



Practice Direction #3

Consent for the WSIAT to Release a Worker's Information

1.0 This Practice Direction

- outlines the access principles to release a worker's information
- describes the process of getting worker consent to release their information to their employer (if they are participating in the appeal)
- describes what occurs when a worker does not consent to release their information or return the Consent Form
- identifies situations where full access may not occur

2.0 Access Principles

- 2.1 Interested parties to an appeal (generally a worker and their employer) need access to relevant information to have a fair hearing.
- 2.2 The WSIAT will determine who has an interest in each appeal.

3.0 Employer Participation

- 3.1 If an employer is participating, they have the right to receive all of the case materials relevant to the appeal.
- 3.2 If an employer is participating in an appeal, they must sign an Undertaking of Confidentiality. This means that they understand that the information the WSIAT sends to them is to be used for workplace safety and insurance purposes only.
- 3.3 If an employer shares the information with a non-party (for example, a doctor), they must remove any details that identify the worker.
- 3.4 If an employer is not participating, the WSIAT will not send them the case materials for the appeal.

4.0 Release of Information to an Employer

- 4.1 If an employer is participating in a worker appeal, the WSIAT will send the case material to the worker and their representative. The WSIAT will ask the worker to complete a Consent Form to Release a Worker's Information (consent form).
- 4.2 Workers have **4 weeks** to complete and return the consent form to the WSIAT.
- 4.3 On the consent form, the worker must indicate if they consent to release information to the participating employer(s) and their representatives. This includes
- the WSIB claim file information
 - related WSIB claim file information
 - any other information the worker sends to the WSIAT
- 4.4 The worker may consent to the release of all or part of this information.

5.0 What Happens When the Worker Does Not Consent?

- 5.1 WSIAT staff will contact the parties to see if the access issue can be resolved through mediation. If not, WSIAT staff will send the access objection to a Vice-Chair for a decision.
- 5.2 If the worker does not consent to the release of information, WSIAT staff ask both the worker and the employer to provide submissions to the WSIAT. The submissions must be in writing. They should include
- why access should or should not be granted
 - if the information is relevant to the issue(s) in dispute
 - if the information is prejudicial to the worker and, if so, in what way
- 5.3 If the worker does not provide written submissions, the worker may have abandoned their objection to access. At this point, WSIAT staff will refer it to a Vice-Chair for a decision.
- 5.4 If the Vice-Chair finds that the objection has been abandoned, the Vice-Chair will send a letter to the parties to confirm the decision. The WSIAT will release the information to the employer 15 business days after the date of the letter.

- 5.5 If the worker provides written submissions, WSIAT staff will refer the access objection to a Vice-Chair for a decision.
- 5.6 Most access objections are decided by a Vice-Chair who reviews the written documents without an oral hearing. This is based on the written submissions and review of the documents in question. If an objection raises unusual issues, the WSIAT may decide an oral hearing is needed.
- 5.7 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. The WSIAT will send the decision to the parties.
- 5.8 If the decision grants access to the employer, the WSIAT will release the information 15 business days after the date of the decision.

6.0 What Happens When the Worker Does Not Return the Consent Form?

- 6.1 The Consent Form to Release a Worker's Information is required. Both parties need access to relevant information so an appeal can proceed to a hearing.
- 6.2 If the worker does not return the completed consent form within 4 weeks, WSIAT staff will call the worker (or their representative) to advise that the information will be released.
- 6.3 A Vice-Chair will send a letter to the parties to confirm the release of the information to the employer.

7.0 Other Situations Where Full Access May Not Be Granted

- 7.1 The WSIAT may identify personal information in records such as the items identified in [Schedule A](#) (noted below). If these items are not relevant to the issues in dispute, the WSIAT will not release them to the employer.
- 7.2 Sensitive or harmful information may also be excluded from the case materials. The WSIAT may withhold the information and send it to a Vice-Chair for a decision on whether it should or should not be released.
- 7.3 The WSIAT might be concerned that information may be harmful to a worker if it is released directly to them. In this case, the WSIAT will provide copies of the

information to the worker's treating health care provider or representative. WSIAT staff will confirm with the worker or representative if the information was released by the treating health care provider.

- 7.4 The matter will be sent to a Vice-Chair for a decision if
- a. the worker objects to this procedure
 - b. the treating health care provider does not release all or part of the information

The Vice-Chair will decide how or if the information should be released (review Section 5.0).

8.0 References and Resources

8.1 Legislative Authority

Workplace Safety and Insurance Act, 1997 sections 57, 58, 59 (access to records sections), 131 (the WSIAT can determine its own practice and procedure), 150 (employer duty to keep information confidential), 181 (duty not to disclose information)

Note: The Act does not discuss access to a worker's file at the WSIAT. The WSIAT does have the authority to determine its own practice and procedure. Through this Practice Direction the WSIAT 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 WSIAT.

Freedom of Information and Protection of Privacy Act

8.2 Related Practice Directions

#5 – Hearing Formats

#28 – Representatives

#31 – Powers of Practice and Procedure

#33 – Role of the Vice-Chair Registrar at the WSIAT

Schedule A

Information That the Workplace Safety and Insurance Appeals Tribunal (WSIAT) Will Not Release

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

- a. personal banking account documents (for example, direct deposit forms or copies of personal cheques)
- b. personal identity documents (for example, driver's licence, passport, Social Insurance Number, health card or certificate of citizenship)
- c. support or garnishment orders
- d. PINs (personal identification numbers) to access personal information