

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4731

Appeal PA22-00085

Workplace Safety and Insurance Board

September 26, 2025

Summary: An individual made a five-part request under the *Freedom of Information and Protection of Privacy Act* to the Workplace Safety and Insurance Board (WSIB) for access to records relating to his file and employee caseloads. The WSIB granted partial access to some records and denied access in full to other records under the discretionary personal privacy exemption (section 49(b)) and the security exemption (section 14(1)(i)). The WSIB also claimed that the caseload records are excluded from the *Act* under the exclusion for employment or labour relations related information (section 65(6)3).

In this order, the adjudicator partially upholds the WSIB's decision. She upholds the WSIB's claim that the labour relations exclusion applies to the caseload records and that the personal privacy exemption applies to some of the withheld information. However, she orders the WSIB to disclose certain information whose disclosure would not be an unjustified invasion of personal privacy under section 49(b) or is not subject to the security exemption under section 14(1)(i).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) ("personal information"), 14(1)(i), 49(b), and 65(6)3.

Orders Considered: Orders PO-2391 and PO-4385.

OVERVIEW:

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

1. I request all internal office documentation of WSIB pertaining to any, and all discussions or communications, written or oral regarding [specified employee #1] and me for the past four years that was discussed within their office, not just the documentation that I already possess within my own file.

2. In particular, I wish to obtain the latest internal information indicating if [specified employee #1's] caseload was excessive, and if it changed after I was removed from her care.

3. How many cases did she handle prior to me being under her care, and how many cases does she currently have after I was assigned to a new case manager, [specified employee #2].

4. [Specified employee #2] was re-assigned to be my new case manager, replacing [specified employee #1]. I therefore request the written notification that would have been provided to [specified employee #2], and the date that he was officially assigned to me.

5. I also request to know whether any phone call was placed to me on May 04, 2021 at either of the two telephone numbers registered to me and listed by WSIB:

i) [specified phone number] Home or

ii) [specified phone number] Cell

[2] The WSIB issued a decision granting partial access to portions of the records responsive to part 1 of the request, withholding information under section 21(1) (personal privacy) and 14(1)(b) (law enforcement investigation) of the *Act*. Access was denied to records responsive to parts 2 and 3 of the request under 65(6) (employment or labour relations). With respect to part 4 of the request, the WSIB stated that there were no responsive records. Access was granted to records responsive to part 5 of the request. Some information was also withheld as non-responsive.

[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] During mediation, the WSIB provided the appellant with details about the search it conducted as well as an explanation about the application of sections 14(1) and 21(1) to the records. In the Index of Records sent to the appellant, the WSIB identified several records as duplicates.

[5] Despite the WSIB's explanations, the appellant advised that he believes further records responsive to his request should exist. He confirmed that he seeks access to the

information withheld by the WSIB under sections 14(1), 21(1),¹ and 65(6) of the *Act*. He also confirmed that he does not seek access to duplicate records and portions of the records withheld as non-responsive. Accordingly, these are not at 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 conducted an inquiry in which I sought and received representations from the parties about the issues in the appeal.

[7] In this order, I partially uphold the WSIB's decision. I uphold the WSIB's claim that the records responsive to items 2 and 3 of the appellant's request are excluded from the scope of the *Act* under section 65(6)3. I find that section 49(b) applies to exempt some of the withheld information from disclosure. However, I find that certain information is not exempt under sections 14(1)(i) and 49(b) of the *Act* and I order the WSIB to disclose it to the appellant.

RECORDS:

[8] The information remaining at issue in this appeal consists of portions of emails as noted in the WSIB's Index of Records, including:

Record	Type	Exemption Claimed
3 ²	Email with Microsoft Teams link	14(1)
31	Email with comment about vacation	49(b)
35	Email with Microsoft Teams link	14(1)
43	Email with Microsoft Teams link	14(1)
47	Email with comments about the appellant	49(b)
52	Email with comment about personal time	49(b)
53	Email with comment about being away from work	49(b)
64	Email with comment about vacation	49(b)
72	Email with comment about vacation	49(b)

¹ Section 49(b) was added as an issue during the inquiry because the records appear to contain the personal information of the appellant.

