



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

Decision F06-05

WORKSAFEBC

Celia Francis, Adjudicator
July 19, 2006

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Summary: Respondent requested records related to work experience and qualifications of WorkSafeBC Occupational Safety Officers. Records in dispute are the occupational and employment history of those officers and clearly protected by s. 22 of the Act, as many orders and decisions have established. No inquiry to be held.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 56, ss. 22(3)(d), 22(2)(e), (f), (g) and (h).

Authorities Considered: **B.C.:** Order No. 54-1995, [1995] B.C.I.P.C.D. No.27; Order 02-57, [2002] B.C.I.P.C.D. No. 59; Order 01-03, [2001] B.C.I.P.C.D. No. 3.

1.0 INTRODUCTION

[1] This decision stems from a request by WorkSafeBC (formerly the Workers' Compensation Board) that I decline, under s. 56 of the *Freedom of Information and Protection of Privacy Act* ("Act"), to hold an inquiry under Part 5 of the Act respecting a request, which I describe below, made by the respondent, who is the access applicant ("respondent").

[2] For reasons which follow, I have decided to exercise my discretion not to proceed to an inquiry on this matter.

2.0 DISCUSSION

Access Request

[3] The respondent in this case said he is a former employee of WorkSafeBC. He made the following request under the Act to that public body:

I'm writing today to request the information I need to support the actual reasons for all the deaths in the Forest Industry these past few years. I require, under the Freedom Of Information Act, the past experiences of those officers who were made logging inspectors over the past 9 (nine) years.

I worked in the Forest Industry for 25 years before becoming a Logging inspector with the Board in 1982 and subsequently the Prevention Manager for the [named location] from 1988 to 1996. I took early retirement due to the fact that the Board had taken a decided shift to the left of the political spectrum by making logging inspectors out of union workers who only had seniority and NO experience. That is the reason forestry workers are being killed in the bush. The Union and the WCB of the day chose to ignore the safety of the Forestry workers so they could pay the big bucks to loyal unionists who had seniority and no experience. The Board and the Union are killing the fathers, brothers, husbands in the industry and now there [sic] are making a big deal out of all the deaths when they themselves are to blame. The best defence is a strong offence and that is what is happening right now.

In the event you decide to push this letter into the background as an item of no consequence, I want you to know I've gathered a very strong team of ex-managers and high profile individuals who will make a formidable group that is dedicated to show what the present Board thinks of the value of life. Whether you know it or not, "WE'RE TALKING HUMAN LIVES" that the Board has chosen to ignore so they can put inept inspectors out in the bush. People who cannot make a difference. We were reducing the deaths in the bush back in the early 90's until the unions and the NDP Gov't took over.

[4] WorkSafeBC responded by denying access to the requested information under s. 22(3)(d) of the *Freedom of Information and Protection of Privacy Act* ("Act"). It did, however, provide a copy of the job description for an Occupational Safety Officer,¹ saying that any successful candidate must meet the requirements for that position.

[5] The respondent asked for a review by this office of WorkSafeBC's decision, saying that the information on the qualifications of the safety officers at WorkSafeBC who inspect logging operations in British Columbia is crucial to "the investigation presently being conducted". The respondent said he was enclosing correspondence that supports his "request for information that will lead to exposing one of the reasons why so many logging workers are being killed in the forest industry". The attachments include copies of routine letters between the respondent and WorkSafeBC's information and privacy office on his request.

¹ WorkSafeBC provided a copy of this job description as Appendix 1 to its submission. It describes the functions, responsibilities and relationships of an Occupational Safety officer, though not the qualifications and experience required.

There is also a letter of December 2005 that the respondent sent the Minister of Forests and Range, in which the respondent writes that, by the end of his time with the WCB, “we had reduced the death rate in the industry to 16, 17 or 18, (almost a third of what we have experienced this year) and were well on our way to improving on those statistics” when hiring practices changed.

[6] Mediation on the request for review was unsuccessful and the respondent asked that the matter proceed to an inquiry. At that point, WorkSafeBC asked that the Commissioner exercise his discretion under s. 56 of the Act not to conduct an inquiry on this request for review. WorkSafeBC said that, in addition to s. 22(3)(d) applying to the requested information, in its view, disclosure of the records would also be inappropriate under ss. 22(2)(e), (f), (g) and (h).

