



Office of the  
Saskatchewan Information  
and Privacy Commissioner

## **REVIEW REPORT 310-2018**

### **Saskatchewan Workers' Compensation Board**

**October 4, 2019**

#### **Summary:**

The Saskatchewan Workers' Compensation Board (WCB) received an access to information request from the Applicant related to their WCB file. WCB denied access to a portion of the record pursuant to subsection 17(1)(b) of FOIP. The Applicant requested a review of WCB's use of subsection 17(1)(b) of FOIP to deny access to a portion of the record and the search efforts by the WCB to locate the records responsive to the request. Through the course of the review, the WCB advised my office it would be releasing three of the pages to the Applicant it had previously withheld. The Commissioner found that the WCB conducted an adequate search for the records responsive to the Applicant's request and recommended WCB take no further action regarding its search efforts. The Commissioner also found that subsection 17(1)(b)(i) of FOIP applied to the contents of the email on pages 1, 2 and 3, but that it does not apply to the email header including the sender, recipients, time stamps, subject lines and signature lines. The Commissioner recommended the WCB continue to withhold the contents of the email and release the email header including the sender, recipients, time stamps, subject lines and signature lines. Finally, as the WCB advised our office it was no longer relying on subsection 17(1)(b) for pages 4, 5 and 6 of the record, the Commissioner recommended the WCB fully release those pages to the Applicant.

#### **I BACKGROUND**

- [1] The Applicant submitted an access to information request received by the Saskatchewan Workers' Compensation Board (WCB) on November 26, 2018, requesting access to:

Any and all stored and or communicated electronic, and or hand written and or verbal, and or other information associated to myself, whether WCB and or third

party sources, excluding that which is originating from myself, including all sources though not limited to: [Employee 1], [Employee 2], [Employee 3], [Employee 4]. November 1, 2014 until the present time. [sic]

- [2] By letter dated December 14, 2018, the WCB responded to the request, denying access to a portion of the record pursuant to subsection 17(1)(b) of *The Freedom of Information and Protection of Privacy Act* (FOIP).
- [3] On December 28, 2018, the Applicant requested a review by my office of the WCB's search efforts to locate the responsive records and its use of subsection 17(1)(b) of FOIP to deny access to a portion of the record.
- [4] On January 4, 2019, my office provided notification to the WCB and the Applicant of the review and invited both parties to make a submission.

## **II RECORDS AT ISSUE**

- [5] The record totals 27 pages. WCB released 21 pages to the Applicant and withheld six pages pursuant to subsection 17(1)(b) of FOIP. This review will also look at the WCB's search efforts in locating the responsive record.

## **III DISCUSSION OF THE ISSUES**

### **1. Does my office have jurisdiction to conduct this review?**

- [6] WCB is a government institution pursuant to subsection 2(1)(d) of FOIP. Thus, I have the authority to conduct this review.

### **2. Did the WCB conduct an adequate search for records?**

- [7] In the December 14, 2018 response to the Applicant, WCB advised that in addition to the four employees noted above, it also made the determination that additional employees may have records responsive to the request and it requested those employee records be

searched. This included the CEO, Vice President (Operations), Director of Case Management, Case Management Team Leader South, and the Executive Information and Inquiry Officer. WCB advised the Applicant that upon completion of the search, Employee 1 and Employee 4 were the only employees that had records responsive to the request.

- [8] The focus of a search review is whether or not the public body conducted a reasonable search. A *reasonable search* is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.
- [9] In its submission WCB advised my office that the Applicant was requesting all records in which their name was mentioned and the Applicant's interactions with WCB would be in relation to the adjudication of their claim. Therefore, WCB determined that there would be a limited number of staff who would have had interactions with or regarding the Applicant. Further, the WCB advised it was these employees (noted above) who were contacted and asked to provide any and all records in its possession or control that would be responsive to the Applicant's request.
- [10] My office asked WCB for further information about the search, including how the WCB files are maintained. For example my office asked if there are paper records, electronic records, are the records maintained on a database and would there be separate email records.
- [11] In response, the WCB advised that adjudication files are maintained in an electronic case management system. Incoming documents are scanned and placed on the claim file. All records including paper, email, faxes, etc. are scanned and placed in the electronic database.

[12] This type of case file management system would easily enable an employee to search for responsive records. I would also note that WCB expanded its search efforts beyond those which the Applicant named in the request. I am therefore satisfied with the search efforts conducted by the WCB.