² Records 3, 34, and 36 are duplicates of the same record.

86	Email with comment about vacation	49(b)
87	Email with comment about vacation	49(b)

[9] Records responsive to items 2 and 3 of the request withheld by the WSIB under the employment and labour relations exclusion are also at issue. These records were not listed in the WSIB's Index of Records. I will refer to these records as the "caseload records."

ISSUES:

- A. Does the section 65(6)3 exclusion for records relating to labour relations or employment matters apply to the caseload records?
- B. Does the discretionary exemption at section 14(1)(i) related to security apply to the withheld links in records 3, 35, and 43?
- C. Do records 31, 47, 52, 53, 64, 72, 86, and 87 contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- D. Does the discretionary personal privacy exemption at section 49(b) apply to the withheld information in records 31, 47, 52, 53, 64, 72, 86, and 87?
- E. Did the WSIB conduct a reasonable search for responsive records?

DISCUSSION:

Issue A: Does the section 65(6)3 exclusion for records relating to labour relations or employment matters apply to the caseload records?

[10] Section 65(6) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters. If the exclusion applies, the record is not subject to the access scheme in the *Act*, although the institution may choose to disclose it outside of the *Act*'s access scheme.³

[11] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.⁴

[12] Section 65(6)3 states:

³ Order PO-2639.

⁴ *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107 (CanLII).

Subject to subsection (7), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest....

[13] If section 65(6) applies to the records, and none of the exceptions found in section 65(7) applies, the records are excluded from the scope of the *Act*.

[14] If section 65(6) applied at the time the record was collected, prepared, maintained or used, it does not stop applying at a later date.⁵

[15] The type of records excluded from the *Act* by section 65(6) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.⁶

Representations, analysis and findings

[16] Based on the parties' representations, I find that section 65(6)3 applies to exclude the caseload records from the scope of the *Act*.

[17] The WSIB submits that the appellant requested information pertaining to a specific WSIB's employee's workload, questioning whether the workload is excessive, and if it resulted in the change of his case manager. The WSIB submits that caseload records were created for the sole purpose of holding weekly meetings regarding employment related matters: performance management discussions and evaluating an employee's workload.

[18] The WSIB submits that it is trite law that evaluations regarding the conduct of the institution's personnel, and records created in response to workload, are excluded from the *Act*.⁷

[19] The WSIB submits that the records were collected, prepared, maintained, and used exclusively for employment-related purposes. The records are related to matters in which the WSIB is acting as an employer, and the terms and conditions of employment or human resources processes are at issue. The WSIB submits that the caseload records are akin to performance management reports, which are reviewed on an ongoing basis with

⁵ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 509.

⁶ *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.). The CanLII citation is "2008 CanLII 2603 (ON SCDC)."

⁷ The WSIB cites *Reynolds v. Ontario (Information and Privacy Commissioner)*, [2006] O.J. No. 4356, and Orders MO-2332 and PO-2057.

the goal of equitable and reasonable distribution of workload.

[20] The WSIB submits that there is a strong and substantial connection between the creation of the caseload records and their use in labour relations and employment meetings, consultations, discussions and communications: to determine whether an employee's workload is fair and being managed to WSIB standards.

[21] The appellant acknowledges the need for certain information relating to labour relations to be redacted. However, he argues that the WSIB has used "labour" as an ongoing excuse to refuse access to the records. The appellant submits that he is requesting the specified employee's caseload records to understand the reasons why the specified employee was assigned/removed from his file.

[22] For section 65(6)3 to apply, the WSIB must establish that:

1. the caseload records were collected, prepared, maintained or used by the WSIB or on its behalf;
2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the WSIB has an interest.

[23] In order for section 65(6)3 to apply, all three parts of the test set out above must be met.