WorkSafeBC’s arguments

[7] WorkSafeBC devoted considerable space in its submission to the difficulties in identifying responsive records. For a number of reasons, including changes in WorkSafeBC’s hiring practices since the 1990s and issues associated with training, efficient use of staff and the adoption of new human resources software in 1999, WorkSafeBC said that it would be unable to identify with any certainty occupational safety officers who had performed logging inspections over the time span of the respondent’s request, in order to locate their résumés.²

[8] WorkSafeBC said that its only alternative to locate responsive records appeared to be to examine approximately 45,000 forestry-related inspection reports that occupational safety officers had issued over the span of the request to determine which officers had performed the inspections. It would then have to trace their résumés and possibly even interview the officers to obtain up to date information on their qualifications and experience. In WorkSafeBC’s opinion, such a search exceeds the requirements of s. 6 of the Act and creating a record from a search of these files could unreasonably interfere with its operations.³

[9] In this regard, WorkSafeBC drew my attention to Order No. 54-1995⁴ in which the previous Commissioner dealt with a request for information on the educational and employment background and qualifications of a Workers’ Compensation Board (“WCB”) rehabilitation consultant. The Commissioner found that the WCB was not obligated to create a record in response to the request.⁵

[10] WorkSafeBC said that, even if it were able to identify responsive records, s. 22(3)(d)⁶ would apply to them, as they constitute the employment history of the

² Paras. 1-6, initial submission.

³ Para. 7, initial submission.

⁴ [1995] B.C.I.P.C.D. No. 27.

⁵ Para. 23, initial submission.

⁶ under which disclosure of personal information that relates to employment, occupational or educational history is presumed to be an unreasonable invasion of third party privacy.

employees in question. In its opinion, the personal information in the officers' résumés was supplied in confidence and the factor in s. 22(2)(f)⁷ therefore applies, favouring withholding the information. It also suggested that the personal information in the résumés is likely to be out of date and thus unreliable, as there is no requirement for employees to update their résumés. Thus, in WorkSafeBC's view, the factor in s. 22(2)(g)⁸ also applies, weighing against disclosure.⁹

[11] WorkSafeBC also rejected any suggestion that ss. 22(2)(a)¹⁰ and (b)¹¹ might apply in this case, again referring to Order No. 54-1995. Also, WorkSafeBC argued, the respondent would not find in these records "actual reasons for all the deaths in the Forest Industry". In any event, it said, the statistics in injuries and fatalities in the forestry industry since 1972 indicate a general downward trend, except for 2005, and the trend in 2006 is consistent with the general trend. Thus, in its view, the premise on which the respondent's request is based—that injuries and fatalities in the forestry industry have increased since the change in hiring practices of "logging inspectors"—appears false.¹²

[12] There are many reasons for fatal accidents in the forestry industry, WorkSafeBC said, including, for example, experienced loggers making an out of character but fatal decision, inexperienced loggers with poor work practices, changes in hiring practices of large forestry corporations, worker fatigue and so forth. Thus, it is incorrect to suggest that the reasons for these incidents can be reduced solely to the past experience of WorkSafeBC "logging inspectors".¹³

[13] WorkSafeBC also cast doubt on the respondent's motives for requesting this information. It would have no control over what he did with the records, it pointed out, "even if that entails making public his "findings" and by his allegations exposing WorkSafeBC officers to financial or other harm or unfairly damaging their reputations". The respondent currently has another access request, of June 6, 2006, with WorkSafeBC for logging inspection reports from a named location since 1993, by officer name. WorkSafeBC speculated that the respondent intends to make public the information he is seeking in order to demonstrate his contention that the number of recent fatalities in the forest industry is caused by what he calls "inept safety officers", "whose hiring is the sole cause for deaths in the forest industry".¹⁴

⁷ the personal information has been supplied in confidence.

⁸ the personal information is likely to be inaccurate or unreliable.

⁹ Paras. 19-30, initial submission.

¹⁰ the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny.

¹¹ the disclosure is likely to promote public health and safety or to promote the protection of the environment.

¹² Paras. 31-35, initial submission.

¹³ Para. 36, initial submission.

¹⁴ Paras. 37-39, initial submission.

No submission from respondent

[14] The respondent did not make a submission in reply to WorkSafeBC's initial submission. I therefore have only his original request, his request for review and his June 2006 request to provide me with clues as to his position on this matter and why it should proceed.

[15] I have already described the first two items. In his June 2006 request for inspection reports, the respondent said that, on his departure from the WCB in 1996, he "accurately forecast" that the change in the WCB's hiring policies would bring about higher fatalities. He alleged that WorkSafeBC places inexperienced inspectors in situations where they cannot recognize safety hazards. Safety infractions go unchallenged, he continued, leading to injury and death among forestry workers and in turn to an increase in assessments on the logging industry. He said the reports would be "a secondary avenue" to assist him to "uncover this deception". If the records reveal that the inspectors were knowledgeable and experienced, he said, "we can look for other reasons". If "we get repetitious meaningless orders we can assume from this that there is a problem".

