

Access to Workers' Information When the Issue in Dispute is at the Tribunal

1.0 This Practice Direction:

- discusses the Tribunal's authority to provide access to a worker's information to other parties
- discusses the principles governing access to a worker's information
- describes the process of obtaining worker consent to access and the employer's undertaking regarding access
- describes what occurs when a worker does not consent to access
- identifies other situations where full access may not occur
- discusses the release of information to an employer's physician.

2.0 The Tribunal's Authority to Provide Access

2.1 The Act does not discuss access to a worker's file at the Tribunal. The Tribunal does have the authority to determine its own practice and procedure.¹ Through this Practice Direction the Tribunal exercises its authority to determine its own practice and procedure on the issue of access to a worker's file when there is an appeal at the Tribunal.

3.0 Access Principles

3.1 The Act sets out when and how the Board provides access to both employers and workers.² This Practice Direction incorporates the principles on access found in the Act. In particular, the Tribunal recognizes that both parties need access to relevant information in order to have a fair hearing.

1 See section 131 of the *Workplace Safety and Insurance Act*.

2 See sections 57 to 59 of the *Workplace Safety and Insurance Act*.

3.2 This Practice Direction also incorporates the principles found in the *Freedom of Information and Protection of Privacy Act* (FIPPA) where applicable. FIPPA covers access to information and the right of individuals, including workers and individuals mentioned in a worker's file, to protection of their personal information.

4.0 Consent to Access and Employer Undertakings

4.1 Workers must indicate on the Notice of Appeal or Response Form if they consent to release to employers who appear to the Tribunal to be interested parties:

- the claim file
- related claim files, and
- any other information sent to the Tribunal.

4.2 The worker may consent to the release of all or part of these documents. The worker has the right to review the claim files before consenting to release.

4.3 When an employer participates in an appeal, the employer receives a Notice of Appeal for Employers or Response Form. The employer must sign the Undertaking on the form that:

- the employer and any representative it retains will not disclose any worker information to a non-party, except in a form calculated to prevent the information from being identified with a particular worker or case.
- the information is used for workplace safety and insurance purposes only.

5.0 What Happens When the Worker Does Not Consent?

5.1 If the worker does not consent to the release of information, both the worker and the employer are asked to provide written submissions to the Tribunal about why access should or should not be granted.

5.2 Parties can make submissions on the issues of whether the information is:

- **relevant** to the **issue in dispute** or
- **prejudicial** to the worker and if so in what way.

- 5.3** Prior to sending an access appeal to a Vice-Chair or Panel for a decision, the Tribunal may contact the parties to see if the access issue can be resolved through mediation (see the *Practice Direction: Mediation*).
- 5.4** Most access appeals are decided by a Vice-Chair or Panel by a written process based on the written submissions and review of the documents in question (see the *Practice Direction: Written Appeals*). Where an appeal raises unusual or extraordinary issues, the Tribunal may decide an oral hearing is needed.
- 5.5** The Vice-Chair or Panel will decide if access to the information should or should not be granted to the employer. In exceptional circumstances, the Vice-Chair or Panel may impose conditions on access. A written decision will be sent to the parties.
- 5.6** If access is granted to the employer, the information is released by the Tribunal fifteen days after the decision is released.

6.0 Other Situations Where Full Access May Not Be Granted

- 6.1** The Tribunal may identify personal information in records such as the items identified in Schedule A (see below) that will not be released. Information which is not relevant to the issues on appeal will not be released. Information may be excluded when the relevance is outweighed by the sensitive or prejudicial nature of the information. The Tribunal may withhold the information and refer the issue to a Vice-Chair for a decision.
- 6.2** If the Tribunal is concerned that information may be harmful to a worker if released directly to the worker, the Tribunal will provide copies of the information to the worker's treating physician and advise the worker or the representative that it has done so. The Tribunal will confirm with the worker or representative whether the information has been released by the treating physician.
- 6.3** If the worker objects to this procedure, or if the treating physician does not release all or part of the information, the matter will be referred to a Vice-Chair. The Vice-Chair will decide how or whether the information should be released. The process outlined in section five will apply.

7.0 Release of Information to Employer Physicians

7.1 Section 59(6) of the Act provides that the employer and employer's representative shall not disclose any health information except in a form calculated to prevent the information from being identified with a particular worker or case.

7.2 For purposes of clarification, a physician retained by an employer to provide an expert opinion may be an employer representative under section 59(6) if:

- a copy of the retainer agreement is provided to the Tribunal; and
- the physician has undertaken to use the health information only for the purpose of providing an expert opinion for the hearing, to return the health information to the employer when it is no longer needed, and to refrain from disclosing the health information except in a form calculated to prevent the information from being identified with a particular worker or case.

SCHEDULE A³

Information That the Tribunal Will Not Release

The Tribunal will usually not release the following information unless it is relevant to the appeal:

- personal banking account documents (e.g. direct deposit forms, copies of personal cheques)
- personal identity documents (e.g. drivers license, passport, SIN card, OHIP card, certificates of citizenship).

Dated at Toronto, Ontario this first day of October, 2007
Workplace Safety and Insurance Appeals Tribunal
I.J. Strachan, Tribunal Chair

³ Schedule A was revised on April 4, 2011.