

FILE NO. - 94/007

**REPORT WITH RESPECT TO THE APPLICATION FOR REVIEW OF  
[REDACTED] WITH RESPECT TO  
INFORMATION REQUESTED FROM THE WORKERS' COMPENSATION BOARD**

[REDACTED] requested access to information pursuant to *The Freedom of Information and Protection of Privacy Act* (the "Act") from the Workers' Compensation Board. He requested "names and addresses of businesses in rate codes T-11 and T-12." To understand the nature of this request, one must appreciate the manner in which assessments are made upon industries or businesses by the Board. This process is succinctly described in the Guidebook published by the Workers' Compensation Board as follows:

"The Assessment Department assigns an industry code to each industry and then groups the industry codes into classes.

Employers having a similar type of operation, hazard or injury experience record are placed in the same class.

Assessment rates are based on the injury experience record within each rate code."

By a letter dated May 11, 1994, the Workers' Compensation Board denied the request on three specific grounds:

- (a) that section 23(3)(k) of the Act specifically excludes its application to Sections 171 to 171.2 of *The Workers' Compensation Act*, and that accordingly the Act does not apply with respect to the information requested;
- (b) that the information is personal information within the meaning of Sections 24(1)(b) and (e) of the Act, and that accordingly disclosure is prohibited by Section 29(1) of the Act; and
- (c) that pursuant to Section 19(1)(c)(ii) of the Act, disclosure of the information could reasonably be expected to prejudice the competitive position of third parties, to wit the industries or businesses under the classification in question.

Section 23(1) of the Act provides that the provisions of any other Act or regulation are overridden by the provisions of *The Freedom of Information and Protection of Privacy Act* subject to certain exceptions which include by Section 23(1)(k):

"Sections 171 to 171.2 of *The Workers' Compensation Act* 1979."

These sections of *The Workers' Compensation Act* provide:

**"171(1)** Subject to sections 171.1 and 171.2, no officer of the board and no person authorized to make an inspection or inquiry under this Act shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the board, any information obtained by him or that has come to his knowledge in connection with that inspection or inquiry.

(2) Every person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000.

**171.1(1) Where:**

- (a) a worker or any person whom he has authorized in writing to be his representative; or
- (b) in the case of a deceased worker, any of his dependents;

has requested reconsideration of or applied for a review of a decision made pursuant to this Act, the board shall, at the written request of the worker, his representative or his dependant, as the case may be, allow the worker, his representative or his dependant, as the case may be, access to information respecting that worker for the purposes of this Act, but the person receiving the information shall use that information only for the purposes of that reconsideration or review.

(2) Where the board is of the opinion that any medical report which the worker or his representative has requested contains information of a sensitive nature which, if provided directly to the worker or his representative, would cause injury to the worker or any other person, the board shall provide the information to the worker's treating physician instead of providing it to the worker or his representative.

(3) Where a physician receives information pursuant to subsection (2), he shall explain to the worker or his representative, as the case may be, the contents of the medical report to assist the worker or his representative in his request for reconsideration of or application for a review of the decision of the board.

**171.2(1)** Where an employer has requested reconsideration of or applied for a review of a decision made pursuant to this Act with respect to a worker's claim for compensation, notwithstanding that the employer is not a party to the reconsideration or review, the board may on written request, in accordance with this section, grant the employer, or a representative of the employer on presentation of the employer's written authorization, access to the information that the board used to make its decision with respect to:

- (a) the facts of the situation in which the injury occurred; or
- (b) the percentage of the cost of compensation which has been assigned by the board to the injury cost record of that employer with respect to the injury the worker suffered out of and in the course of his employment with that employer;

that is obtained on or after the date this section comes into force for the purposes of this Act, but the person receiving the information shall use that information only for the purposes of that reconsideration or review.

(2) Where a request is made pursuant to subsection (1), the board shall notify the worker or any person whom he has authorized in writing to be his representative of the request and the information that it will grant access to and inform the worker or his representative that he may make any objection to the release of the information within the time specified in the notice.

(3) On the expiration of the time mentioned in subsection (2), the board shall, after consideration of any objections, determine what information it will grant the employer or his representative access to and so notify the worker or his representative in writing sent by registered mail.

