

NORTHWEST TERRITORIES INFORMATION AND PRIVACY COMMISSIONER

Review Recommendation 01-20

Review File: 00-264-4

BACKGROUND

On December 1st, 2000, the Applicant applied to this office under the *Access to Information and Privacy Act* (the "Act") to review what the Applicant considered to be a refusal on the part of the Workers' Compensation Board (WCB) to provide certain information in the possession or control of the WCB. Some of the information requested was the personal information of the Applicant and some of it was not.

It appeared from the information which was provided with the Request for Review that the Applicant's contact with the Workers' Compensation Board has had a bit of a history. As a result, the letter written to the Applicant in response to his request for information was somewhat terse. It made the following points:

- a) the form upon which the request for information had been requested was a federal government form, not an NWT form and was, therefore, being returned;
- b) a disclosure had been made to the client in October, 1999 and that the Board would not provide additional copies of documents already provided unless the Applicant paid a \$25.00 fee.
- c) if the proper form was filled out, the Workers' Compensation Board would provide copies of any material on the Applicant's personal file but only subsequent to October, 1999 (the previous disclosure date).

The specific list of documents requested by the Applicant is lengthy, and is reproduced here:

- a) a report detailing all past and present involvement of any staff relating to [the Applicant's] case;

- b) all information regarding any payments made to any myself (sic), specialists, and medical officials on this matter;
- c) All documents pertaining to the costs, bookings, and arrangements of any trips to the specialists;
- d) All documents, memos, e-mails, case-notes, letters and faxes pertaining to the decisions to send me to any doctors I have seen in regard to this case;
- e) All medical records, test results, x-rays, regarding this case as well as any memos, faxes, e-mails and letters sent or received that regard these test results, medical records, x-rays etc.
- f) A list of any adjudicators assigned to this case, as well any (sic) records of decision, and all information that pertains to decisions made by adjudicators regarding my case;
- g) All reports made by adjudicators that outline the findings regarding the five criteria outlined in the policy manual for initial entitlement to compensation benefits;
- h) All documents/memos/notes/letters/forms/notices that were sent or received from February 18, 1982 to present regarding this case;
- i) All documents, e-mails, letters, case-notes, faxes or memos sent or received to any physiotherapists regarding my case;
- j) All MRI reports, as well as any documents, emails, letters, faxes or memos about MRI regarding this case;
- k) All documents, letters, faxes, case-notes or memos sent to/from any rehabilitation centres including the Millard Centre (The Millard Rehab File);
- l) The Psychology file;
- m) The Detail Cost file. A file detailing all costs paid on my claim.
- n) All documents/letters/emails/faxes/memos sent or received from the office of the appeals advisor regarding this case;

- o) All documents/letters/emails/faxes/memos sent or received from the appeals commission regarding this case;
- p) Any CIS Notes;
- q) All documents/letters/emails/faxes/memos sent or received from Medical Advisors regarding my case;
- r) A list of my previous claims;
- s) Any documents/letters/faxes/case-notes/emails/memos related to me or my case that are filed in the following departments:
 - Adjudication Unit;
 - Case Management Unit;
 - Medical Unit;
 - Pensions Unit;
 - Administration;
 - Legal Unit;
 - Finance Unit;
 - Rehabilitation Unit
- t) a report detailing any payments made on this case to the following Doctors as well as any documents/letters/referrals/memos/emails/notes sent regarding this file;
 - Dr. Paul Green
 - Dr. Martin Austin
 - Dr. David E. Hartman
 - Any other doctors that have been consulted regarding this file
- u) Telephone records for telephone calls made by employees regarding any matter discussed with me, my doctors, or lawyers, including duration of calls, phone number called and date of calls, as well as any existing documents describing the matters discussed;
- v) I would also like all documents or information existing in email, electronic form, hand-written or typed memos, letters, faxes or notes regarding my file that exist and that were sent or received by:
 - all specialists
 - all doctors
 - all lawyers

- all other government departments (anywhere in Canada);
- all other employers;

