



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 02-53

WORKERS' COMPENSATION BOARD

Alexander Boyd, Adjudicator
October 31, 2002

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Summary: The applicant made two requests to the WCB for a copy of records pertaining to him. The WCB's search for records was adequate and it met its s. 6(1) duty to conduct an adequate search.

Key Words: duty to assist – adequacy of search – respond openly, accurately and completely.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 6(1).

Authorities Considered: B.C.: Order 02-03, [2002] B.C.I.P.C.D. No. 3.

1.0 INTRODUCTION

[1] This inquiry arises out of two separate requests made by the applicant to the Workers' Compensation Board ("WCB"). On a form dated November 20, 2001 the applicant's first request was for "Complete File Disclosure". In a letter dated December 7, 2001 the WCB responded to the applicant by informing him that arrangements had been made for the WCB Disclosure Office to directly provide him with a copy of his claim file. The letter also informed the applicant that a number of the WCB departments had been contacted to determine if any had responsive records outside his claim file. Each department responded that it did not. The letter also informed the applicant that the only records relating to him outside of his claim file were those contained in the WCB database system. A copy of those records was enclosed with the letter.

[2] The applicant's second request, contained in a letter dated December 24, 2001 was for:

1. E-Files,
2. Claim Logs, and
3. Data printouts etc. for all my claim files

[3] In addition, a substantial portion of this request was for a copy of various "Form 8's" that the applicant believed should be in the custody of the WCB. A Form 8 is apparently one of the standard reporting documents used by physicians to report the date and nature of a work related injury (Affidavit of Celia Jensen, para. 5).

[4] In a letter of January 24, 2002, the WCB responded to this second request by again informing the applicant that it had arranged for disclosure of the claim files to be provided directly to the applicant through the WCB's Disclosure Department. The WCB also informed the applicant that it had again contacted a number of departments to determine if any had records responsive to his second request outside his claim file. Three departments did locate responsive records. Copies were obtained and released to the applicant along with the January 24 response letter.

[5] The applicant did not accept the WCB's responses. In letters of December 21, 2001 and February 20, 2002, he requested that this Office conduct a review of the responses. Mediation was not successful in resolving the applicant's concerns, so a written inquiry was held under Part 5 of the Act. I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the *Freedom of Information and Protection of Privacy Act* ("Act").

2.0 ISSUE

[6] The only issue in this inquiry is whether the WCB conducted an adequate search for records and thus discharged its duty to assist the applicant under s. 6(1) of the Act. Previous orders have established that the burden of proof regarding the adequacy of a search rests with the public body.

[7] Although this Office did not receive the applicant's reply submission until shortly after the noon deadline for submissions, I have decided to consider it.

3.0 DISCUSSION

[8] **3.1 Applicable Principles** – Section 6(1) of the Act requires the WCB to make every reasonable effort to assist the applicant. This includes a duty to conduct an adequate search for any records that might be responsive to the applicant's request.

[9] Many previous orders have outlined the standard that must be met in order for a public body's search efforts to be considered reasonable. The standard does not require that the public body's search efforts be perfect, but the search must be one that a fair and

rational person would expect to be done or would consider to be reasonable. This standard was outlined by Commissioner Loukidelis in Order 02-03, [2002] B.C.I.P.C.D. No. 3, at para. 14:

Although the Act does not impose a standard of perfection, it is well established that, in searching for records, a public body must do that which a fair and rational person would expect to be done or consider acceptable. The search must be thorough and comprehensive. The evidence should describe all potential sources of records, identify those searched and identify any sources that were not searched, with reasons for not doing so. The evidence should also indicate how the searches were done, and how much time public body staff spent searching for records.

[10] Much of the applicant's submissions discuss his belief that, due to various legislation, policies and interactions with the WCB and medical practitioners, the WCB should have in its possession radiology reports ("x-rays") and various forms used by the WCB (such as a "Form 8"), which he apparently believes physicians are required to send to the WCB. For example, the applicant refers to the "Freedom of Information and Protection of Privacy (B.C.) Directory of Records 1995, Vol. 3, pages 2476-2478" as indicating that "the WCB Radiology/X-Ray Department maintains radiograph records on injured workers and individuals who have claimed ICBC or Criminal Injury Compensation" (submission, p. 6, para. 1). The applicant also discusses his interpretation of the *Workers' Compensation Act* as requiring physicians to provide the WCB with a Form 8 in specific situations (p. 5, para. 3, submission).

