

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-4392

Appeal PA21-00246

Workplace Safety and Insurance Board

May 17, 2023

**Summary:** The appellant alleges that the Workplace Safety and Insurance Board (the WSIB) failed to conduct a reasonable search for responsive records. The WSIB took the position that it conducted a reasonable search for responsive records in compliance with their obligations under the *Act*. The adjudicator finds that the WSIB conducted a reasonable search for responsive records and dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, 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* or *FIPPA*) for access to information not previously disclosed to the requester relating to a specified file. The request provided as follows:

We, the POAs, are formally requesting access to the Claim File Section Called "No Access" and any other, such as "Legal", sections of the Claim File [specified number] that is not usually disclosed with a regular Access Request. Memo [specified number and date] references a Discharge Plan provided by Toronto Grace Health Centre surrounding the Discharge, which is described as "Very Detailed" covering the worker's significant care and resource requirements. The Memo indicates the following "These

reports have been indexed and scanned in the No Access of the claim file.”

We are formally requesting access to all sections of the Claim File that have not been released during previous Access Requests.

[2] The request appears to have arisen from concerns regarding WSIB’s funding decisions relating to an injured worker.

[3] The WSIB identified responsive records and issued a decision granting partial access to them. The WSIB relied on sections 21(1) (personal privacy) and 22(a) (publicly available information) of the *Act* to deny access to the portions it withheld.

[4] The appellant appealed the WSIB’s access decision to the Information and Privacy Commissioner of Ontario (the IPC).

[5] At mediation, the appellant advised that access was no longer being sought to the information that the WSIB relied on section 21(1) and 22(a) to withhold, but took issue with the reasonableness of the WSIB’s search for responsive records. The WSIB advised that there were no other responsive records within its custody or control. Accordingly, the reasonableness of the WSIB’s search for responsive records became the sole matter at issue in the appeal.

[6] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process where an IPC adjudicator may conduct an inquiry under the *Act*.

[7] I decided to conduct an inquiry and representations were exchanged between the appellant and the WSIB in accordance with section 7 of the IPC’s *Code of Procedure* and Practice Direction 7.

[8] In this order, I find that the WSIB conducted a reasonable search for responsive records and dismiss the appeal.

### **Did the WSIB conduct a reasonable search for records?**

[9] As explained in the Overview, the appellant believes that the WSIB’s search failed to locate responsive records.

[10] 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>

[11] 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

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

concluding that such records exist.<sup>2</sup>

[12] 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>

[13] 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 representations**

[14] The appellant states that the WSIB's response to the access request did not identify all the records in the claim file. The appellant provides as an example the WSIB's failure to identify a copy of the injured worker's birth certificate, which the appellant asserts was provided to the WSIB and would have been in the claim file. The appellant attached a WSIB Documentation Memo (the memo) in support of this submission.

[15] The appellant also refers to a concern regarding the adequacy of disclosure previously provided by the WSIB that arose in the context of a hearing before the Workplace Safety and Insurance Tribunal (WSIAT). The appellant asserts that the WSIB's inadequate disclosure was only resolved after an investigation by the Fair Practices Commission (FPC).

[16] The WSIB provided an affidavit of its Director of Privacy and Freedom of Information office (the director) in support of its search efforts.

[17] The director explains that all of the WSIB's claim files are housed on the WSIB's electronic Account and Claims Enterprise System, which is the WSIB's authorized repository for records related to the adjudication of a claim.

[18] The director states that upon receipt of the request he asked the WSIB's Privacy, FOI & Risk specialist (the specialist) to conduct a search for responsive records. He states that the specialist accessed the claim file and after reviewing the appellant's previous access requests determined that there were only three specific sections of the WSIB claim file that were not previously disclosed to the appellant. The director states the specialist exported those previously undisclosed sections contents to the Privacy and FOI Office's shared drive, and the director issued an access decision in relation to them.

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<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.

[19] The WSIB submits in reply that the memo relied upon by the appellant does not state that the WSIB received a copy of a birth certificate from the appellant. The WSIB submits that the memo simply notes a voicemail from the appellant in which the appellant states that a copy of a birth certificate was submitted to the WSIB. The WSIB states that other memos contained in the WSIB claim file in and around the time of the memo do not mention that a birth certificate was received by the WSIB.

[20] The WSIB submits that, in any event, in response to the request the Privacy and FOI Office comprehensively reviewed the appellant's previous access requests and produced all the WSIB claim file records in its custody or control that had not been identified through the appellant's prior access requests.

[21] Finally, the WSIB submits that the previous document disclosure issue (investigated by the FPC) does not impact the reasonableness of the WSIB's search for records responsive to the appellant's request at issue in this appeal.

### **Analysis and finding**

[22] In all the circumstances, I find that the WSIB made a reasonable effort to locate records 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 complied with its obligations under the *Act*.

[23] In reaching this conclusion, I have considered the appellant's position regarding the birth certificate and the document disclosure issue investigated by the FPC. With respect to the birth certificate, I am satisfied that reasonable efforts were taken by the WSIB to locate all responsive records, including the birth certificate. I note that it is possible that it was provided to the WSIB, but I am satisfied that a copy could not be found, despite reasonable efforts to locate one.

[24] I am not persuaded that the existence of prior disclosure issues or any other of the appellant's concerns about the conduct of the WSIB, alters my finding that the WSIB conducted a reasonable search for responsive records. I have also considered whether these arguments establish a reasonable basis for me to conclude that further searches would yield additional records. When I consider the method and breadth of the search already undertaken, I am not able to conclude that further searches will yield additional records.

[25] Accordingly, I find that the WSIB has conducted a reasonable search that is in accordance with the requirements of the *Act*.

### **ORDER:**

I uphold the reasonableness of the WSIB's search for responsive records and dismiss the appeal.

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

\_\_\_\_\_ May 17, 2023