- w) All correspondence with Beaver Enterprises regarding this case;

- x) All documents/letters/faxes/memos/emails/notes sent or received from the Ombudsman's office and the Minister's Office regarding this case;

- y) a definition of "Incurable incapacitating mental disorder",

- z) All Orders, notices, returns, reports, forms or other documents or papers relating to this case;

- aa) All referrals any (sic) Doctors contacted regarding this case;

- bb) All referrals to the Mayo Clinic;

- cc) Requests for comment on any portion of this file;

- dd) Any correspondence requesting comments or reports from:
 - the Medical Department to any physician

The Workers' Compensation Board, in its reply to my request for an indication of its position on the Request for Information, advised me that the Applicant had been provided with the entire contents of his file in October, 1999 and, after receiving my letter, that they had forwarded the balance of the file to the Applicant. They also confirmed with me that they only have one file which would contain all information relating to the Applicant.

The Applicant was not satisfied with the disclosure and I have, therefore, been asked to address the matter by means of recommendation.

DISCUSSION

I would make two preliminary comments. Firstly, the *Access to Information and Protection of Privacy Act*, provides quite clearly that when an Application is made for

access to information, there is a duty on the government agency involved to assist the Applicant. That would include, in my respectful opinion, accepting a request for information even though it is made on the wrong form without requiring the Applicant to re-do the request on the "correct" form. In fact, the Act does not provide for any specific form of application. It merely requires the request to be in writing. It was improper, therefore, to reject the request merely because it was on the "wrong form".

Secondly, it should be noted that for the most part, the information being requested by the Applicant is personal information to which the Applicant is entitled as of right and without any cost. There is nothing in the Act which limits a person's right to request his or her file. In fact, what the Regulations say is that there will be no fee for a request for personal information. They do not say that there will be no fee the first time that the information is requested. If a person seeks a copy of his/her entire file in 1999 and again in 2000, he or she is entitled to that information. It would be acceptable for the public body to inquire if it would be sufficient to provide only that part of the file subsequent to the last disclosure, but if the answer to that is in the negative, there is nothing in the Act which allows the public body to either limit its disclosure or to charge a fee for the disclosure.

Thirdly, it is to be noted that the onus is on the public body to show that the information requested is protected from disclosure under the Act.

Unfortunately, the Workers' Compensation Board has not given a detailed reason for refusing to provide all of the information in question. I have asked them, informally, to provide the Applicant with an explanation for agreeing to release or refusing to agree to release each of the enumerated documents requested. To date, I have not received a copy of that explanation and can only assume that it has not been done.

Normally I would request from the public body in question copies of all of the relevant documents for my review in making my recommendations. I have not done that in this case, as the problem appears to be that the Workers' Compensation Board has not gone through the Request for Information line by line or piece by piece so as to identify the documents which would be responsive. They have, instead, limited disclosure to the contents of the Applicant's file and advised the Applicant that he has been provided with a complete copy of that file. A close look, however, will show that more has been requested than simply a copy of the file.

For this reason, I will review each request individually and identify those which appear to have been answered and those that remain outstanding. I will leave it open to both the Applicant and to the Board to provide further submissions with respect to the application of any exemptions which might be applicable or not as the case may be once both parties have had the opportunity to review these recommendations.

- A. A report detailing all past and present involvement of any staff relating to (the applicant's) case;

Although it is not entirely clear, it would appear that what is being requested here is a list of all staff with the Worker's Compensation Board who have, at some point, done work on the Applicant's file. I suspect that there is no existing list of this sort. The Act, at section 7(2) states:

- (2) The head of a public body shall create a record for an applicant where
 - (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and
 - (b) creating the record would not unreasonably interfere with the operations of the public body.

I suspect that it would be less than onerous to compile a list of all the individuals within the Workers' Compensation Board who have had some hand in the Applicant's file and I would recommend that this be done unless the Board can show that to do so would "unreasonably interfere with the operations" of the Board.

