

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

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.

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.

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

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

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.³
- the information is used for workplace safety and insurance purposes only.

5.0 What Happens When the Worker Does Not Consent?

5.1 Prior to sending an access appeal to a Vice-Chair for a decision, the Tribunal may contact the parties to see if the access issue can be resolved through mediation (see *Practice Direction: Mediation*).

5.2 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.

5.3 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.

3 See section 59(6) of *Workplace Safety and Insurance Act*

- 5.4** If the worker does not provide written submissions, the issue of whether the worker's objection has been abandoned will be referred to a Vice-Chair.
- 5.4.1** Where the Vice-Chair finds that the objection has been abandoned (see *Practice Direction: Closing Appeals by the Tribunal*), a letter signed by the Vice-Chair will be sent to the parties to confirm the decision. The information is released by the Tribunal 15 days after the date of the letter.
- 5.5** Most access appeals are decided by a Vice-Chair by a written process based on the written submissions and review of the documents in question (see *Practice Direction: Written Appeals*). Where an appeal raises unusual or extraordinary issues, the Tribunal may decide an oral hearing is needed.
- 5.6** The Vice-Chair will decide if access to the information should or should not be granted to the employer. In exceptional circumstances, the Vice-Chair may impose conditions on access. A written decision will be sent to the parties.
- 5.7** If access is granted to the employer, the information is released by the Tribunal 15 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 is not relevant to the issues in dispute and will not be released. Information may also 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.

SCHEDULE A⁴

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. driver's license, passport, SIN card, OHIP card, certificates of citizenship).

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Workplace Safety and Insurance Appeals Tribunal

4 Schedule A was revised on April 4, 2011