

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4717

Appeal PA23-00056

Workplace Safety and Insurance Board

August 28, 2025

Summary: The Workplace Safety and Insurance Board received a request under the *Freedom of Information and Protection of Privacy Act* for invoices, statements of account or receipts relating to a bargaining process. The WSIB denied access to the responsive records under the mandatory exemption for third party information at section 17(1) of the *Act*. The requester appealed the WSIB's decision. In this order, the adjudicator finds that section 17(1) does not apply and orders the WSIB to disclose the records at issue to the requester.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 17(1).

OVERVIEW:

[1] The Workplace Safety and Insurance Board (the WSIB) received the following request from an organization under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

All invoices, statements of account, and/or receipts issued by [named entity] in 2020 and 2021, related to the negotiations, conciliation, and arbitration of the collective agreement between the WSIB and [a union].

[2] The WSIB issued a decision, accompanied by an index of records, denying access to the responsive records pursuant to section 17(1) (third party information) of the *Act*. The requester (now the appellant) appealed the WSIB's decision. An IPC mediator

discussed the appeal with the appellant and the WSIB. The WSIB confirmed it consulted with an affected party and maintained its decision to deny access to the responsive records. The appellant advised that it wished to move to adjudication to pursue access to the responsive records.

[3] No further mediation was possible, and the matter was transferred to the adjudication stage of the appeals process where an adjudicator may conduct a written inquiry pursuant to the *Act*. An adjudicator commenced an inquiry and obtained representations from the parties. The matter was then transferred to me to continue the inquiry. After reviewing the parties' representations, I provided the WSIB and the affected party with a copy of the appellant's representations and invited them to reply. The affected party submitted a reply, the WSIB did not.¹

[4] In this decision, I find that part two of the three-part test in section 17(1) is not met because the information at issue was not supplied to the WSIB. I allow the appeal and order the WSIB to provide the appellant with copies of the records at issue.

DISCUSSION:

[5] There are six invoices at issue in this inquiry which the WSIB and the affected party say are subject to the mandatory exemption for third-party information at section 17(1) of the *Act*.

[6] The sole issue to be determined in this appeal is whether the six invoices are exempt under the mandatory exemption for third party information under section 17(1) of the *Act*. The purpose of section 17(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,² where specific harms can reasonably be expected to result from its disclosure.³

[7] The relevant paragraphs of section 17(1) state,

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial, or labour relations information,

¹ In its reply, the affected party raised two new issues. It said that the records at issue should not be disclosed because the request was frivolous and/or vexatious pursuant to the *Act* and because the discretionary exemption for solicitor-client privilege at section 19 of the *Act* applied. I decline to consider these issues for two reasons. First, the WSIB, as the institution, is the party with the discretion to issue a decision that a request is frivolous or vexatious, and/or to apply the exemption for solicitor-client privilege at section 19 of the *Act* and it did not do so. Furthermore, I note that if solicitor-client privilege applied, the privilege would belong to the WSIB as the client, not the affected party. Second, the letter I sent to the affected party seeking representations in reply to the appellant's representations clearly stated that new issues could not be raised.

² *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, 2005 CanLII 24249 (ON SCDC) (*Boeing Co.*).

³ Orders PO-1805, PO-2018, PO-2184, and MO-1706.

supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency[.]

[8] For section 17(1) to apply, the appellant, who is arguing against disclosure, must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial, or labour relations information;
2. the information must have been supplied to the WSIB in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms claim in paragraph (a), (b), and/or (c) of section 17(1) will occur.

[9] As the parties resisting disclosure of the information at issue must satisfy the requirements of all parts of the test, the failure to satisfy any part of this test will lead to a finding that the section 17(1) exemption does not apply. For the reasons set out below, I find section 17(1) does not apply because the second part of the test is not established in the circumstances of this appeal.

Part 2: Supplied in confidence

[10] The requirement that information was *supplied* to the institution reflects the purpose in section 17(1) of protecting the informational assets of third parties.⁴

[11] Information may qualify as *supplied* if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.⁵

[12] The contents of a contract involving an institution and a third party will not normally qualify as *supplied* for the purpose of section 17(1). The provisions of a contract,

⁴ Order MO-1706.

⁵ Orders PO-2020 and PO-2043.

in general, are considered to be mutually generated, rather than *supplied* by the third party, even where the contract is preceded by little or no negotiation or where the final agreement reflects information that originated from a single party.⁶ This approach is based on the purpose of section 17(1), which is to protect the *informational assets* of third parties. In this context and having regard to the plain meaning of the words used in section 17(1), this office has not generally accepted that the terms of a contract constitute information *supplied* by a third party to an institution.

[13] There are two exceptions to this general rule: the *inferred disclosure* and *immutability* exceptions. The *inferred disclosure* exception applies where disclosure of the information in a contract would permit accurate inferences to be made with respect to the underlying non-negotiated confidential information supplied by the third party to the institution.⁷ The *immutability* exception arises where the contract contains information supplied by the third party but the information is not susceptible to negotiation. Examples are financial statements, underlying fixed costs and product samples or designs.⁸

The parties' representations

[14] The WSIB's representations are brief. It states only that it correctly withheld the invoices pursuant to the mandatory exemption at section 17(1) of the *Act*. The WSIB says it consulted with the affected party and after considering its submissions it concluded that the invoices met the three-part test at section 17(1) of the *Act* and should be withheld.