Part 1 and 2: collected, prepared, maintained or used in relation to meetings, consultations, discussions or communications

[24] The WSIB submits that the caseload records were collected, prepared, maintained and/or used by it for workflow and performance management internally and pursuant to its collective agreement. The WSIB submits that these caseload records refer to discussions that took place between managers and their direct reports for the purpose of determining what corrective action should be taken in the management of each case, as well as discussions between the manager and their director to ensure proper management of cases.

[25] After reviewing the representations of the parties and the circumstances of this appeal, I am satisfied that the caseload records were collected, prepared, maintained or used by the WSIB in its capacity as an employer. The caseload records at issue are used by the WSIB for workflow and performance management of the specified employee. These types of documents are typically collected, prepared, maintained or used by an employer. Accordingly, I find that part 1 of the test under section 65(6)3 has been met.

[26] I am also satisfied that the evidence submitted by the WSIB establishes that the

caseload records were collected, prepared, maintained or used in relation to meetings, consultations, discussions or communications by the WSIB with or in relation to the specified employee and their caseload. Therefore, I find that part 2 of the test has also been met.

Part 3: labour relations or employment-related matters in which the ministry has an interest

[27] The records are excluded only if the meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the institution has an interest. The phrase “in which the institution has an interest” means more than a “mere curiosity or concern” and refers to matters involving the institution’s own workforce.⁸

[28] For the collection, preparation, maintenance or use of a record to be “in relation to” one of the three subjects mentioned in this section, there must be “some connection” between them.⁹

[29] The “some connection” standard must, however, involve a connection relevant to the scheme and purpose of the *Act*, understood in their proper context. For example, given that accountability for public expenditures is a core focus of freedom of information legislation, accounting documents that detail an institution’s expenditures on legal and other services in collective bargaining negotiations do not have “some connection” to labour relations.¹⁰

[30] The term “labour relations” refers to the collective bargaining relationship between an institution and its employees, as governed by collective bargaining legislation, or to similar relationships. The meaning of “labour relations” is not restricted to employer-employee relationships.¹¹

[31] The term “employment of a person” refers to the relationship between an employer and an employee. The term “employment-related matters” refers to human resources or staff relations issues arising from the relationship between an employer and employees that do not arise out of a collective bargaining relationship.¹²

[32] Based on the parties’ representations and the nature of the records, I find that the caseload records were collected, prepared, maintained or used by the WSIB in relation to meetings, consultations, discussions or communications about labour relations or

⁸ *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)*, cited above.

⁹ Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

¹⁰ Order MO-3664, *Brockville (City) v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div. Ct.).

¹¹ *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2003] O.J. No. 4123 (C.A.); see also Order PO-2157.

¹² Order PO-2157.

employment-related matters in which the WSIB has an interest.

[33] The WSIB submits that the caseload records being requested are created due to labour relations obligations in the collective agreement for WSIB employees and the specified employee is a member of the bargaining union. The WSIB submits that these caseload records are referred to in the union's collective agreement, which states that the WSIB acknowledges that work can fluctuate and should be reviewed on an ongoing basis with the goal of equitable and reasonable distribution of workload.

[34] In this case, the appellant specifically seeks access to caseload records related to the specified employee's caseload, including the specific number of cases at various points, and whether her caseload changed, or was excessive. These records were created and maintained as part of the WSIB's workflow and performance management. I accept that discussions and communications about an employee's caseload and performance are matters in which the WSIB has an employment-related interest.

[35] I am satisfied that the caseload records meet the requirement that they be about employment-related matters, because they comprise records related to the specified employee's caseload and meetings, consultations, discussions or communications between the specified employee and the WSIB with respect to their workflow and performance management.

[36] I am also satisfied that, in this case, the WSIB's interest in the communications in the caseload records is employment related because the WSIB is the specified employee's employer. Accordingly, I find that part 3 of the test is met.

[37] Neither party has argued that any of the exceptions in section 65(7) apply to the caseload records, and I find that none of them apply in the circumstances of this appeal.

[38] Since all three parts of the section 65(6)3 test have been met and none of the exceptions in section 65(7) apply, I find that the caseload records are excluded from the scope of the *Act*. Therefore, the appellant has no right of access to them under the *Act*.

