

ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

**Report on the Investigation into
Complaint Regarding Collection of Personal Information**

June 4, 1998

Workers' Compensation Board

Case Number 1395

INVESTIGATION REPORT #98-IR-001

The Complaint

On February 19, 1998, I received a letter from the Complainant objecting to the release of medical test results by a regional health authority to the Workers' Compensation Board (WCB). The Complainant's concerns include:

1. the medical test results were disclosed to WCB without the consent of the Complainant or the authorization of the Complainant's physician; and
2. WCB received the medical test results three weeks before the Complainant received them from the office of the Complainant's physician.

As the regional health authorities are currently not under the jurisdiction of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act), the provisions of the FOIP Act governing disclosure of personal information do not apply to the regional health authority at this time. Therefore, there can be no breach of the FOIP Act concerning the release of the medical test results by the regional health authority.

However, WCB is subject to the FOIP Act and must comply with the provisions of the FOIP Act regarding the collection of personal information. Under section 51(2)(e) of the FOIP Act, I have the authority to conduct an investigation to determine whether the collection of the medical test results by WCB was in violation of Part 2 of the FOIP Act.

Background

The Complainant has an active WCB claim due to a work-related left shoulder/arm injury. The settling of this claim has been an issue for a number of years.

On September 1997, the Complainant's physician ordered cardiolute testing as the Complainant was experiencing chest pains. The testing was conducted in early January 1998 at a hospital. The Complainant received the cardiolute test results from the office of the Complainant's physician on February 9, 1998.

Subsequently, the Complainant discovered that the cardiolute test results were provided to WCB by the regional health authority on January 19, 1998 and these results were placed on the Complainant's WCB claim file. This led to the complaint received in my office on February 19th, 1998.

Issue: Did WCB collect personal information in violation of Part 2 of the FOIP Act?

Do the medical test results contain "personal information"?

"Personal information" is defined in section 1(1)(n) of the FOIP Act. The relevant portions of section 1(1)(n) read:

1(1)(n) "personal information" means recorded information about an identifiable individual, including

(i) the individual's name, home or business address or home or business telephone number,

(iii) the individual's age, sex, marital status or family status,

(iv) an identifying number, symbol or other particular assigned to the individual,

(vi) information about the individual's health and health care history, including information about a physical or mental disability"

The information contained in the cardiolute test results include: the Complainant's name, age, sex, date of birth, health care number, type of examination, date of examination and results of examination. Therefore, the cardiolute test results are personal information about the Complainant.

Did WCB have the authority to collect the personal information?

Provisions for the collection of personal information by a public body are contained in Part 2 of the FOIP Act. Section 32(a) of the FOIP Act states:

32 No personal information may be collected by or for a public body unless

(a) the collection of that information is expressly authorized by or under an Act of Alberta or Canada.

WCB says its authority to collect personal information is granted under section 31 of the *Workers' Compensation Act*:

31 The Board may require from any person entitled to compensation, whether a worker or dependent, particulars of his place of residence, address and other information relative to the disability and compensation, that it considers necessary, and pending the receipt of those particulars the Board may withhold compensation payments.

WCB claims it only collects information which is necessary and relevant for the purpose of determining a worker's entitlement to benefits under the *Workers' Compensation Act*.

The Complainant's position is that the WCB claim submitted is due to a shoulder/arm injury and that information regarding the Complainant's cardiac condition is not relevant to the WCB claim. Therefore, WCB had no authority or right to collect this information.

WCB counters it had been informed by the Complainant's employer that the Complainant cited cardiac problems on a number of occasions before leaving work. As cardiac conditions could cause symptoms in upper extremities, WCB decided it had both an obligation and justifiable grounds to investigate if cardiac problems were a contributing factor to the Complainant's inability to work. After reviewing the matter, WCB concluded that the Complainant's inability to work was not due to cardiac problems.

WCB said that it retains whatever information it collects. The claim file is a record repository relating to the processing of a specific claim. While the file contains personal information about a worker, it is not a history of that worker. A worker may have a number of claim files if the worker has had several work-related injuries. The claim file includes all information considered by WCB in rendering its decision on the benefits and services granted to an injured worker on that specific claim.

Claim files are open to both workers and employers. WCB entitlement decisions may be appealed by either the injured worker or the worker's employer. Therefore, although WCB may determine that a specific condition was not the cause of a worker's inability to work, WCB retains that information as evidence in the event its decision is appealed.

I find that section 31 of the *Workers' Compensation Act* provides WCB with legislative authority to collect personal information it considers necessary, that relates to the disability and compensation of that disability under the *Workers' Compensation Act*.

As stated earlier, the Complainant's employer advised WCB that the Complainant had left work on several occasions complaining of cardiac problems. Cardiac conditions may cause symptoms in arms and shoulders. The Complainant's WCB claim is for a left shoulder/arm injury. Based on these facts, I am satisfied that WCB had reasonable grounds for considering that the cardiolute test results were necessary to determine whether the Complainant's cardiac condition was contributing to the Complainant's inability to work and that the cardiolute test results were collected pursuant to section 31 of the *Workers' Compensation Act*. Accordingly, I conclude that WCB had the authority to collect the cardiolute test results.

Did WCB collect the personal information in accordance with section 33 of the FOIP Act?

The Complainant was concerned that WCB obtained the test results without the Complainant's consent or the authorization of the Complainant's personal physician.

Under section 33 of the FOIP Act, a public body must collect personal information directly from the individual the information is about. However, section 33 of the FOIP Act also allows a public body to collect personal information about an individual from other sources in particular circumstances. The relevant portions of section 33 read:

33(1) A public body must collect personal information directly from the individual the information is about unless

(a) another method of collection is authorized by

(ii) another Act or a regulation under another Act,

WCB says there is a legislative requirement for physicians and hospitals to provide information to WCB. The relevant parts of section 29 of the *Workers' Compensation Act* read:

29(1) A physician who attends an injured worker shall

(a) forward a report to the Board

(i) within 2 days after the date of his first attendance on the worker if he considers that the injury to the worker will or is likely to disable him for more than the day of the accident or that it may cause complications that may contribute to disablement in the future,

(ii) at any time when requested by the Board to do so,

(b) advise the Board when, in his opinion, the worker will be or was able to return to work, either in his report referred to in clause (a)(i) or in a separate report forwarded to the Board not later than 3 days after the worker was, in his opinion, so able, and...

(2.1) Notwithstanding subsection (1), where an injured worker is attended to in a hospital or other treating agency, the Board may request the hospital or treating agency to furnish it with a report and, on receiving such a request, the administrator or person in charge of the hospital or treating agency shall ensure that the request is forthwith complied with.

Pursuant to section 29 of the *Workers' Compensation Act*, WCB requested the cardiolute test results from the hospital and the information was provided to WCB by the hospital. Under section 29 of the *Workers' Compensation Act*, consent of the individual to whom the information relates (i.e. the Complainant) is not

required. Therefore, I find that WCB has the authority to collect the cardiolute test results from the hospital.

Concluding Comments

In summary, I find that the collection of the cardiolute test results by WCB was in accordance with section 32(a) and section 33(1)(a)(ii) of the FOIP Act. While I appreciate the Complainant's concerns, *the Workers' Compensation Act* does authorize WCB to collect personal information it considers necessary, that relates to the disability and compensation of that disability under the *Workers' Compensation Act*. The *Workers' Compensation Act* also allows WCB to collect the personal information from an information source other than the individual to whom the information relates.

This file is closed.

Robert C. Clark
Commissioner

June 4, 1998