

Government Transparency Initiative 2021

Workers' Compensation Board's Proposed Transparency Plan

Ensuring the timely preparation of legally mandated reporting *and* identify ways to make useful information available to the public.

The Board is legally mandated to report on the following:

Report	Required by	Due Date	Recipient
Assessment Rate	WCL §151	11/01/21	Public Subject Number to be issued shortly. Recommend mid-October release.
Safety Net Report	WCL §35	12/01/21	Governor, Senate Majority Leader, Assembly Speaker, and Senate/Assembly Committees of Labor, Ways and Means, and Finance.
Regulatory Agenda	SAPA §202-D	01/01/22	State Register (filed online).
WCB Annual Report	WCL §153	02/01/22	Governor, public (online).
Reopened Case Fund Accounting	WCL §25A	04/01/22	Send to DFS by 4/1/22. Not published.
Special Fund for Disability Annual Reconciliation	WCL §15-8	04/01/22	Available internally for public inspection if requested. Not published.
WC Rate Stabilization Fund	Chapter 59, part NNN §2 of the Laws of 2017	04/01/22	Governor, Senate Majority Leader, Assembly Speaker, Senate Finance Chair/VC, Assembly Ways & Means Chair, Senate Labor Chair, Assembly Labor Chair.
Uninsured Employers' Fund Report	WCL §26-a	06/30/22	Department of Financial Services, open for public inspection.
Personal Privacy Protection Law report	POL §94(6)	09/01/22	Committee on Open Government.

It remains a priority for the Board to ensure compliance with all statutorily mandated reports. While not every report is filed online, the Board will increase the public visibility of these reports by creating a section on our website listing the reports, including a link for all such reports that are public.

The Board's website contains detailed information for stakeholders, including the latest news, ways to connect to your hearing, and medical, legal, claims, and other information. During the pandemic, the Board has provided crucial information on the continuity of the system, and

adjustments made to serve injured workers and other stakeholders. For example, hearings have continued unabated thanks to our Virtual Hearing Center. Modifications were made to allow for electronic signatures to most forms. Telemedicine rules were put in place. The Board will continue to look for ways to provide more up-to-date information on its website, as New York continues its recovery.

In addition, the Public Information Office conducts many webinars on key topics, with a current focus on educating all stakeholders on the upcoming medical prior authorization portal called ‘OnBoard Limited Release’ (OBLR).

The OBLR system itself will also provide much greater transparency into the provision of medical care for injured workers. It will provide real time information about the claim and the Medical Treatment Guidelines to medical providers, which will assist them in providing care, and in requesting prior authorization for treatment. With a fully electronic system, faxing and mailing of paper forms to the insurance carrier will no longer be an issue, as all payers and providers will access OBLR to see all Prior Authorization Requests (PARs), including current status and all associated details. The claims file accessed by stakeholders (e-case) will have full information relating to all PARs and responses and decisions related to PARs.

As we near roll-out, outreach efforts by our Public Information Office and subject matter experts will increase, so that medical providers, insurers, attorneys, injured workers, and employers are fully aware of and comfortable with navigating the system. Following the release of OBLR, the Board will continue outreach and training with respect to the design and implementation of the full release of OnBoard, the fully integrated new claims system.

The Office of the Advocate for Injured Workers and the Office of the Advocate for Business perform public education providing information to interested groups to help workers and employers understand and protect their rights in the workers' compensation system. During the pandemic both of the Advocates offices have been fully operational and smoothly transitioned to virtual presentations and outreach including our wildly popular monthly “lunch and learn” webinars. Given the popularity of these programs, the Board will look for ways to increase the visibility and assistance provided by the two Advocates offices.

Improving response time for all Freedom of Information Law requests, including by tracking monthly backlogs of outstanding requests and new requests, and by proactively posting frequently requested information or completed requests online.

The Board does not operate under a significant backlog of FOIL requests. Of the 489 FOIL requests received between January 1, 2021 and September 1, 2021, only 5 (1%) were extended beyond 20 business days from the date the FOIL request was acknowledged (a FOIL request must be acknowledged within five-business days of receipt per Public Officers Law [POL] 89[3][a]).

This has been emblematic of the Board’s approach to handling FOIL request over the past 20 years.

In February 2020, the Board began utilizing the Open FOIL NY Workflow application at the behest of the Chamber. It has proven to be an effective tool for (a) tracking new and outstanding requests, and (b) sending reminders when acknowledgement letters are due, and a response due date is approaching.