[15] The affected party's initial representations on the application of the section 17(1) test are also minimal. The relevant portions can be summarized as follows:

- The affected party says it was retained as counsel and spokesperson for the WSIB and assisted it in achieving a settlement with a union.
- It says that the records at issue are financial records of its bills for that work, which "was fully approved by the WSIB and paid."
- It submits that the nature of its work and "related confidential labour information" could be inferred from the records.

[16] The appellant denies that section 17(1) of the *Act* applies to the information at issue and argues that neither the WSIB nor the affected party has satisfied its onus to establish that the information must be withheld. The appellant submits that the WSIB and the affected party have failed to meet part two of the three-part test in section 17(1). Specifically, the appellant argues that the invoices were not "supplied" to the WSIB by

⁶ This approach was approved by the Divisional Court in *Boeing Co.*, *supra* note 1, and in *Miller Transit Limited v. Information and Privacy Commissioner of Ontario et al.*, 2013 ONSC 7139 (*Miller Transit*).

⁷ Order MO-1706, cited with approval in *Miller Transit*, above at para. 33.

⁸ *Miller Transit*, *supra* note 9 at para. 34.

the affected party "in confidence."

[17] The appellant says that the affected party states that the records at issue are "bills" issued to the WSIB for work that it performed as its representative and spokesperson. The appellant argues that the financial information contained in the "bills" is presumptively pricing information. It submits that the IPC has repeatedly found that pricing information in an invoice that a third party provides to an institution is not "supplied" to the institution by a third party where the pricing information was mutually agreed on and arises from a contract negotiated between the parties.⁹

[18] The appellant also notes that the affected party states that it was "retained" by the WSIB to perform work, for which it then billed the WSIB. The appellant argues that this indicates the parties entered into a commercial agreement regarding the work reflected in the records at issue. It says that the pricing information in the records arises from commercial and financial terms that were mutually agreed on by the WSIB and the affected party. As a result, the appellant argues that the information was not "supplied" by the affected party to the WSIB for the purposes of section 17(1) of the *Act* and is therefore not exempt under that section.

[19] In the relevant portions of its reply, the affected party says that it supplied the information at issue to the WSIB in confidence. It says that the records contain narratives and/or summaries of the work or advice that it provided to the WSIB during the collective bargaining process. Specifically, it says that "this type of information is highly confidential and was supplied to the WSIB." The affected party makes no further submission on whether the information was supplied.

Findings and analysis

[20] Below are my reasons for finding that the invoices were not supplied by the affected party within the meaning of that term in the second part of the section 17(1) test. Having considered the parties' representations and the copies of the invoices provided to the IPC, my view is that they contain information about the nature of the fees that the WSIB agreed to pay for the affected party's services and cannot be said to have been "supplied" for the purposes of section 17(1) of the *Act*.

[21] Each of the six invoices relates to the same "Purchase Order" and is labelled "Bill for Service." Each invoice contains a description of the services provided to the WSIB by the affected party, the number of hours worked, the hourly rate, and the total fee. The description of the work includes the dates the work took place and what was done. Each of the invoices provides instructions on how the WSIB should make the payment owing to the affected party.

[22] Based on my review of the information before me, it appears that the WSIB and the affected party agreed to a commercial arrangement (referred to in the invoices as

⁹ The appellant refers me to Order MO-3372 and *Miller Transit*, *supra* note 6.

the “Purchase Order”), in which the affected party would provide certain services to the WSIB for agreed upon fees. As noted in the affected party’s representations, each of the invoices was “approved and paid” by the WSIB. In my view, the fact that the affected party says the WSIB “approved” the invoices and paid them in full is evidence that the information at issue was not supplied – in other words, it was open to the WSIB to approve the invoices, or to challenge them and various aspects of the fees, and possibly negotiate a new price.

[23] My finding that the information in the invoices was not supplied by the affected party to the WSIB keeps with the reasoning in numerous previous IPC orders that have consistently found that information in an invoice that a third party provides to an institution cannot be considered to have been “supplied” by that third party if such information was mutually agreed upon and arises from a negotiated commercial arrangement between those parties.¹⁰ I also note that the terms of a commercial agreement, whether contained in a contract or invoice, have been found not to meet the criterion of having been supplied by a third party, even where they were proposed by the third party and agreed to with little discussion.¹¹

[24] Additionally, from my review of the content of the invoices and the parties’ representations, I do not accept that any of the information contained therein meets either of the “inferred disclosure” or “immutability” exceptions described above. In my view, there is insufficient evidence before me to support that the information contained in the invoices could permit accurate inferences to be made with respect to underlying non-negotiated confidential information supplied by the affected party to the WSIB. I also find that there is insufficient evidence to suggest that the invoices contain information that is not susceptible to negotiation.

[25] As a result, I find that the invoices were not “supplied” to the WSIB for the purposes of section 17(1) of the *Act* and do not meet the second part of the three-part test for the exemption to apply. As all three parts of the section 17(1) test must be met it is not necessary for me to also review the confidentiality requirement of the second part of the test, or the harms contemplated in the third part. To summarize, I find that section 17(1) does not apply to any of the information in the records at issue and I allow the appeal.

ORDER:

1. I order the WSIB to disclose the records in full to the appellant by **October 03, 2025**, but not before **September 27, 2025**.

¹⁰ See, for example: Orders PO-4055, MO-3372, MO-3258, and PO-2806

¹¹ This approach was upheld in *Boeing Co.* See also, Orders PO-4153 and MO-1706.

2. In order to verify compliance with Order Provision 1, I reserve the right to require the WSIB to provide me with copies of the records that are disclosed to the appellant.

Original Signed by: _____
Meganne Cameron
Adjudicator

August 28, 2025