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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 243-1998
June 26, 1998

INQUIRY RE: The adequacy of the Workers' Compensation Board's search for records

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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 May 12, 1998 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 the applicant of a search for records by the Workers' Compensation Board of British Columbia (WCB) in response to the applicant's request for records.

2. Documentation of the inquiry process

On July 15, 1997 the applicant submitted a four-part request for records to the Workers' Compensation Board (WCB) as follows:

> (a) a copy of the correspondence that [the Vice-President, Rehabilitation and Compensation Services Division of the WCB] faxed to the applicant's employer, including the fax cover sheets;
>
> (b) copies of policies and correspondence around changes to the Harassment Policy and the protocol for the faxing of confidential communications which were initiated as a result of the WCB's actions against the applicant or as a result of the WCB Ombudsman's recommendations;
>
> (c) copies of inappropriate comments about the applicant contained in the Courtenay Office claim files; and,

(d) copies of all records pertaining to the applicant and copies of any recommendations that were made or policies changed as a result of the WCB's actions against the applicant from January 1995 onward.

On August 14, 1997, WCB responded to the request by stating:

(a) a record of the correspondence [the Vice-President] faxed to the applicant's employer (which consisted of correspondence the applicant had sent to the Courtenay WCB office) does not exist.

(b) to their knowledge, no WCB protocol on the faxing of confidential communications has been established as a result of the WCB's actions against the applicant. Further, although revision of the WCB Personal Harassment Policy began in early 1996, the revision was not linked to any issues concerning the applicant.

(c) to date, no inappropriate comments about the applicant have been found in the Courtenay claim files, but the search is continuing.

(d) the WCB released three pages of records created since the applicant's last Freedom of Information request on April 28, 1997. Records pertaining to the applicant which were created prior to this date had already been released to the applicant in previous requests.

Towards the end of November 1997, the Office of the Information and Privacy Commissioner received a request from the applicant to review the WCB's search, since she believed that further records existed which were responsive to items (a), (b), and (d) in her four-part request. The Office first approved an extension under section 53(2)(b) to the thirty-day time limit for requesting a review. Then, on December 16, 1997, the Office opened a file on these three issues. The ninety-day time limit was due to expire on March 16, 1998.

On December 18, 1997, regarding item (c) in the applicant's request, the WCB informed the applicant in writing that the search of the Courtenay Office claim files for inappropriate comments about her was complete and that it had found no inappropriate comments about the applicant.

On December 29, 1997, the applicant requested a review of the search conducted for inappropriate comments about her in the Courtenay Office claim files. This review was opened as a separate file. The ninety-day time limit for this file was due to expire on March 30, 1998.

On March 15, 1998 the applicant submitted a written request to proceed to an inquiry on items (a) to (d) in the Office's two review files. As well, the parties consented to extend the time for holding an inquiry to the end of May 1998.

3. Issue under review and the burden of proof

The issue before me is whether the WCB conducted an adequate search under section 6 of the Act for the records requested by the applicant.

The relevant section of the Act is as follows:

Duty to assist applicants

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.

Section 57 of the Act, which establishes the burden of proof on parties in this inquiry, is silent with respect to the issue of adequate search. I decided in Order No. 103-1996, May 23, 1996, that the burden of proof in such cases rests with the public body.

4. The records in dispute

As the issue in this inquiry is the adequacy of the WCB's search for records, there are no records in dispute in this case.

5. The applicant's case

With respect to the inappropriate comments about her in the Courtenay claim files, the applicant believes that these records must exist. She wishes me to find that the WCB conducted an inappropriate search, misled her and me by implying that these comments never existed, and order a correction to her file.

With respect to her correspondence that the WCB apparently faxed to her employer, the applicant wishes me to conclude that either the WCB conducted an inadequate search, or a senior official of the WCB destroyed information contrary to the Act.

With respect to the protocol on the faxing of confidential communications, the applicant wishes me to find that the WCB has not taken the remedial action "ordered by the Commissioner". She further believes that the WCB has not conducted a proper search for correspondence about changes to the Harassment Policy that were initiated as a result of her initiatives. The WCB's partial response is the contents of Order No. 194-1997, October 14, 1997, do not reflect these views of the applicant. (Reply Submission of the WCB, pp. 2-3)

Finally, the applicant wishes me to ensure that she has received all of the information about herself that she has requested from the WCB.

The applicant did not make a reply submission in this inquiry.

6. The Workers' Compensation Board's case

Since the WCB's response deals with a series of specific items, I have discussed each of them below.

7. Discussion

Some of the details of the ongoing issues between this applicant and the WCB can be reviewed in Order No. 194-1997. Given the allegations of the applicant that the WCB has not complied with this Order, I simply note that it has indeed done so.

In its reply submission, the WCB expresses some surprise at certain records that the applicant now seeks to access, and simply encourages her to ask for them. The applicant has a full copy of this reply submission.

a) The fax sheet from a senior WCB official with the applicant's correspondence attached

The WCB's response is that it has not seen this correspondence and is thus at a disadvantage in searching for it. Its policy is to treat a fax cover sheet as a transient record and thus not retain it. Transitory records are those of temporary usefulness and needed only for a short period of time to complete a routing action. In order for a record to be transitory, it could not contain personal information which was used to make a decision about an individual; if this were the case, the Act requires such documents to be retained for a minimum of one year. While there is no evidence that the fax cover sheet contained the applicant's personal information, I recommend that the WCB determine what records are transient and what records must be retained under section 31 of the Act. In this regard, I refer the WCB to Order No. 239-1998, June 3, 1998.

In the circumstances of this inquiry, I find that the WCB has met its obligations to the applicant under section 6 of the Act.

b) Records of policies and correspondence around changes to the WCB Harassment Policy and the protocol for faxing of confidential communications made as a result of the Applicant

The WCB submits that no changes to its Harassment Policy or to the protocol on the faxing of confidential communications occurred as a consequence of its interactions with the applicant. (Submission of the WCB, pp. 3-4)

I find that the WCB has met its obligations to the applicant under section 6 of the Act.

c) Copies of any inappropriate comments made about the Applicant in the claim files of the WCB Courtenay office

I am satisfied on the basis of correspondence from the Courtenay office of the WCB that it has made every reasonable effort to find records of any irrelevant or unprofessional comments made about the applicant.

I find that the WCB has met its obligation to the applicant under section 6 of the Act.

d) All records pertaining to the Applicant and any recommendations made or policies changed as a result of the Applicant from January 1995 onward

The WCB has not changed any policies or made any recommendations as a result of this applicant: "There is no point in conducting a search for records based on 'changes' or 'recommendations' that have never been made." (Submission of the WCB, p. 5)

The WCB also submits that it has fully responded to all of the applicant's requests for access to records under the Act. (Submission of the WCB, pp. 5-6)

I find that the WCB has met its obligations to the applicant under section 6 of the Act.

8. Order

Section 58(1) of the Act requires me to dispose of the issues in an inquiry by making an order under this section. I find that the search conducted by the Workers' Compensation Board of British Columbia in this case was a reasonable effort within the meaning of section 6(1) of the Act.

Under section 58(3)(a), I require the Workers' Compensation Board of British Columbia to perform its duty under section 6(1) to make every reasonable effort 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) of the Act.

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David H. Flaherty
Commissioner

June 26, 1998