Issue B: Does the discretionary exemption at section 14(1)(i) related to security apply to the withheld links in records 3, 35, and 43?

[39] Section 14 contains several exemptions from a requester's right of access, mostly related to the context of law enforcement.

[40] Section 14(1)(i) states:

(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

[41] Parties resisting disclosure of a record cannot simply assert that the harms under section 14 are obvious based on the record. They must provide detailed evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 14 are self-evident and can be proven simply by repeating the description of harms in the *Act*.¹³

[42] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.¹⁴ However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.¹⁵

Representations, analysis and findings

[43] The WSIB submits that section 14(1)(i) applies to the withheld links in records 3, 35, and 43.

[44] The appellant submits that the withheld information is unrelated to law enforcement.

[45] For section 14(1)(i) to apply in this appeal, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger the security of a building or of a system or procedure established for the protection of items, for which protection is reasonably required.

[46] The WSIB submits that these links are unique meeting links to a Microsoft Teams meeting that is part of the WSIB's security network, which is not available to the public. The WSIB submits that disclosure of these links could reasonably be expected to endanger the security and integrity of the WSIB's information technology (IT) system.

[47] The WSIB submits that its IT Security Department recommended withholding the links due to the specific cybersecurity risk to the organization. It submits that independent research has found vulnerability specific to the desktop version of Microsoft Teams on Windows and outlines that credentials could be theoretically stolen by an attacker who has remote access and used to steal data after bypassing the multifactor authentication.

¹³ Orders MO-2363 and PO-2435.

¹⁴ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

¹⁵ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616.

[48] In support of its position, the WSIB submits that in Order PO-2391, the IPC found that section 14(1)(i) applies because the disclosure of records about the Ministry of Consumer and Business Services' operating systems could reasonably be expected to endanger the security of a system or procedure established for the protection of the information contained in the system. However, I find that Order PO-2391 does not apply in the circumstances of this appeal. In Order PO-2391, the records at issue contain "detailed, specific information about this system and the operational procedures including sensitive login procedures, diagrams, screen reproductions and step-by-step instructions, as well as information about the security of the system itself." Meanwhile, in this current appeal, the only information at issue is Microsoft Teams meeting links. Additionally, in Order PO-4385, the IPC found that section 14(1)(i) did not apply to internal meeting links of a ministry.

[49] From my review of the links, they are three different links to presumably three different Microsoft Teams meetings. The WSIB has not established that disclosing this information for the specific meetings could be expected to endanger the security of its IT system. These meetings happened in the past and it is not evident to me how the appellant or others could use this information to gain access to the WSIB's IT system. By its own admission, the WSIB states that an attacker would require remote access before "theoretically" stealing credentials, then using those credentials to steal data, after bypassing the multifactor authentication. It is unclear to me how all of this could occur just from disclosure of the past Microsoft Teams meeting links and the WSIB has not established this.

[50] For the reasons above, I find that the WSIB has not established the harm in section 14(1)(i), and I find that it does not apply to exempt the withheld links in records 3, 35, and 43 from disclosure.

Issue C: Do records 31, 47, 52, 53, 64, 72, 86, and 87 contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

[51] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains "personal information," and if so, to whom the personal information relates.

[52] The WSIB claims that the discretionary personal privacy exemption at section 49(b) applies to the withheld information. For this section to apply, the IPC must first determine that the record contains "personal information," and if so, to whom the personal information relates. It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.¹⁶ Also, if the record contains the personal information

¹⁶ Under sections 47(1) and 49 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

of other individuals, one of the personal privacy exemptions might apply.¹⁷

[53] Section 2(1) of the *Act* gives a list of examples of personal information.¹⁸ Section 2(2) states: "Personal information does not include information about an individual who has been dead for more than thirty years."

[54] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.¹⁹

[55] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.²⁰ See also sections 2(3) and 2(4), which state:

(3) 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.

(4) For greater certainty, subsection (3) 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.