B. All information regarding any payments made to any myself (sic), specialists, and medical officials on this matter;

Again, this specific list may well not exist per se. I suspect, without knowing, that at the very least, there is some record somewhere within the Workers' Compensation Board which outlines all payments made to or on behalf of the Applicant. There is little question that this list, even if it has to be compiled, should be provided to the Applicant. Monies paid to specialists and medical officers on behalf of the Applicant may, or may not, be the personal information of the Applicant and there may, therefore, be exemptions attached to the disclosure of such information.

Without knowing the way in which the Workers' Compensation Board maintains its financial records, I can only assume that they keep records of how much money is paid to doctors and other medical personnel on each file. If so, it would be my recommendation that this information should be compiled and, subject to any exemptions which might arise under the Act, be provided to the Applicant as a separate record. If the Board does not keep separate records of monies paid to medical personnel on individual files, the Applicant should be advised of that fact, perhaps with a short explanation as to how these kinds of payments are, in fact, tracked.

C. All documents pertaining to the costs, bookings, and arrangements any trips to the specialists;

Again, I suspect, without knowing, that all this information is on the Applicant's file. If so, the Applicant should be advised of that fact. As he has, or will be, receiving the full file, he should be able to put this information together for himself from the contents of

the file. If there are any other documents outside of the Applicant's personal file, this information should be compiled and provided to the Applicant separately.

- D. All documents, memos, e-mails, case-notes, letters and faxes pertaining to the decisions to send me to any doctors I have seen in regard to this case;

Again, I suspect, without knowing, that all of this information is on the Applicant's file, which he has or will be receiving. If so, again the Applicant should be advised of this fact. If not, the information not in his file should be compiled and provided to the Applicant separately.

- E. All medical records, test results, x-rays, regarding this case as well as any memos, faxes, e-mails and letters sent or received that regard these test results, medical records, x-rays etc.

Again, I suspect, without knowing, that all of this information is on the Applicant's file and I repeat my recommendation as set out under "C" above. If the Workers' Compensation Board has not received all of the relevant information from the various doctors which the Applicant saw, he should be advised of that fact as well so that he can request that information from the appropriate sources.

- F. A list of any adjudicators assigned to this case, as well any (sic) records of decision, (sic) and all information that pertains to decisions made by adjudicators regarding my case;

I suspect, without knowing, that this information also exists on the Applicant's file and I repeat my recommendation as set out in "C" above.

- G. All reports made by adjudicators that outline the findings regarding the five criteria outlined in the policy manual for initial entitlement to compensation benefits;

Assuming that there are five criteria outlined in the policy manual for initial entitlement to compensation benefits, and assuming that reports were made by adjudicators on the

Applicant's file on the issue of initial entitlement, I presume that these reports would be on the Applicant's file. The same considerations, therefore, apply.

- H. All documents/memos/notes/letters/forms/notices that were sent or received from February 18, 1982 to present regarding this case;

To the extent that there are any such records outside of the Applicant's file, they should be compiled and provided to the Applicant. If there are no such records outside of the Applicant's file, he should be advised of that fact.

- I. All documents, e-mails, letters, case-notes, faxes or memos sent or received to any physiotherapists regarding my case;

I suspect, without knowing, that this information also exists on the Applicant's file and I repeat my recommendation as set out in "C" above.

- J. All MRI reports, as well as any documents, emails, letters, faxes or memos about MRI regarding this case;

To the extent that these exist in the Applicant's file, they should, of course, be provided to the Applicant. If there are no such reports on the file, but the Board is aware of where these medical records might be obtained (or if they exist), the Applicant should be advised of that fact.

- K. All documents, letters, faxes, case-notes or memos sent to/from any rehabilitation centres including the Millard Centre (The Millard Rehab File);

Is there a file called the "Millard Rehab File", separate from the Applicant's general file with the Workers' Compensation Board? Does the Millard Centre have a file for the Applicant? Is the Millard Centre a public body subject to the *Access to Information and Protection of Privacy Act* of the Northwest Territories or other similar legislation in another Canadian jurisdiction? The Workers' Compensation Board has a duty under section 7 of the Act to assist an Applicant.

