

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2018-53

September 26, 2018

WORKERS' COMPENSATION BOARD

Case File Number F8187

Office URL: www.oipc.ab.ca

Summary: The Applicant made a request for access under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Workers' Compensation Board (the Public Body). He requested his claim history from October 26, 2010 and other information from January 16, 2012 onward.

The Public Body located responsive records and provided them to the Applicant.

The Applicant requested review of whether the Public Body had conducted a reasonable search for responsive records.

The Adjudicator found that the Public Body had conducted a reasonable search for responsive records, and had also satisfied the informational component of the duty to assist by explaining the search it had conducted and by satisfactorily explaining why it believed no additional records existed.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 10, 72

Authorities Cited: **AB:** Orders F2007-029, F2015-29

Case Cited: *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII)

I. BACKGROUND

[para 1] The Applicant made a request for access under the FOIP Act to the Public Body. He requested his claim history from October 26, 2010, and other information from January 16, 2012 onward. In particular, he requested:

All written notes, records, minutes, documents and emails pertaining to:

- a. All meetings of WCB staff regarding [the Applicant] with lists of attendees;
- b. All meetings of DRDRB staff regarding [the Applicant] with lists of attendees;
- c. All meetings of WCB staff with other parties, e.g. Millard Health, with lists of attendees;
- d. Any other face to face discussions of WCB staff with or without third parties with lists of attendees;
- e. All communications, including emails between WCB staff regarding [the Applicant], including names of those involved,
- f. All communications, including emails by WCB staff with third parties including for example Millard Health, and medical consultants and practitioners regarding [the Applicant] with names of those involved;
- g. All analyses and assessments, medical and otherwise, (including comments) of [the Applicant's] medical condition and any proposed response thereto including rationale and calculation of compensation and duration of same;
- h. All notes, records emails etc. on developing recommendations for decisions;
- i. All recommendations for decisions;
- j. All notes, records emails etc. on recommendations for decisions which were referred back for reconsideration.

The Public Body responded to the Applicant on April 24, 2014. It stated:

We are pleased to provide access to your client's WCB records. Enclosed is a copy of the Records.

Some of the records you requested contain information that is non-responsive to your request for your client's personal information held by the WCB. We have severed the unrelated information so that we could disclose to you the remaining information in the records.

Outlined below are the results of our review of the records. The records are attached to cover sheets indicating the area where the records were found.

Customer Service (Documents Removed from Active File)

2 pages located. All information has been disclosed.

The letter is in relation to a FOIP/privacy matter and does not belong on the claim file; therefore, it has been removed from the active claim file. Records of this nature are maintained in the WCB FOIP Office.

Customer Service (Case Management - Case Manager)

5 pages located. The following pages contain information that was non-responsive to your FOIP request:

Pages 3 to 7 - partial severing

Office of the President & Board of Directors

11 pages located. All information has been disclosed.

Please note, as you discussed with [...], FOIP Specialist, we have asked WCB's Access to Information area to provide you with an update of the claim file, vocational assistance and case planning screen prints, and the claim history listing.

Special Investigations

Under section 12(2) (copy attached) of the *FOIP Act*, we are unable to confirm or deny the existence of **active investigation records** held by the WCB. However, if such information did exist, it would be exempted under section 20 of the *FOIP Act*. We do not advise workers if they are or may be the subject of an investigation. The fact that an investigation occurred is only disclosed upon completion of an investigation at which time the investigation or surveillance report is placed on the claim file and is available through the Access to Information area. Other information related to an investigation will not be placed on the claim file but can be provided under a FOIP request when the investigation has been closed. [emphasis in original]

The Applicant requested that the Commissioner review the adequacy of the Public Body's search for responsive records.

[para 2] The Commissioner authorized a senior information and privacy manager (SIPM) to investigate and attempt to settle the matter.

[para 3] On July 8, 2016, following the conclusion of this process, the Applicant requested an inquiry. He stated:

I refer to the [...] letter from [the SIPM] dated February 8, 2016 providing her findings. She allowed until March 9th, 2016 to request an [inquiry]. I had decided not to proceed and request an [inquiry] since it seemed reasonably certain, based on the WCB statements, that no documentation pertaining to the FOIP request existed outside the claimant's file and all documentation in the claimant's file had been given to me.

However the WCB filed a brief with the Court of Queen's Bench dated May 13th, 2016 in support of their position in a lawsuit by [the Applicant], [...], *which states at para.7 that 'the issues were forwarded to the appropriate management personnel for review'*. [emphasis in original]

[para 4] The Commissioner agreed to conduct an inquiry and delegated her authority to conduct it to me.

II. ISSUE

Did the Public Body meet its obligations to the Applicant under section 10(1) of the Act?

[para 5] Section 10 of the FOIP Act states, in part:

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 6] Prior orders of this office have determined that the duty to make every reasonable effort to assist applicants includes the duty to conduct a reasonable search for responsive records. In Order F2007-029, the Commissioner noted:

In general, evidence as to the adequacy of a search should cover the following points:

- The specific steps taken by the Public Body to identify and locate records responsive to the Applicant's access request
- The scope of the search conducted – for example: physical sites, program areas, specific databases, off-site storage areas, etc.
- The steps taken to identify and locate all possible repositories of records relevant to the access request: keyword searches, records retention and disposition schedules, etc.
- Who did the search
- Why the Public Body believes no more responsive records exist than what has been found or produced

[para 7] In Order F2015-29, the Director of Adjudication reviewed past orders of this office and noted that the duty to assist has an informational component, in the sense that a public body is required to provide explanations of the search it conducts when it is unable to locate responsive records and there is a likelihood that responsive records exist. She said:

Earlier orders of this office provide that a public body's description of its search should include a statement of the reasons why no more records exist than those that have been located. (See, for example, Order F2007-029, in which the former Commissioner included "why the Public Body believes no more responsive records exist than what has been found or produced" in the list of points that evidence as to the adequacy of a search should cover. This requirement is especially important where an applicant provides a credible reason for its belief that additional records exist.