[56] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.²¹

[57] The WSIB submits that the withheld information in records 31, 47, 52, 53, 64, 72, 86, and 87 contain information about WSIB employees' vacations and/or personal time away from the office. The WSIB submits that their personal information appears in a personal capacity and reveals something of a personal nature about them.

[58] The appellant submits that none of the information at issue in this appeal consists of personal information.

[59] Based on my review of the records, I find that they contain the personal information of the appellant, but they also contain the personal information of other identifiable individuals including WSIB employees. I acknowledge that the employees appear in the records in their professional capacity. However, I find that the information

¹⁷ Sections 21(1) and 49(b), as discussed below.

¹⁸ The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."

¹⁹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

²⁰ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

²¹ Orders P-1409, R-980015, PO-2225 and MO-2344.

relating to their vacation/time away from the office is their personal information because it reveals something of a personal nature about them.

[60] Accordingly, as the records contain the personal information of the appellant and other individuals, I will consider the appellant's access to the withheld information under Part III of the *Act* which considers the protection of individual privacy including the right of the individual to whom personal information relates.

Issue D: Does the discretionary personal privacy exemption at section 49(b) apply to the withheld information in records 31, 47, 52, 53, 64, 72, 86, and 87?

[61] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides some exemptions from this right.

[62] The WSIB submits that section 49(b) applies because disclosure of the withheld information would be an unjustified invasion of personal privacy of the individuals whose information is contained in the records.

[63] The appellant submits that none of the information at issue in this appeal consists of personal information.

[64] Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[65] The section 49(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of other individual's personal privacy.²²

[66] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b).

[67] Also, the requester's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.²³

[68] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of another individual's personal privacy. If any of the section 21(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy, and the information is not exempt from disclosure under section 49(b). Similarly,

²² See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 49(b).

²³ Order PO-2560.

if any of the situations in section 21(4) apply, disclosure would not be an unjustified invasion of personal privacy under 49(b). If any of sections 21(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b).

[69] Sections 21(2) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b). Section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.²⁴ The list of factors is not exhaustive. The institution must also consider circumstances that are relevant, even if they are not listed under section 21(2).²⁵

[70] In deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), the decision-maker²⁶ must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.²⁷

Representations, analysis and findings

[71] The parties did not argue that sections 21(1), 21(3), or 21(4) apply in the circumstances before me. From my review, I am satisfied that they do not apply and will not discuss them further in this order. I will now consider below whether any of the factors in section 21(2) or any unlisted factors are relevant.

[72] The parties also did not raise any section 21(2) factors weighing in favour of or against the disclosure of the withheld information. From my review of the circumstances of this appeal, I find that none apply. I also considered whether any unlisted factors favouring disclosure, such as inherent fairness issues, apply, and I find that none apply in the circumstances of this appeal.

[73] The withheld information in records 31, 52, 53, 64, 72, 86, and 87 does not contain the appellant's personal information it only contains the personal information of the other identifiable individuals, specifically WSIB employees. The withheld personal information consists of comments about these employees' vacation and plans outside of work. As no factors weighing in favour of disclosure apply, balancing the interests of the parties, I find that disclosure of the withheld information in records 31, 52, 53, 64, 72, 86, and 87 would be an unjustified invasion of these individuals' personal privacy under section 49(b). Accordingly, I find that this information is exempt from disclosure.

[74] The withheld information in record 47 contains the personal information of the appellant and the name of another identifiable individual. Since disclosing the appellant's

²⁴ Order P-239.

²⁵ Order P-99.

²⁶ The institution or, on appeal, the IPC.

²⁷ Order MO-2954.

personal information to him would not be an unjustified invasion of personal privacy, I will order the WSIB to disclose this information to him. I order the WSIB to disclose the withheld information in record 47 to the appellant except for the name of the other identifiable individual, which I find is exempt under section 49(b).

Exercise of discretion

[75] The section 49(b) exemption is discretionary, meaning that the WSIB can decide to disclose information even if the information qualifies for exemption. The WSIB must exercise its discretion. On appeal, I may determine whether the WSIB failed to do so.