[13] Accordingly, I find the WCB conducted an adequate search for the records responsive to the Applicant's request.

**3. Did the WCB properly apply subsection 17(1)(b) of FOIP to the record?**

[14] WCB fully withheld pages 1 to 6 of the record pursuant to subsection 17(1)(b) of FOIP. However, through the course of the review, it advised my office that it is no longer relying on subsection 17(1)(b) of FOIP for pages 4, 5 and 6 and intends to release those pages to the Applicant. Therefore, I will be looking at subsection 17(1)(b) of FOIP for pages 1, 2 and 3 of the record.

[15] Subsection 17(1)(b) of FOIP is a discretionary exemption and provides:

**17(1)** Subject to subsection (2), a head may refuse to give access to a record that could reasonably be expected to disclose:

...

(b) consultations or deliberations involving:

(i) officers or employees of a government institution;

(ii) a member of the Executive Council; or

(iii) the staff of a member of the Executive Council;

[16] From a review of the record, I note that the communications are internal, therefore subsection 17(1)(b)(i) of FOIP is engaged.

[17] The provision is meant to permit public bodies to consider options and act without constant public scrutiny.

[18] A *consultation* occurs when the views of one or more officers or employees of a public body are sought as to the appropriateness of a particular proposal or suggested action. A *deliberation* is a discussion or consideration, by the persons described in the section, of the reasons for and against an action. It refers to discussions conducted with a view towards making a decision.

[19] In order to qualify, the opinions solicited during a consultation or deliberation must:

- (i) be either sought, expected, or be part of the responsibility of the person who prepared the record; and
- (ii) be prepared for the purpose of doing something, such as taking an action, making a decision or a choice.

[20] Public bodies should identify those individuals involved in the consultations or deliberations, include the job title of each, list organization affiliation and clarification as to each individuals role in the decision making process. For FOIP, the consultations and/or deliberations must involve:

- officers or employees of a government institution;
- a member of Executive Council; or
- the staff of a member of the Executive Council.

[21] The provision is not meant to protect the bare recitation of facts, without anything further. In addition, the exemption does not generally apply to records or parts of records that in themselves reveal only the following:

- that a consultation or deliberation took place at a particular time;
- that particular persons were involved; or
- that a particular topic was involved.

[22] In its submission, the WCB asserts that it is clear on the face of the December 3, 2018 email from the WCB Manager, Appeals Department to the Director, Board Services that

advice was being sought on how to respond to issues raised by the Applicant. Further, the WCB notes specifically the consultation dealt with the appropriate response to be provided to the Applicant.

[23] I will first take a look at the body of the email exchange on pages 1, 2, and 3. From a review of the record, Employee 4 is engaged in a consultation with a Fair Practices Officer as to how to respond to the Applicant regarding the particular issue. There is clearly a consultation taking place between the two WCB employees. Therefore, subsection 17(1)(b)(i) of FOIP applies to that portion of the record.

[24] However, the email header including the sender, recipients, time stamps, and the subject lines and signature lines found in the email only show that a consultation took place, who the consultation was between and the time it took place. Therefore, this information is not protected under subsection 17(1)(b)(i) of FOIP.

[25] I find subsection 17(1)(b)(i) of FOIP applies to the contents of the email, but that it does not apply to the email header including the sender, recipients, time stamps, subject lines and signature lines.

#### **IV FINDINGS**

[26] I find the WCB conducted an adequate search for the records responsive to the Applicant's request.

[27] I find subsection 17(1)(b)(i) of FOIP applies to the contents of the email, but that it does not apply to the email header including the sender, recipients, time stamps, subject lines and signature lines.

#### **V RECOMMENDATIONS**

[28] I recommend the WCB take no further action regarding its search for records.

[29] I recommend the WCB fully release pages 4, 5 and 6 to the Applicant.

[30] I recommend the WCB continue to withhold the contents of the email found on pages 1, 2, and 3 of the record.

[31] I recommend the WCB release the email header including the sender, recipients, time stamps, subject lines and signature lines found on pages 1, 2, and 3 of the record.

Dated at Regina, in the Province of Saskatchewan, this 4th day of October, 2019.

Ronald J. Kruzeniski, Q.C.  
Saskatchewan Information and Privacy  
Commissioner