[para 8] In *University of Alberta v. Alberta (Information and Privacy Commissioner)* 2010 ABQB 89 (CanLII), the Alberta Court of Queen's Bench confirmed that the duty to assist has an informational component. Manderscheid J. stated:

The University's submissions set out the information it provided, and argues that it is not necessary in every case to give extensive and detailed information, citing, *Lethbridge Regional Police Commission*, F2009-001 at para. 26. This is not an entirely accurate interpretation as to what the case holds. While the Adjudicator indicated that it was not necessary in every case to give such detailed information to meet the informational component of the duty to assist, it concluded that it was necessary in this case. In particular, the Adjudicator said (at para. 25):

In the circumstances of this case, I also find that this means specifically advising the Applicant of who conducted the search, the scope of the search, the steps taken to identify and locate all records and possible repositories of them, and *why the Public Body believes that no more responsive records exist than what has been found or produced.* [Emphasis added in original]

Similarly here the Adjudicator reasonably concluded that the informational component of the duty to assist included providing the University's rationale, if any, for not including all members of the Department in the search, for not using additional and reasonable keywords, and, if it determined that searching the records of other Department members or expanding the keywords would not lead to responsive records, *its reasons for concluding that no more responsive records existed.* [My emphasis]

[para 9] From the foregoing cases, I conclude that the duty to assist requires a public body to search for responsive records. In addition, the duty to assist has an

informational component, which requires the public body both to explain the search it conducted and to provide its reasons for believing that no additional records are likely to exist.

[para 10] The Applicant takes the position that the Public Body has not provided copies of correspondence sent to management regarding the Applicant's complaints of unfairness. In addition, the Applicant also states:

In addition, I wrote to Guy Kerr, CEO of the WCB on May 27th 2013 making allegations of lack of independence, bias, conflict of interest and prejudicial behavior by the DRDRB. I cannot believe that the CEO of WCB, an administrative decision making body (ADM), would pass such a letter containing such serious allegations to a mid-level manager to reply without giving instructions. I have not received such information.

[para 11] The Public Body provided the affidavit of the FOIP Specialist who conducted the search for responsive records. She documented all the areas she searched and the results of the search in each area. This documentation was attached to the affidavit. She also provided her reasons for believing that responsive records were likely to be located in the areas in which she searched, and not in other areas.

[para 12] The Public Body also notes:

It appears that the May 31, 2013, letter drafted by [the chair of the DRDRB], which is included in the Notice of Inquiry package, was drafted in response to the May 30, 2013, in-person meeting noted in the brief as outlined above. The letter states:

(Page 1) Thank you for taking the time to meet with me on May 30, 2013 to bring your concerns about this case to my attention...

(Page 2) I have asked Mr. [...], Manager, Customer Service, to review your concerns in relation to the case manager, supervisor, claims management processes and use of medical consultants. I have also asked Ms. [...], Manager, Millard Operations to review the Millard chart relating to [the Applicant's] treatment at Millard Health between 2005 and 2008.

Lastly, Mr. [...], Team Lead for the DRDRB and I will review your procedural concerns in relation to the Decision Review process. You can expect a response to these matters shortly.

The letter was forwarded to the named individuals for their review of the items as noted in the letter. Internal correspondence is sent internally either in hard copy by the WCB's internal mail system, or electronically by email. The following letters, attached as Tab 2, which are located on [the Applicant's] claim file, were drafted in response to [the chair of the DRDRB's] May 31, 2013, letter:

- June 12, 2013, letter to [the Applicant's representative] from [the Team Lead for the DRDRB]
- June 17, 2013, letter to [the Applicant's representative] from [an employee of the WCB on behalf of the Manager, Customer Service]
- June 17, 2013, letter to [the Applicant's representative] from [the Manager, Millard Operations]

[para 13] I find that the Public Body has established that it conducted a reasonable search for responsive records. It has also established that it searched for, and located, records that are the basis for the Applicant's request for inquiry. The exhibits to the affidavit of the FOIP Specialist establish that she contacted the authors of the letters in question to determine whether they had any additional responsive records. The authors indicated that they searched, but were unable to locate any additional records.

[para 14] With regard to the argument that the CEO would be unlikely to pass a letter containing serious allegations such as those made by the Applicant to a mid-level manager for reply without giving instructions, there is no evidence before me to support the Applicant's position. It appears entirely possible that a CEO might pass a letter of this kind to a mid-level manager for response without direction.

[para 15] To conclude, I find that the Public Body has established that it conducted a reasonable search for responsive records, and that it has met the informational component of the duty to assist, by explaining the search it conducted and its reasons for concluding that there are no more responsive records beyond those it has already produced.

III. ORDER

[para 16] I make this Order under section 72 of the Act.

[para 17] I confirm that the Public Body met its duty to assist the Applicant.

Teresa Cunningham
Adjudicator