[16] None of the respondent's correspondence provided any statistical or other support for his contention that changes since the mid-1990s in WorkSafeBC's hiring practices for logging inspectors or occupational safety officers and the alleged inexperience of occupational safety officers with the logging industry have led to an increase in injuries and deaths among forestry workers over that time.

Discussion

[17] Section 56(1) of the Act reads as follows:

Inquiry by Commissioner

56(1) If the matter is not referred to a mediator or is not settled under section 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

[18] Section 56 confers discretion as to whether to hold a Part 5 inquiry respecting a request for review. As noted in earlier decisions, there may be a variety of reasons why this discretion might be exercised in favour of not holding an inquiry. These include the factors expressed in Order 02-57¹⁵ and Order 01-03.¹⁶

[19] I begin by observing that WorkSafeBC's lack of control over the respondent's use of any information he received in this case and the possibility

¹⁵ [2002] B.C.I.P.C.D. No. 59.

¹⁶ [2001] B.C.I.P.C.D. No. 3.

that he might publish the results of his “investigation” could arise with any access request. One of the purposes of the Act after all is to make public bodies more accountable and an access applicant is free to do what he or she pleases with records disclosed under the Act, including publishing them.¹⁷ These concerns are not relevant to the issue before me. The fact that the respondent currently has another request with WorkSafeBC is also irrelevant.

[20] In addition, while I acknowledge the challenges WorkSafeBC would face in locating responsive records in this case, it is not clear that there are no responsive records. Rather, WorkSafeBC seems to be arguing, it would be difficult and burdensome to find such records and, when it found them, they would likely be incomplete or out of date. Of course, the Act does not permit a public body to refuse to process a request simply because responding would involve a burdensome and time-consuming search or because records provide an incomplete picture of certain circumstances. The Act provides mechanisms to manage requests involving extensive searches, for example, by charging fees or by taking time extensions. WorkSafeBC could also encourage the respondent to narrow the request, for example, to a shorter time frame. It could also provide explanations to fill in any gaps.

[21] There is no indication that WorkSafeBC has negotiated with the respondent in these areas, just on severing or summarizing the records, which it apparently rejected as not feasible for various reasons.¹⁸ While the Act does oblige a public body to sever records where it is reasonable to do so, the Act certainly does not require a public body to create summaries from existing records. Nor is a public body required to interview its employees to produce information.

[22] The real issue arising from WorkSafeBC’s s. 56 request is quite different. The issue is, assuming for discussion purposes only that responsive records containing third-party personal information do exist, whether the respondent is entitled to have access to their contents. Without deciding the matter, I will assume for the purposes of this discussion that WorkSafeBC has in its custody or under its control responsive records of the “past experiences”—in the sense of past work or occupational experience, at the very least—of WorkSafeBC’s occupational safety officers who were logging inspectors. Such information would clearly constitute the occupational safety officers’ employment or occupational history, that is, personal information which falls under s. 22(3)(d), the disclosure of which is presumed to be an unreasonable invasion of third-party privacy.

[23] As noted above, the respondent did not provide any support for his contention that officers’ alleged inexperience in the logging industry has led to an increase in injuries and deaths since the 1990s. WorkSafeBC contends that, in

¹⁷ This is not to say an applicant can ignore other relevant laws, notably the law of defamation or the law of copyright. Simply put, the Act itself does not explicitly or implicitly constrain publication.

¹⁸ Paras. 13-15 & 40-42, initial submission.

fact, the contrary is the case, although it provided no evidence of this. It is evident from the range of possible causes of injuries and fatalities in the logging industry that WorkSafeBC described that the officers' qualifications and experience in the logging industry—if they are even relevant—would form only a small part of the overall picture of the causes of the injury and death rate among forestry workers. Nothing in the material before me supports an argument that the officers' résumés would assist in subjecting WorkSafeBC to public scrutiny or in promoting health and safety. For the reasons WorkSafeBC argues, I also agree with WorkSafeBC that the factors in s. 22(2)(f) and (g) would favour withholding the requested information. Thus, s. 22(1) would require WorkSafeBC to refuse access to the requested information.¹⁹

3.0 CONCLUSION

[24] In these circumstances, where it is plain and obvious—including in light of previous orders respecting similar third-party personal information—that the requested information would be protected by s. 22, I have decided that no inquiry should be held under Part 5 of the Act respecting the respondent's request for access to information. This office's file for the respondent's access request will be closed.

July 19, 2006

ORIGINAL SIGNED BY

Celia Francis
Adjudicator

OIPC File: F06-27993

¹⁹ For a similar finding, see the Information and Privacy Commissioner's decision of July 9, 2003 regarding a request for the names of students at Simon Fraser University who had been "found guilty of plagiarism", where the Commissioner decided to exercise his discretion not to conduct an inquiry.