7.(1) The head of a public body shall make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay.

This includes the obligation to advise the Applicant, in writing, where specific information requested might be found. I suspect, without knowing, that if the Applicant did spend time in one or more rehabilitation centres, there may be additional information on the files of the centres themselves that do not appear on the Workers' Compensation Board file. Although the Board has no obligation to obtain that information for the Applicant, it does have the obligation to point him in the right direction so that he can obtain that information directly from the institution or institutions involved.

L. The Psychology file;

Again, is there a "psychology file" separate from the Applicant's other file or files? Are there psychological reports on the Applicant's WCB file? Was the Applicant referred to agencies outside the WCB for psychological assessment or treatment? Is the agency likely to have further information about the Applicant which is not on his Workers' Compensation file? If so, was the agency or agencies involved within the Northwest Territories? Was that agency a public body within the meaning of the Act? If the agency is a public body within the Northwest Territories, this part of the request should be forwarded to that public body involved and the Applicant should be advised of that fact pursuant to section 12 of the Act, which reads as follows:

- 12.(1) The head of a public body may transfer a request for access to a record and, if necessary, the record, to another public body where
- (a) the record was produced by or for the other public body;
 - (b) the other public body was the first to obtain the record; or

- (c) the record is in the custody or under the control of the other public body.

M. The Detail Cost file. A file detailing all costs paid on my claim.

Is there a file which contains this information, separate from the Applicant's personal file? Can this information be compiled from the Board's existing records and would it be difficult to do so? In light of section 7(1) of the ATIPP Act, I would suggest that it incumbent on the Board to at least consider these questions. It may be that more specifics are required from the Applicant as to what he means by "the detail cost file". If so, those questions should be asked.

N. All documents/letters/e-mails/faxes/memos sent or received from the office of the appeals advisor regarding this case;

Again, it may well be that this information is all on the file which the Applicant has been provided with. If so, the Board should confirm this in writing to the Applicant. If there is a separate "appeal" file, it would be appropriate to review that file and provide the information requested to the extent that it is not otherwise exempt from disclosure under the Act. Does the "appeals advisor" have his/her own file? Has this file been reviewed so as to ensure that the Applicant has received all of the relevant and requested records? The Board must address itself to all of these questions and provide the Applicant with a written explanation in order to comply with its responsibilities under the Act.

O. All documents/letters/e-mails/faxes/memos sent or received from the appeals commission regarding this case

My comments with respect to item "N" apply as well to this item. Is there an "Appeals Commission" and does it maintain its own file? If so, has this file been reviewed so as to ensure that the Applicant has received all of the relevant and requested records? Has the Applicant been advised of these relevant facts?

P. Any CIS Notes;

I personally have no idea of what is being requested here. What are CIS Notes? Assuming that the Board knows what the Applicant is referring to, it should be applying the principals already discussed to this specific request and advising the Applicant accordingly. If the Board is not clear about what the Applicant is referring to, they should be contacting him to clarify what it is he is asking for.

Q. All documents/letters/e-mails/faxes/memos sent or received from Medical Advisors regarding my case;

Again, I'm not entirely sure what the Applicant is referring to when he speaks of "medical advisors". Is he referring to his own medical information? Or is he referring to someone employed by the Board to review and analyze medical opinions received? The Applicant's request should be clarified. Once clarified, if the information is all contained within the Applicant's file, he should be so advised. If there are other files containing the information being requested by the Applicant, these files should be reviewed and, subject to the exemptions provided for in the Act, any responsive records should be produced.

R. A list of my previous claims;

Would this information all be in the file that was provided to the Applicant? If so, the Applicant should be informed of that fact. If separate files are opened for each separate claim, it seems to me it should be easy enough for the Board to compile a list of the previous claims, if any, and provide that to the Applicant as per his request. This does not appear to me to be an overly difficult request to meet.

