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**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 255-1998
August 12, 1998**

INQUIRY RE: The adequacy of a search for records conducted by the Workers' Compensation Board of British Columbia

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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 July 8, 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 of the response given by the Workers' Compensation Board of British Columbia (the WCB) to an applicant's request for her employee file and any other records pertaining to her at the Appeal Division of the WCB.

2. Documentation of the inquiry process

On December 9, 1997 the applicant submitted a request under the Act to the WCB for "full disclosure of [her] employee file located in the Appeal Division as well as any other file of information pertaining to [her] which [the manager] may have."

On December 18, 1997 the WCB disclosed "a copy of all records about [her] in the custody and control of [the manager] including a copy of [her] employee file held in the Appeal Division." The WCB stated that no records had been withheld from the applicant, and there had been no information severed from the records disclosed.

On January 6, 1998 the applicant submitted a request for review of the WCB's decision to this office stating that "[she was] concerned that there may be other files which were not disclosed."

The inquiry date was extended once with the consent of the parties from April 13, 1998 to June 1, 1998, and again by my Office from June 1, 1998 to July 8, 1998.

3. Issue under review and the burden of proof

The issue in this inquiry 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 the parties to 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

The applicant believes that there may be records relating to her at the Appeal Division of the WCB or in the personal possession of the Appeal Division manager that have not been disclosed or accounted for.

5. Procedural objections

The applicant objected to being required to make an initial submission only one and one-half days after receiving the Notice of Inquiry, the result of an initially unsuccessful attempt to send her the required documents. Fairness required that, in my absence, the Director of Information and Privacy of the Office exercise her delegated authority to extend the dates for submissions to be made by the parties, and to reschedule the inquiry to July 8, 1998.

6. The applicant's case

Although I did not receive an initial submission from this applicant, it is clear from copies of her other correspondence submitted to me that she believes that there may be other records about her at the WCB that have not been disclosed to her.

7. The Workers' Compensation Board's case

The applicant is an employee of the WCB. The WCB has submitted a detailed affidavit describing the efforts to locate records responsive to the applicant's request.

8. Discussion

The applicant has been offered a private meeting with the FOI Coordinator at the WCB and has not taken advantage of that offer, which may have led to suggestions for areas to search for records about her. I would encourage her to take advantage of this offer.

In terms of the factual and descriptive information put before me by the WCB, I am satisfied that the WCB has made every reasonable effort to assist the applicant and to respond without delay to her openly, accurately, and completely in the circumstances of this request.

9. 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 for records 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) of the Act, 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 for records conducted was reasonable, I find that the WCB has complied with this Order and discharged its duty under section 6(1) of the Act.

David H. Flaherty
Commissioner

August 12, 1998