording. She states that it was explained to her, in a related appeal, that the mobile number that conducted the call (mobile number) is not a WSIB number, so it was not contained in Genesys (the WSIB's call centre technology software), and thus the metadata of the call has been lost. The appellant submits that this fact was not addressed by the WSIB in its search affidavit.

[13] The appellant states that she questions the integrity of the recording because the call would have been made and held outside of Genesys. She states that she believes that the recording she received has been altered because statements she associated with the call were missing from the recording. She seeks access to the unaltered copy, and she believes that the unaltered copy of the recording may be contained in email correspondence as an attachment, or it may have been uploaded to the WSIB servers during May 27-29, 2020.

[14] The WSIB replies that all claim calls are recorded on Genesys and it does not record claim calls outside of Genesys.

Analysis and findings

[15] I am satisfied that the WSIB conducted a reasonable search for records responsive to the appellant's request. My reasons follow.

[16] The WSIB has described the individuals involved in the search, where it searched, and the results of its search. In my view, the WSIB's search was logical and comprehensive. As noted above, 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 to the request.⁵ I am satisfied that the WSIB has provided sufficient evidence to establish this.

[17] I have reviewed the appellant's representations, and I am not persuaded that she has established a reasonable basis for concluding that further responsive records exist. As noted above, 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.⁶

[18] It is clear the appellant has opinions about what the WSIB should have included in its affidavit. However, the *Act* does not stipulate what information should be included

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2246.

in an affidavit. Nor does the *Act* demand perfection. I must only be satisfied that sufficient evidence has been provided to establish that a reasonable search has been conducted, which I find the WSIB has done.

[19] For the reasons above, I find that the WSIB conducted a reasonable search for responsive records.

ORDER:

I uphold the WSIB's search as reasonable and dismiss the appeal.

Original signed by: _____
Anna Truong
Adjudicator

_____ December 21, 2022