S. Any documents/letters/faxes/case-notes/e-mails/memos related to me or my case that are filed in the following departments:

- Adjudication Unit;
- Case Management Unit;
- Medical Unit;
- Pensions Unit;
- Administration;
- Legal Unit;
- Finance Unit;
- Rehabilitation Unit

Does the Workers' Compensation Board administer itself through departments as described in the Applicant's request? Do each of these departments maintain separate files with respect to any one claim? Do any of these departments maintain separate files with respect to any one claim? If so, have these files been reviewed and responsive documents been identified? The Applicant having made this specific request, it seems to me at the very least that he is entitled to an explanation of the administrative organization of the Board and its filing system. If there is more than one file which MIGHT contain information along the lines of that requested, ALL such files should be reviewed to determine if there are responsive records and the Applicant should be advised of the specific files searched and the results of those searches, even if no documents were found.

T. a report detailing any payments made on this case to the following Doctors as well as any documents/letters/referrals/memos/e-mails/notes sent regarding this file;

- Dr. Paul Green
- Dr. Martin Austin
- Dr. David E. Hartman
- Any other doctors that have been consulted regarding this file

I suspect that this request is, at least to some degree, overlapping a number of the previous enumerated requests dealing with payments made with respect to this file (see "B", "C" and "M" above). To the extent that this is not the case, is the information

available on the file already provided to the Applicant? If so, he should be advised of that fact. If the information is contained in another file, that information should be compiled and provided to the Applicant subject, of course, to any applicable exemptions under the Act.

- U. Telephone records for telephone calls made by employees regarding any matter discussed with me, my doctors, or lawyers, including duration of calls, phone number called and date of calls, as well as any existing documents describing the matters discussed;

A lot of information is being requested in this question. I suspect that some of the information will be on the Applicant's file, which he has already been provided with, specifically notes made by employees about telephone calls made and received with respect to the Applicant's case. It may be that some such notes exist outside the file. If so, obviously these should be reviewed and provided to the Applicant, subject to any exemptions under the Act. If not, the Applicant should be advised of that fact. Are separate telephone records kept which track the length of telephone calls? Is there a record of telephone numbers on the file? Is there some kind of tracking mechanism which records the telephone calls made on each file? Can a report be generated from existing computer programming and equipment? These questions must all be addressed by the Board and an explanation provided to the Applicant. If the information does exist in some form, that information should be reviewed and, subject to the exemptions under the Act, provided to the Applicant.

- V. I would also like all documents or information existing in e-mail, electronic form, hand-written or typed memos, letters, faxes or notes regarding my file that exist and that were sent or received by:

- all specialists
- all doctors
- all lawyers
- all other government departments (anywhere in Canada);
- all other employers;

Once again, this request has already been dealt with to a large degree in some of the previous requests. To the extent that it has not been dealt with, I suspect that all of the relevant information is on the Applicant's file that has already been provided to him. If so, the Applicant should be advised of this fact. If there is a possibility that some of this information might exist on other files, those files should be reviewed and relevant documents provided to the Applicant, subject to any exemptions available under the Act. The Applicant should also be advised of what files have been reviewed and what steps have been taken to ensure compliance with the request made.

W. All correspondence with Beaver Enterprises regarding this case;

Is this information all on the Applicant's file? If so, the Board should confirm this in writing to the Applicant. If not, all other files which might contain this information should be reviewed and, subject to other exemptions which might apply under the Act, relevant and responsive documents provided to the Applicant.

X. All documents/letters/faxes/memos/e-mails/notes sent or received from the Ombudsman's office and the Minister's Office regarding this case;

Is there any such correspondence in the possession of the Workers' Compensation Board? Does an Ombudsman's Office exist? To the extent that such documents might exist, are they contained in the file which has been provided to the Applicant? Is it possible that such correspondence might exist on another file? If so, those files should be reviewed and, subject to any applicable exemptions, provided to the Applicant and the Applicant should be advised of the nature and extent of the search and review done by the Board to meet his request.

