ISSN 1198-6182

Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 164-1997
May 15, 1997

INQUIRY RE: The Workers Compensation Board's decision to withhold personal and other information from an applicant

Fourth Floor
1675 Douglas Street
Victoria, B.C. V8V 1X4
Telephone: 250-387-5629
Facsimile: 250-387-1696
Web Site: http://www.oipcbc.org

1. Description of the Review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on March 25, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review by an applicant concerning the Workers Compensation Board's decision to withhold and sever information from his access request pursuant to sections 13, 15, 16, 19, and 22 of the Act.

2. Documentation of the inquiry process

On July 29, 1996 the Workers Compensation Board (WCB) received a request from the applicant for "any and all information held by, engendered by, generated by, and/or known to the Workers Compensation Board, or anyone acting on the Board's behalf or providing information to the Board relating to me, or my claims in any way, by any reference, including but not exclusive to, name, WCB Claim #, SIN and or MSP #." The applicant received a response from the WCB on November 26, 1996. The applicant was given a copy of his claim file and other records. The WCB informed the applicant that it was withholding and severing a number of records pursuant to sections 13, 15, 16, 19, and 22 of the Act. On December 3, 1997 the applicant requested a review of the decision by the WCB to withhold and sever information. He also requested a review of the adequacy of the search.

Notices were sent on February 13, 1997 informing both parties that an inquiry would be held on March 6, 1997. As per the notice, initial submissions were due on February 27, 1997, and reply submissions due on March 5, 1997. Initial submissions were received by the due date. Applicant's counsel then requested an extension of time to

file their reply submission. The WCB opposed this request on the grounds that "it would be inappropriate, unfair and illegal at this late stage of the game, after the review period has expired by statute, for the Commissioner to purport to have jurisdiction to extend the time for review to allow [the applicant] to seek legal counsel to improve his written submission." As the applicant had retained counsel late in the inquiry process, I determined that in the interest of fairness an extension to March 24, 1997 would be granted and that such an extension would not result in a loss of jurisdiction. The applicant filed a reply submission on March 24, 1997. The WCB was permitted a supplementary submission, which was received on March 25, 1997.

On February 26, 1997 the WCB disclosed to the applicant the only two pages of records withheld under section 16 of the Act.

3. Issue under review at the inquiry

The issue in this review is whether the WCB appropriately applied sections 13, 15, 19, and 22 of the Act to the information in dispute and whether the WCB met its duty to assist the applicant under section 6 of the Act.

Policy advice or recommendations

13(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or minister.

Disclosure harmful to law enforcement

15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to:

...

(d) reveal the identity of a confidential source of law enforcement information

(e) endanger the life or physical safety of a law enforcement officer or any other person

....

Disclosure harmful to individual or public safety

19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health, or

(b) interfere with public safety

Disclosure harmful to personal privacy

22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether:

...

(e) the third party will be exposed unfairly to financial or other harm

(f) the information was supplied in confidence

....

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation

(c) the personal information relates to employment, occupational or educational history

...

(g.1) the disclosure could reasonably be expected to reveal that the third party supplied in confidence, a personal recommendation or evaluation, character reference or personnel evaluation

....

Duty to assist

6(1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

4. Burden of proof

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(1), where access to information in the record has been refused under sections 13, 15, and 19 it is up to the public body to prove that the applicant has no right of access to the record or part of the record.

Under section 57(2), if the record or part that the applicant is refused access to under section 22 contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

5. The records in dispute

The records in dispute are e-mails and memoranda among staff from the following branches of the WCB: Field Services (Investigation), Appeal Division, Safety and Security, Psychology and Divisional Management.

6. The applicant's case

The applicant states that he is seeking information from his WCB claim file(s). He rejects the various sections of the Act that the WCB relied on to deny him access to the records that he has requested:

> I can't agree with this action, as I'm not a violent person nor is it in my character nor my RB record, until the WCB set me up and fabricated information to make me look this way in the publics' eyes and the courts.... I am not a threat to anyone.

The applicant also believes that the WCB did not conduct an adequate search to locate records responsive to his request.

The applicant's reply submission was prepared by counsel, but it has the effect of further muddying troubled waters, because, as the WCB pointed out in its own reply submission to this one, the episode raised by counsel is not part of this particular inquiry, because it refers to records in connection with an episode that occurred after the applicant filed his original request for access to information. In the circumstances, I prefer not to go into the details of the exchange on this matter, since it does not advance decision-making in the present inquiry. The applicant is free to submit a request for records created after July 29, 1996.

7. Discussion

Almost all of the WCB's initial submission and all of its affidavit evidence was made on an *in camera* basis. This obviously limits my ability to present the substance of

its arguments and evidence under the sections of the Act that it is arguing. I have read all of the affidavit evidence submitted by the WCB as well as the unsevered volume of records pertaining to the applicant; this has persuaded me that reliance on *in camera* submissions was appropriate in the context of this case.

I can summarize several points from the WCB's reply submission, which was not made on an *in camera* basis. It denies all of the allegations made by the applicant to the effect that the WCB set him up, fabricated information, is playing games with the lives of claimants, and is "in cahoots with the RCMP." The WCB also points out that "[the applicant] makes these allegations without any evidence to support them."

The applicant also argued that a third party would only want to hide information from a requester under the Act if something illegal was going on.

> The WCB responds that a third party will want to hide from a FIPP requester, and a public body has an obligation to protect the third party's privacy, in circumstances where the FIPP requester presents a serious threat to the life, safety or mental health of the third party.

The WCB has especially relied on sections 19 and 22 of the Act to withhold most of the records in dispute in this inquiry. I find that it has met its burden of proof in this regard, and the applicant has failed to meet his section 22 burden. (See Orders No. 109-1996, June 4, 1996; Order No. 89-1996, March 4, 1996; Order No. 28-1994, November 8, 1994; Order No. 108-1996, May 30, 1996; and Order No. 37-1995, March 31, 1995) I also find that the WCB has appropriately relied on sections 13 and 15 of the Act to protect a limited number of records from disclosure.

Adequacy of the search

As noted above, the applicant questions whether the WCB searched thoroughly for records relating to his claims. The latter furnished the applicant and myself with a list of 16 departments at the WCB that it contacted in order to try to locate appropriate records: "these are the departments which, based on our experience, may hold records about a claimant which might not also be on the claim file." I concur with the WCB's statement that its search has been adequate.

8. Order

I find that the WCB was authorized to refuse access to information in the records in dispute under sections 13, 15, and 19 of the Act. Under section 58(2)(b), I confirm the decision of the WCB to refuse access to the applicant.

I also find that the WCB was required to refuse access to the information in the records in dispute under section 22(1) of the Act. Under section 58(2)(c), I require the WCB to refuse access to the applicant.

I also find that the search conducted by the WCB was a reasonable effort within the meaning of section 6(1) of the Act. Under section 58(3)(a), I require the WCB to perform its duty to assist the applicant; however, since I have found that the search conducted was reasonable, I find that the WCB has complied with this Order and discharged its duty under section 6(1).

_____

David H. Flaherty
Commissioner

May 15, 1997