

# My Employees' Medical Records are Private, Right?

Insights

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Medical records are generally considered to be private information--protected from disclosure by federal and/or state law--but that didn't stop the Seventh Circuit Court of Appeals from deciding that MSHA has the authority to review miners' medical and personnel records.

In 2010, MSHA took the position that its inspectors should be permitted to review medical and personnel records during its review of injury and illness reports (Part 50 Audit) to determine whether mine operators are fully reporting miners' injuries and illnesses. Two mine operators (out of an initial 39) refused to provide the records, claiming that MSHA exceeded its authority, that MSHA violated the companies' and miners' Constitutional rights, and that the requests conflicted with a variety of federal and state laws. Unfortunately for these companies, the Federal Mine Safety and Health Review Commission (FMSHRC) disagreed and the Seventh Circuit upheld the Commission's decision (and significant penalties for non-compliance with MSHA's order).

The Seventh Circuit concluded that "[t]he records that MSHA seeks from mine operators are reasonably necessary for the agency to be able to fulfill its responsibility to protect miner safety and health. Without the records, significant numbers of mine-related injuries and illnesses may go unaccounted for, and mines operating under risky and hazardous conditions may continue to do so without sanction. While the petitioners raise important privacy concerns, Justice Holmes reminded us to 'remember that the machinery of government would not work if it were not allowed a little play in its joints.' In light of the long history of mine accidents and illness, Congress has given the Secretary and MSHA powerful tools to protect miners. Those tools include the demands to inspect documents at issue here."

Unlike Justice Holmes, I think MSHA is operating just fine without "a little extra play in its joints." For now, however, unless this decision is appealed to the Supreme Court and overturned, mine operators should prepare for additional requests from MSHA to review medical documents and consult with legal counsel regarding the decision to produce, or not produce, these documents. This increased focus also means that mine operators must be especially vigilant in reporting injuries and illnesses.

## ***Related People***

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