

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2004-007

April 16, 2004

WORKERS' COMPENSATION BOARD

Review Number 2678

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request to the Workers Compensation Board (“WCB”) under the *Freedom of Information and Protection of Privacy Act* (the “Act”) for access to all information relating to himself and his claims. The request was subsequently narrowed to information in e-mail records other than those on his claim file, and for a letter (in un-severed form) written by a physician, that the Applicant believed had been supplied to him by the WCB in severed form in an earlier access request.

The WCB performed a number of searches for the requested records but did not find them. The Applicant requested a review of the WCB’s response to his requests on the basis of his belief that the records had been withheld.

The Commissioner reviewed the searches conducted by the WCB for the requested records, and the manner and timing of its communication of the results. In light of this review, the Commissioner held that the WCB conducted an adequate search for the requested records, and met its duty under the Act to make every reasonable effort to assist the Applicant and to respond openly, accurately and completely.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, s. 10(1)

Authorities Cited: **AB:** Order 96-022, Order 99-039

I. BACKGROUND

[para 1] On October 2, 2002, the Applicant made a request under the *Freedom of Information and Protection of Privacy Act* (the “Act” or “FOIP”) to the Workers’ Compensation Board (“WCB”) for all information in its possession or known to it relating to himself and his claims. Following further correspondence and telephone communication, it was agreed between the Applicant and WCB FOIP Officer that the WCB would conduct a search for e-mail records other than those already on the Applicant’s claim file. (The Applicant and FOIP Officer also agreed about the steps to be taken with respect to the remaining information requested by the Applicant. These steps were taken and the provision of that information is not an issue in the present inquiry.)

[para 2] The WCB conducted a search for the e-mails and no responsive records were located. The WCB advised the Applicant of the results of the search on November 4, 2002.

[para 3] On January 20, 2003, the Applicant’s representative made an informal request for information relative to a letter (the “Letter”) that the Applicant had allegedly received in severed form in an earlier access request. The representative provided a copy of the severed Letter to the WCB. The Letter was written and signed by a physician, and apparently pertains to a WCB claim. The name and address of the addressee, and a number of modifiers in the text of the Letter, were blocked out. The Letter does not reveal whose WCB claim it discusses, nor the date it was written.

[para 4] The WCB conducted a search for the Letter but failed to locate it. The WCB so advised the Applicant’s representative on January 28, 2003. In its response the WCB also made suggestions as to how the Applicant or representative might go about obtaining answers to some of their questions about the Letter from other sources.

[para 5] Subsequently, by letter dated March 13, 2003, the Applicant made a request under the Act to the WCB for an unedited version of the Letter. The WCB performed another search but the Letter was not located, and the Applicant was so advised on March 19, 2003.

[para 6] By letter dated March 17, 2003 the Applicant requested a review of the WCB’s response to his requests on the basis of his belief that documents had been withheld. I authorized mediation, which was not successful, and the matter was set down for a written inquiry.

II. RECORDS AT ISSUE

[para 7] The records in this inquiry are:

1. E-mail messages relating to the Applicant not on his claim file.

2. Letter written and signed by a physician (the “Letter”), in which the addressee, and several modifiers throughout the text of the Letter, have been severed. The date is unknown.

III. ISSUE

[para 8] Did the Public Body make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(1) of the Act?

IV. DISCUSSION OF THE ISSUE

[para 9] Section 10(1) of the Act reads:

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para 10] In Order 96-022, the former Commissioner said that a public body has the burden of proving that it has fulfilled its duty under section 10(1). The former Commissioner said that a public body must show that it has conducted an adequate search. The Public Body must show that: (a) it made every reasonable effort to search for the records requested; and (b) that it informed the applicant in a timely fashion about what has been done.

1. Request for e-mail records other than e-mail records already on the Applicant’s claim file

[para 11] The WCB provided documentation that it had searched through all 23 of its operational areas for e-mails other than those placed on the Applicant’s claim file, and that no responsive records were located. The WCB says that this represents all the areas where records about the Applicant could possibly be held. The Applicant was advised of the results of the search, and of the fact that he could obtain e-mails on his claim file through the routine WCB Access to Information process.