[11] He also provides details as to his involvement with various medical practitioners and why he believes that such involvements should have resulted in an x-ray or Form 8 or similar record, or both, being sent to the WCB (p. 1, para. 2, submission). To further support his belief, the applicant provided an affidavit and several exhibits.

[12] The only issue in this inquiry is whether the WCB conducted an adequate search for records. Whether the applicant believes that a given enactment or interaction should have resulted in the creation of a record and its being forwarded to the WCB, does not assist me in making this determination.

[13] At p. 6, para. 2 of his initial submission, the applicant contends that the WCB did not perform an adequate search because

... it did not contact/search their other Offices i.e. Abbotsford, Surrey, Coquitlam 8100 Granville avenue, etc. and their Microfilm Department and Occupational Disease Services Department. They did not search all their Departments i.e. Accounts Department, Tax Department etc. for my records...

[14] The applicant does not provide any explanation as to why he believes these other offices should have been contacted to learn if they have records responsive to his request. Why, for example, would the applicant expect that the Accounts Department or the Tax Department would have any records responsive to his request, notably any x-rays or Form 8's?

[15] The applicant's use of the word "etc." in two places in the referenced paragraph, and the lack of any rationale as to why the named offices or departments might have any responsive records, has left me with the impression that the applicant was simply listing locations that could have been searched, rather than locations that reasonably could be expected to possess responsive records.

[16] I do not believe it is reasonable for an applicant to simply provide a list of a public body's various offices or locations with an expectation that all locations on the list will or should be searched. There must be a reasonable connection between the records that the applicant is requesting and any possible locations.

[17] In its initial submission, at para. 13, the WCB outlines the process it has established to locate records that might be responsive to an applicant's request for records. Apparently, the process requires the WCB's Disclosure Department to make a copy of the requester's entire claim file and to forward it to the applicant. The WCB Freedom of Information & Protection of Privacy Office ("FIPP Office") has also created an "Any & All Index of Records" form, which lists all of the possible departments that may be expected to hold records relating to individual claimants outside of their claim files. Based on its knowledge and experience with WCB records, the FIPP Office uses this form to contact all of the departments that might have other records responsive to each individual request that it receives (paras. 13 & 14, submission).

[18] In response to the applicant's first request, the FIPP Office contacted all of the departments on the "Any & All Index of Records" form. All departments reported that they had no records responsive to the applicant's request (para. 14, submission). In support of its position, the WCB refers to Appendix 13 of the Portfolio Officer's Fact Report. Appendix 13 contains a copy of an "Any & All Index of Records" form referencing the departments that were contacted and the response of each.

[19] In response to the applicant's second request, the FIPP Office again contacted the same departments. This resulted in three departments locating records and the remainder reporting that they held no records responsive to the applicant's request (para. 15, submission). In support of its position, the WCB refers to Appendix 14 of the Portfolio Officer's Fact Report. Appendix 14 contains a copy of the "Any & All Index of Records" form referencing which departments were contacted and the response of each.

[20] After carefully considering the WCB's search process, it appears to me that it has in place a reasonable process that should ensure that it locates all records responsive to an individual request for records. This process is two-fold in nature. The first part sees an applicant receiving a copy of his claim file directly from the WCB's Disclosure Department. The second part of the process sees the FIPP Office contacting all departments that might, judged using the index of records, possess records related to an applicant's request. Any such records are forwarded to the FIPP Office, which then arranges for a copy of the records to be released to the applicant.

[21] Further, as demonstrated by the WCB's response to the applicant's second request, the WCB's search process results in a second search in the same departments, as

well as additional ones, if an applicant places a second request for records related to a previous request. In other words, the WCB does not simply determine that it has already searched in a given location and thus that it does not need to conduct a second search when a follow-up request is received.

[22] I am satisfied, based on the material before me, that the WCB conducted an adequate search for records when responding to the applicant's requests for records.

4.0 CONCLUSION

[23] Given that I have determined that the WCB conducted an adequate search for records, and thus that it has fulfilled its duty to assist under s. 6(1), under s. 58(3)(a) of the Act I confirm that the WCB has performed its s. 6(1) duty.

October 31, 2002

ORIGINAL SIGNED BY

Alexander Boyd
Adjudicator