Y. A definition of "Incurable incapacitating mental disorder"

This may, or may not be, a request that falls directly under the Act. Is this a term that

appears in the Workers' Compensation Act? If so, is there a definition under the Act? If not, is there a accepted medical or other definition being used by the Workers' Compensation Board for this term? Is that definition contained in a policy paper or other written or electronic form? If there is such a document, I suspect that it is NOT included in the Applicant's file material and he should be provided with it.

If there no legislated, policy driven or medical definition of this term which appears in writing, the Applicant should simply be advised of this fact.

Z. All Orders, notices, returns, reports, forms or other documents or papers relating to this case;

I would simply repeat the comments made earlier. If the information requested in this specific request has already been provided to the Applicant as part of his file, this should be confirmed in writing. If such documents exist elsewhere, the relevant files should be reviewed with a view to ensuring full disclosure in accordance with the Act.

AA. All referrals any (sic) Doctors contacted regarding this case;

It seems to me that the information in this request has been taken care of by several of the earlier requests. If so, this should be confirmed in writing to the Applicant. If not, further review should be completed and the relevant responsive documents provided to the Applicant.

BB. All referrals to the Mayo Clinic;

Once again, I believe that this request has most likely already been dealt with in one or more of the previous requests and I repeat my comments with respect to request "AA"

CC. Requests for comment on any portion of this file;

I suspect, without knowing, that any request for comment on the file would appear on the file which has already been provided to the Applicant. I repeat my comments with respect to request "AA".

DD. Any correspondence requesting comments or reports from:

- the Medical Department to any physician

Once again, I suspect that this request has already been taken care of by several of the earlier requests and I repeat my comments with respect to request "AA".

SUMMARY AND RECOMMENDATIONS

It appears to me that the Board has, for whatever reason, simply not addressed its mind fully to the requests being made. Section 7 of the Act requires the public body to assist the Applicant in any way it can to ensure that the requested information is provided. It seems to me that it may require more than a catch-all statement that the Applicant has been provided with a copy of his/her file for the public body to satisfy its mandate where there are a large number of separate requests. This is particularly so, I would suggest, where, as here, there appears to be a bit of a history and some degree of lack of trust on the part of the Applicant, for whatever reason.

I therefore recommend specifically as follows:

1. The Applicant should be asked if he requires another full copy of his file. If the answer to that is in the affirmative, the entire file should be provided once more to the Applicant, free of charge. Should repeated applications of this sort be made, the public body has the right to request that I refuse to disregard further requests for review pursuant to section 53 of the Act which states as follows:

53. The Information and Privacy Commissioner may, at the request of the head of a public body, authorize the public body to disregard a request under section 6 that

- (a) is frivolous or vexatious;
- (b) is not made in good faith;
- (c) concerns a trivial matter;
- (d) amounts to an abuse of the right to access; or
- (e) would unreasonably interfere with the operations of the public body because of its repetitious or systematic nature.

I am not convinced from the information given to me to date that this current request for information falls under this section.

2. Each of the specific and individual requests for information should be reviewed and answered individually for the Applicant. A careful review should be done to ensure that in fact all of the relevant information requested has been provided and that each individual request has been dealt with. I have posed a number of questions in my discussion above. All of these questions should be answered for the Applicant, in writing. I would highly recommend that in all cases such as this, as full an explanation of the process and the searches done should be provided to the Applicant. This will help to reduce the level of mistrust and, perhaps, the number of matters which are eventually referred to this office. I do not feel that the Workers' Compensation Board, in this particular case, gave the request for information the appropriate amount of attention, nor did it provide the Applicant with adequate explanations for the individual requests made. I therefore recommend that the Workers' Compensation Board review each of the individual requests made and provide the Applicant with a detailed explanation of their review of the relevant files in accordance with the comments made above. I recommend that this exercise be undertaken as soon as possible, and, in any event, within 30 day of the acceptance of this recommendation. I repeat my assertion, however, that if further documents are found, they may well be subject

to specified exemptions under the Act and before any information is released to the Applicant.

Elaine Keenan Bengts
NWT Information and Privacy Commissioner