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October 1, 2021

VIA E-MAIL ONLY: kevin@gl-lg.com

Kevin Jacoby
4614 S Kelly Avenue, Suite 300
Portland, OR 97239

Re: Petition for Public Records Disclosure Order
Department of Consumer and Business Services
DOJ File No.: 438100-GA0138-21

Dear Mr. Jacoby:

This letter is the Attorney General's order responding to your September 22, 2021,[1] petition under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks us to order the Department of Consumer and Business Services (DCBS) to disclose the accounting ledger maintained by Sedgwick Claims Management Services, Inc., ("Sedgwick") for a particular workers' compensation claim. For the following reasons, we respectfully deny your petition.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). The law is a disclosure law, and exemptions from disclosure must be express. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain any such denial. *Id*.

We understand from your petition that you represent the noncomplying employer of an employee who filed a workers' compensation claim under ORS 656.054. Pursuant to a contract with DCBS, the claim was processed by Sedgwick – a private entity – as the assigned claims agent. *See* ORS 656.054(9). After the claim was settled, the DCBS Workers Compensation Division (WCD) billed your client for various costs, fees and civil penalties associated with the claim. Because you believe there may be errors or irregularities in the bill, on September 17, 2021, you requested WCD disclose Sedgwick's ledger. According to your

[1] Thank you for granting us additional time to respond.

petition, WCD contacted your office telephonically on September 21, 2021, and informed you that it was not the custodian of Sedgwick's ledger. Your appeal followed.

In response to your appeal, we contacted Cathy Ostrand-Ponsioen, WCD Legal Issues Coordinator. She explained DCBS' position that, although a limited number of WCD employees have access to Sedgwick's ledger, the ledger is not a public record under the Public Records Law because it is maintained exclusively by a private entity. Alternatively, WCD asserts that Sedgwick's ledger is exempt from disclosure under two statutes – ORS 192.355(20), which makes workers' compensation claim records maintained by DCBS exempt; and ORS 656.360, which makes worker medical and vocational claim records confidential and generally restricts their disclosure to anyone but the claimant. Both statutes contain limited exceptions, but DCBS asserts that none of those exceptions apply to your request.

We have no trouble concluding that the ledger at issue is a public record. The Public Records Law defines a "public record" for inspection purposes as "any writing that contains information relating to the conduct of the public's business * * * prepared, *owned*, used or retained by a public body * * *." ORS 192.311(5)(a) (emphasis added). Under the unambiguous terms of WCD's contract with Sedgwick, all claims files generated by Sedgwick under the contract are the exclusive property of WCD.[2] Ms. Ostrand-Ponsioen also informed us that WCD considers Sedgwick's claims ledgers to be part of the claims files. *See also* OAR 436-060-0017(1)(a)(C) (confidential claims documents include payment ledgers). Specifically, she noted, the ledgers list Sedgwick's administrative expenses in processing claims, including attorney fees; they document indemnity payments made to claimants, including disability benefits, settlement amounts, and reimbursements for prescription or travel expenses; and they detail payments for medical services provided in relation to claims, including dates of service and dates of payment. Because WCD owns the claims file and the requested ledger is part of that file, it follows that the ledger is a public record for inspection purposes, regardless of whether it is maintained exclusively by Sedgwick.

Next, we turn to WCD's assertion that if the ledger is a public record, it is exempt from disclosure. DCBS relies, in part, on ORS 192.355(20), which states that DCBS "workers' compensation claim records" are expressly exempt from disclosure. It contains four exceptions for circumstances where DCBS adopts rules permitting disclosure:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

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[2] *See, e.g.*, Claims Management Services Contract ("Contract"), paragraph 10(a)(iii) ("Claim Files are the exclusive property of Agency irrespective of where, or on what medium the information is stored"); Contract Statement of Work, paragraph 1(H) (defining a "Claim File" as "the Claim File, in any form including without limitation electronic information and information on paper, that contains all the information related to a Claim. Claim Files are the exclusive property of Agency."); and Contract Statement of Work, paragraph 7(B) (requiring Sedgwick to turn over "all Claim Files and related work products" to the Agency upon the expiration or termination of the contract).

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

Id. Pursuant to the statute, DCBS has adopted a rule providing that access to claims records under an exception is at the sole discretion of the director. *See* OAR 436-001-0700(3)(b).

According to Ms. Ostrand-Ponsioen, DCBS interprets the exemption to apply to all records related to workers' compensation claims, including administrative records such as the accounting ledgers associated with the processing of claims. She also explained DCBS' position that there is no provision in the Workers' Compensation Law that permits a noncomplying employer to access or review the costs incurred or fees paid by a claims agent when processing a claim. *See, e.g.,* ORS 656.360; OAR 436-001-0700; OAR 436-060-0017. Rather, she noted, if a noncomplying employer is concerned about the costs associated with a particular claim, the employer may request WCD perform an audit of the agent's claims file, which WCD would be obligated to perform under ORS 656.054(3).

You argue that you are not seeking workers' compensation claim records, but rather a ledger of the fees charged by Sedgwick that WCD used to bill your client for reimbursement. You also agree to the redaction of any personal, medical, or vocational information relating to the claimant that may appear in the ledger.

The legislature has not defined "workers' compensation claim records" for purposes of ORS 192.355(20). In evaluating the scope of the exemption, we have observed that it was created to prevent discrimination against persons who previously filed workers' compensation claims. *See Attorney General's Public Records and Meetings Manual* at 122 (2019) ("*Manual*"). Consistent with this observation, we have previously interpreted the term to apply broadly to any information that may reveal the identity of a claimant, including both substantive information about claims and claimants, and administrative information about claims, such as the names of claimants, employers, and insurers. *Id*. (citing Public Records Order, Jul 9, 1998, Scheminske (the term may apply to records that would establish that a worker filed a workers' compensation claim or that would pertain to actions taken with respect to the claim)).

The ledger you seek indisputably is a compilation of information about a particular workers' compensation claim and its processing. And publicly disclosing the ledger – or any part of it – would confirm the identity of the claimant and thereby risk the discriminatory effects that the exemption seeks to avoid. In our view, this confirms that the ledger should be treated as a claim record for purposes of the public records law.[3] The ledger is therefore exempt from public disclosure unless an exception applies.

[3] We recognize that the identity of the claimant and the nature of the claim are known to you by virtue of your representing the claimant's employer. However, that fact is not relevant to our evaluation here because the identity, motive and need of the requester are generally irrelevant to determining whether an exemption applies to requested records. *Manual* at 1.

Based on the available record, the only exception that might apply to your request is if disclosure is necessary for DCBS or some other governmental agency to carry out its duties, functions, or powers. ORS 192.355(20)(b). But DCBS has determined that disclosure is not necessary to carry out its duties, functions, or powers because it believes your concerns about Sedgwick's accounting can be addressed through an audit of Sedgwick's claims file under ORS 656.054(3). Indeed, by enacting that provision, the legislature provided a specific remedy for your client to require WCD to validate any reimbursements it made to Sedgwick. This legislatively created remedy does not entail the public disclosure of any workers' compensation claim records. As a result, we cannot conclude that DCBS abused its discretion when it determined that none of the available exceptions apply to your public records request. We therefore respectfully deny your petition.[4]

Sincerely,

FREDERICK M. BOSS
Deputy Attorney General

FMB:pjn
c via e-mail only: Cathy Ostrand-Ponsioen (DCBS)

[4] Because we conclude that DCBS was permitted to withhold Sedgwick's ledger under ORS 192.355(20), we do not need to evaluate DCBS' claim that the ledger is also exempt under ORS 656.360.