The Board's newly revised webpage contains a section devoted entirely to public access to Board records through FOIL. It contains: (a) an overview of Public Officers Law Article 6; (b) methods to make a FOIL request (using the Open FOIL NY online form, mail, email, fax and in person); (c) treatment of the FOIL process; (d) a discussion on the right to appeal; (e) the Board's Subject Matter List, (f) the Board's FOIL regulations (12 NYCRR Part 425), and (g) helpful tips (which contains a link to the Committee on Open Government webpage and 21 FAQs concerning FOIL).

Since most of all FOIL requests seek individually identifiable claimant information that is protected from disclosure under Workers' Compensation Law (WCL) § 110-a, posting of these records online for public consumption is prohibited.

The Board will, however, proactively add the following Open Data link to its webpage to facilitate access to frequently requested aggregate claimant data:

<https://data.ny.gov/Government-Finance/Assembled-Workers-Compensation-Claims-Beginning-20/jshw-gkgu>

To the extent that completed FOIL requests that are of interest to the public are identified, the Board will endeavor to post them on its webpage.

Posting documents required for meetings open to the public at the same time the agenda is posted, to the extent practicable.

The only meetings that the Board regularly holds that are considered open to the public under the Open Meetings Law (Public Officers Law Article 7) are its monthly Board meetings. The Board posts the agenda when each meeting is held. Soon thereafter, a webcast of the meeting is posted on the Board's webpage. A transcript of the meeting will be created to comply with recent amendments to the Public Officers Law. The Board will post a copy of the transcript on its webpage as soon as practicable following the meeting to further the goals of governmental transparency.

Most of the time for each meeting is devoted to the consideration of workers' compensation cases (legal appeals, mandatory review cases and discretionary review cases). WCL § 110-a protects individually identifiable claimant information from disclosure to the public. Once the cases are appealed to the Appellate Division and/or the Court of Appeals, they are no longer protected by WCL § 110-a, and the resulting decisions can be found on each court's webpage. The Board will post a link to the webpage of the Appellate Division, Third Department, and the Court of Appeals so these decisions can be easily accessed by the public.

Reducing or eliminating the costs associated with providing data or records.

Public Officers Law § 87(1)(b)(iii) permits the Board to charge a requestor \$.25 per page for paper copies of records that are disclosed through FOIL. The Board's Records Access Officer (RAO) presently makes every effort to provide records to requestors electronically. The Board's RAO frequently provides records to requestors by email and through MOVEit, a managed file transfer software that provides a link to the requestor with a user I.D. and password to provide electronic access to the requested file for a period of 20 days.

In those instances where a requestor specifically seeks paper copies, the statutory fee is always waived if the number of responsive records is 10 pages or less. All copying fees for paper copies are waived for fellow governmental entities. As a result of these policies, the Board's Office of General Counsel has only charged a copying fee for four FOIL requests submitted in 2021 (through September 28, 2021).

Requests for claimant records outside of the FOIL process are handled by the Board's Norwich Central Archives Facility (Norwich). Norwich handles approximately 22,500 such requests per year. Approximately 95% are complied with by sending responsive records to the requestor electronically. The remaining 5% are complied with by providing paper copies. Norwich does not request a fee for providing paper copies of its records if the number of pages is 10 or less, or the request is from a fellow governmental entity. As a result, only a small portion of the requests sent to Norwich for claimant records entail the Board's collection of a copying fee. In fact, a copying fee has not been collected by Norwich in 2021 (through September 28, 2021).

Historically, when paper copies of transcripts of Board records were requested outside of the FOIL process, fees were charged and collected by Verbatim Reporters. All the Board's hearings have been conducted through the Virtual Hearing Center since April 2019. As such, all of its hearings have been digitally recorded, transcripts are no longer routinely prepared, and verbatim reporters are not paid for production of these transcripts. Instead, a digital audio recording of any requested hearing is sent free of charge.

Updating records retention policies, including ensuring the timely transfer of pertinent records to the State Archives.

Retention of Board records is determined either by individual Board Records Retention and Disposition schedules, or the General Retention and Disposition Schedule for New York State Government Records published by New York State Archives. The former is updated as needed by the Board's Records Management Officer. The latter is presumably updated regularly.

Before Board records deemed of historical significance are destroyed, the Board's Records Management Officer routinely reaches out to State Archives to determine the potential for a transfer of the records.

For example, the Board contacted State Archives in 2019 to gauge its interest in securing the Board's collection of approximately 5.7 million employer cards detailing employer insurance coverage for individual workers' compensation claims between 1946 and 1999. State Archives declined.

The Board will continue to inquire of State Archives before destroying any historically significant records.