[para 12] In my view the WCB conducted an adequate search for the e-mail records sought by the Applicant, and communicated the results of its searches promptly. Therefore the WCB met its duty under s. 10(1) of the Act with respect to the request for e-mail communications.

2. Request for the Letter

[para 13] The Applicant has stated that the Letter was provided to him in documents provided in his “most recent F.O.I.P. request”. The Applicant’s representative states that the Applicant believes this letter was released to him in March 2000 through a WCB access request. The representative also states the Applicant’s belief that the Letter was

written in response to a request from the Appeals Commission's registrar, in preparation for a 1997 Appeals Commission hearing.

[para 14] The WCB provided documentation that on receiving the January 20, 2003 request from the Applicant's representative, it performed the following searches for the Letter:

- The WCB's FOIP Specialist personally reviewed, page by page,
 - the Applicant's paper and electronic claim file – approximately 1200 pages
 - the Applicant's two claim files stored on microfilm
 - all of the Applicant's previous access requests under the Act
- the Team Lead, Health Information Unit, at the Millard rehabilitation clinic reviewed the clinic's files
- a Policy Advisor at the Workers' Compensation Appeals Commission reviewed all Appeals Commission files
- a Supervisor in the Office of the Appeals Advisor reviewed the Office of the Appeals Advisor files (most of the Applicant's file from the early 1990s had been destroyed in accordance with records management regulations)
- a Work Coordinator in the WCB's Access to Information area reviewed all deleted image documents that remained in the system in 'background'.

[para 15] The Letter was not found.

[para 16] The WCB's FOIP Specialist also contacted the medical office of the physician who had written the Letter, but was advised that the Letter could not be accessed and in any case would be provided only to the Applicant. Accordingly the WCB's Privacy Officer suggested to the Applicant's representative in a letter dated January 28, 2003 that he contact the physician personally.

[para 17] The WCB provided documentation that on receiving the Applicant's request for the Letter (on March 17, 2003), its FOIP Specialist again personally reviewed the imaged file, and the Access to Information Work Coordinator also conducted another search. These searches failed to locate the Letter.

[para 18] In my view the WCB conducted an adequate search for the Letter. As part of its duty to assist in accordance with Order 99-039, the WCB also sought additional information about the Letter from the Applicant and his representative in order to focus the search (paragraph 3 of the letter of January 28, 2003 from the WCB Privacy Officer to the Applicant's representative). However, no such information was provided. These steps are evidence that the WCB met its duty under s. 10(1) of the Act.

[para 19] In addition to the documented steps taken by the WCB, there is additional evidence tending toward the conclusion that the search was adequate. This evidence tends to show that the Letter was never part of the Applicant's file. The evidence suggests the reason the Letter was not located was not because the search was inadequate, but because the Letter was not there. The evidence consists of the following:

1. The Letter refers to an *increase* in the permanent disability award of the person to whom it refers “to 15% of total”. The Appeals Commission award relative to the Applicant’s claim, as well as other evidence provided in the WCB’s submission (e-mail correspondence dated 06/09/2003 from the WCB Case Adjudicator), indicates that the Applicant’s original permanent disability award was assessed at 15%, and subsequently increased to 20% and 25%. This suggests the Letter does not refer to the Applicant at all.
2. The content of the Letter is not such as would provide much assistance to the Applicant in an appeal for a higher permanent disability award. Even on the theory that the WCB would deliberately withhold correspondence that would support the Applicant’s appeal of a level of disability awarded by the WCB, there would be no such motivation relative to this Letter. It would also be illogical for the WCB to release a severed document in response to one access request and withhold it in a subsequent one.
3. It is standard WCB practice to include any document pertaining to the claim on a client’s claim file.
4. The WCB asserts that it is not part of the practice of its Access to Information area to ‘black out’ information in the manner this had been done in the Letter. It also points out the Letter is not numbered in the usual manner for documents released in access requests under the Act.

V. ORDER

[para 20] The WCB conducted an adequate search for the requested records, and met its duty to make every reasonable effort to assist the Applicant and to respond to the Applicant openly, accurately and completely, as required by section 10(1) of the Act.

[para 21] As the WCB has complied with the requirements of section 10(1), no order is required.

Frank Work, Q.C.
Information and Privacy Commissioner