(4) The worker may, within 21 days of the date that the notice pursuant to subsection (3) is mailed, request the board to reconsider its decision made pursuant to subsection (3).

(5) The board shall not grant the employer or his representative access to any information until the expiration of the time allowed for a request pursuant to subsection (4) or the determination of the request, whichever is later.

(6) The board shall inform the worker or his representative of all information it has granted an employer or his representative access to pursuant to this section.

(7) An employer may request the board to reconsider its decision with respect to the information the board has granted access to within 21 days of the date of that decision."

It is argued by the Board that the information in question is obtained as a result of an "inquiry" by the Board.

However, as indicated above, the information in question is a calculation or determination made by the Board based on its assessment of the industries in question. It is true that to do so, the Board obtained information from each employer, but this information is obtained pursuant to Section 124(1) of *The Workers' Compensation Act* which provides:

"124(1) Every employer shall, annually, in accordance with the regulations, on or before a date prescribed by the board and at any other time or times that the board may by order require, prepare and transmit to the board a statement setting out:

- (a) the amount of the earnings of all workers in his employ during the immediately preceding year, or any part thereof that the board may specify;
- (b) an estimate of the amount he will expend for wages during the current year, or any part thereof that the board may specify; and
- (c) any additional information that the board may require;

and certified by the employer or the manager of the business, or, where the employer is a corporation, by an officer of the corporation having personal knowledge of the matters certified, to be true, correct and complete in every respect."

The Workers' Compensation Board Regulations, 1985 (section 3) provides in part that "every employer shall, on or before February 28 in each year, submit to the office of the board the statement required by section 124 of the Act." For this purpose, the Board provides to each employer an "Employer's Payroll Statement" which the employer files with the Board to meet the requirement of Section 124. It necessarily includes the name and business address of the employer which is the information requested by the Applicant. The form does not appear to be prescribed by the Regulations.

With all due respect, I am unable to agree that this information is obtained by the Board as the result of an inquiry. Rather, it is simply information which employers are required by the statute to submit to the Board. The word "inquiry" appears in several other sections of *The Workers' Compensation Act*, i.e.: Section 23, Section 27,

Section 130 and Section 172. It would seem to me that the meaning of the word "inquiry" must be consistent with its usage in these various sections of the said Act.

Nor does it appear to me that the information requested by the Applicant is "personal information" within the meaning of *The Freedom of Information and Protection of Privacy Act*. While it may very well be that some of the businesses or industries included in the classifications requested are carried on or operated by individuals rather than by corporations, I am unable to conclude that the identity of a business carried on by an individual is personal information. In order to carry on a business or industry, or any commercial or professional activity, the identity of such an activity must be known to the public, otherwise no business of any sort could be done. However, the Act does state that "personal information" includes "the home or business address, home or business telephone number, finger prints or blood type of the individual." While one may find this provision to be peculiar, it nevertheless is there.

However, the Applicant, in pursuing his request to access for information from the Board advised the Board that he would be prepared to accept a list of the employers without the addresses, and I am satisfied that a list of the names, including individual proprietors, would not result in the disclosure of "personal information" within the meaning of the Act. In other words, it does not appear to me that the classification of an employer by the Workers' Compensation Board for the purpose of assessment is, or could be described as "personal information" or that the disclosure of such information would be an invasion of the privacy of any such individual.

Finally, would disclosure of the information prejudice the competitiveness position of any such employer? In its submission to me by letter dated August 24, 1994, the Board did not pursue this argument. In fact, it has stated:

"Finally, we advise that the Board does not object to production of a list of the names and addresses of corporate entities within the specified classifications."

If the Board is prepared to do so, then there is no reason why it should not also disclose the same information with respect to individual employers, as in this respect no distinction could be made on the basis of harm or prejudice to such employers.

In the result, it is my recommendation that the Board should disclose to the Applicant the names of all employers included in classification T-11 and T-12 as requested by the Applicant.

Dated at Regina, Saskatchewan this                      day of October, 1992.

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**Derril G. McLeod, Q.C.,  
Commissioner of Information and  
Privacy for Saskatchewan**