[76] After considering the parties' representations and the circumstances of this appeal, I find that the WSIB did not err in its exercise of discretion with respect to its decision to deny access to the withheld personal information in records 31, 52, 53, 64, 72, 86, and 87 under section 49(b) of the *Act*. I am satisfied that the WSIB considered relevant factors and did not consider irrelevant factors in its exercise of discretion. In particular, it is evident that the WSIB considered the fact that the withheld information in the emails contain the personal information of the WSIB employees and balanced it against the appellant's right of access.

[77] Accordingly, I find that the WSIB exercised its discretion in an appropriate manner in this appeal, and I uphold it.

Issue E: Did the WSIB conduct a reasonable search for responsive records?

[78] The appellant claims that further records responsive to his 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 24.²⁸ 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.

[79] 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.²⁹ 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.³⁰

[80] 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

²⁸ Orders P-85, P-221 and PO-1954-I.

²⁹ Orders P-624 and PO-2559.

³⁰ Orders M-909, PO-2469 and PO-2592.

concluding such records exist.³¹

Representations, analysis and findings

[81] For the reasons that follow, I find that the WSIB conducted a reasonable search for records responsive to the appellant's request.

[82] The WSIB submits that it conducted a reasonable search for responsive records. In support of its position, the WSIB submitted an affidavit from its Manager of Privacy, Access, and Risk in the Freedom of Information Office. The affidavit described the individuals involved in the search, where they searched, and the results of their search.

[83] The appellant's representations on the WSIB's search included concerns and submissions outside the scope of this appeal.³² These portions are not directly relevant to my determination on the issue of reasonable search, and I will not comment on them further in this order.

[84] The appellant submits that the WSIB unilaterally narrowed the scope of his request based on its own internal judgements of what it considered relevant, not collaboratively with him. He submits that the WSIB did not provide a "detailed and verifiable account of the specific search steps taken" and the absence of specific details makes it impossible to determine whether the WSIB's search was reasonable. The appellant also submits that it is unclear whether responsive records have been destroyed and where the WSIB searched other than the WSIB's claims repository system (ACES).

[85] Based on my review of the appellant's representations, I am not persuaded that he 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.³³ The WSIB outlined its *Records Management Policy* and explained that this policy prohibits using email as a repository for records and all emails relevant to a claim are transferred to ACES. The WSIB submits, and I accept, that emails are transitory in nature and nonrelevant emails are deleted on a regular basis.³⁴

[86] I am not persuaded by the appellant's argument that because the WSIB found responsive emails outside ACES that further responsive records exist outside of ACES that have not been located by the WSIB. It is clear the appellant has opinions and concerns about what the WSIB should have included in its search and its affidavit. However, the *Act* does not require the institution to prove with absolute certainty that further records

³¹ Order MO-2246.

³² Including but not limited to the WSIB's handling of his claim, allegations against WSIB staff, the WSIB's "overbroad use of exemptions," and his Human Rights Tribunal of Ontario complaint and other proceedings.

³³ Order MO-2246.

³⁴ Emails are retained for three years per the policy.

do not exist. The institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records,³⁵ and I am satisfied that the WSIB has done so.

[87] The WSIB has described the individuals involved in the search, where they searched, and the results of their 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.³⁶ I am satisfied that the WSIB has provided sufficient evidence to establish this.

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

ORDER:

1. I order the WSIB to disclose the withheld portions of records 3, 35, and 43; and the highlighted portion of record 47 to the appellant by **October 31, 2025**, but not before **October 26, 2025**.
2. I otherwise uphold the WSIB's access decision.
3. In order to verify compliance with this order, I reserve the right to require the WSIB to provide me with a copy of the records disclosed to the appellant in accordance with provision 1.

Original Signed by: _____

Anna Truong
Adjudicator

September 26, 2025

³⁵ Orders P-624 and PO-2559.

³⁶ Orders M-909, PO-2469 and PO-2592.