

ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

**Report on the Investigation into a
Complaint Regarding the Sharing of Information Between Public Bodies**

May 14, 1998

Workers' Compensation Board

Alberta Family and Social Services

Case Number 1367

INVESTIGATION REPORT # 98-IR-002

The Complaint

On December 9, 1997, the Complainant attended at my office and met with one of my Portfolio Officers. At the end of the meeting, the Complainant wrote out a complaint regarding the breach of his privacy. The Complaint indicated that his privacy was breached as a result of personal information being shared by the Worker's Compensation Board (the WCB) with Alberta Family and Social Services (Social Services). Specifically, there is a notation on a copy of a letter dated August 8, 1996, written to the Complainant by the WCB which indicates that a copy of the letter containing personal information was given to Social Services.

Background

In September of 1989, the Complainant was involved in a compensable motor vehicle collision. From that time to the present, he has been engaged in a dispute with the WCB over benefits. The Complainant indicates that he has been unable to work since the accident.

The primary issue surrounding the Complainant's dispute with the WCB has been his direct acceptance of a cash settlement from the insurance company of the other party in the collision. The *Workers' Compensation Act (sections 17 and 18)* places restrictions on accepting such settlements. Generally speaking, the WCB pays benefits to the injured worker and any funds recovered are paid to the WCB to offset the cost of compensation benefits. There is a formula used to pay a portion to the injured worker even if compensation exceeds the amount of the settlement. Excess amounts are awarded back to the injured worker.

Since the WCB has denied him benefits, the Complaint indicates that he has had to rely on Supports for Independence (SFI) benefits from Social Services in order to live. The complaint alleges that the WCB purposely gave Social Services personal information so that his SFI

benefits would also be discontinued. The Complainant viewed the sharing of information as a deliberate, malicious act by WCB.

Issue: Did the WCB violate the Complainant's privacy as set out in Part 2 of the FOIP Act by sharing personal information with Social Services?

Does the August 8, 1996, letter contain personal information about the Complainant?

“Personal information” is defined in section 1(1)(n) of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act), which states, in part:

1(1) In this Act,

(n) “ personal information ” means recorded information about an identifiable individual, including

(i) the individuals name, home or business address or home or business telephone number,

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

(vi) information about the individuals health and health care history, including information about a physical or mental disability,

(vii) information about the individuals educational, financial, employment or criminal history, including criminal records where a pardon has been given,

(viii) anyone else's opinions about the individual, and

The August 8, 1996, letter was written to the Complainant by his WCB Case Manager. It contained the following personal information, as defined by the FOIP Act:

- name and address - sec. 1(1)(n)(i)
- claim number - sec. 1(1)(n)(ii)
- reference to 2 Doctors' reports/letters - sec. 1(1)(n)(vi) and sec. 1(1)(n)(viii)
- reference to a memo from the Claimant Services Review Committee (WCB) indicating information about benefits - sec. 1(1)(n)(vii) and sec. 1(1)(n)(viii)

Therefore, the letter contained personal information about the Complainant.

Was the letter sent to Social Services by the WCB?

The copy of the August 8, 1996, letter received by the Office of the Information and Privacy Commissioner from the Complainant was made from a copy received by the Complainant as a result of an access request he made to Social Services. It also had the following notations on it:

- top right of the first page, under WCB letter-head:
AFSS: For Your Information, [signed, first name only]
- last page, bottom:
If [Complainant] advises you of the date and amount of the settlement, please advise [Case Manager] @ WCB [phone #], Thanks [signed] WCB Coordinator [phone number]

During the course of the investigation, the person who wrote the last notation, identified as the WCB Coordinator, was interviewed. The WCB Coordinator works for Social Services in their Human Resources Department. The WCB Coordinator's primary function is to monitor employees of Social Services who have compensation claims with the WCB. As a secondary responsibility, they receive all correspondence from the WCB and pass it on to the applicable person. Even though much of the correspondence relates to clients of both public bodies and not employees of Social Services, the person in this role acts as the liaison person so that the WCB has one contact with Social Services. In this case, the notation was made prior to sending the letter on to the Case Worker responsible for overseeing the Complainant's SFI benefits.

A review of the Complainant's file with Social Services revealed a copy of the August 8, 1996, letter on the Complainant's file. Also on the file was a letter, dated November 15, 1996, from a lawyer acting on behalf of the Complainant, in reply to a telephone request from Social Services. This letter had the particulars of the settlement obtained by the Complainant as a result of the collision. It also gives specific details on how the proceeds were paid out. There was also a letter from a Case Manager of the WCB, dated November 13, 1996, confirming that the Complainant had not received compensation benefits from the WCB since the date of the Accident.

The file review also revealed a written authorization, signed January 16, 1996, by the Deputy Minister, Alberta Family and Social Services, to release information to the WCB, pursuant to section 5 of the *Social Development Act*, which states:

5(1) No person shall disclose to any other person

(a) any file, document or paper kept by any person in any place, that has come into existence through anything done pursuant to Part 2, or

(b) any information obtained by him in the performance of any duties under Part 2,

that deals with the personal history or record of a person who has applied for or has received a social allowance or handicap benefit under Part 2, or any dependents of such

a person, except on the written consent of the Minister or an authorized official responsible for the administration of this Act or the Child Welfare Act.

The stated purpose of the authorization was to determine if the Complainant had applied for benefits from both public bodies at the same time. This information has a bearing on this investigation from the perspective that the Complainant alleges the WCB sent information to Social Services to deliberately cause him to lose SFI benefits. The authorization by the Deputy Minister is evidence that there was communication about the Complainant between the two public bodies prior to the August 8, 1996, letter. This does not support the Complainant's allegations that the sending of the letter was malicious on the part of the WCB. There is also no evidence that receipt of the August 8, 1998, letter resulted in any adverse affect on the Complainant's status with Social Services.

Is the disclosure of personal information by the WCB to Social Services authorized by the FOIP Act?

The disclosure of personal information by a public body is set out in section 38 of the FOIP Act, which states, in part:

38(1) A public body may disclose personal information only

(e) for any purpose in accordance with an enactment of Alberta or Canada that authorizes or requires the disclosure,

(j) for the purpose of determining an individual's suitability or eligibility for a program or benefit,

Disclosure of information is covered in section 141(2) of the *Workers' Compensation Act*, which states:

141(2) No member or officer or employee of the Board shall divulge information respecting a worker or the business of an employer that is obtained by him in his capacity as a member, officer or employee unless it is divulged under the authority of the Board to the persons directly concerned or to agencies or departments of the Government of Canada, the Government of Alberta or another province.

Release of information is contained in Procedure 20.2 of the WCB Business Procedures Manual, Volume I, page 3 of 8 under the heading "Federal and Provincial Government Agencies", which states:

Federal and Provincial Government Agencies often request compensation information necessary when contemplating assistance to a worker. The following information may be released if relevance to the investigation is confirmed:

- *Present address*

- *Social Insurance Number*
- *Date of birth*
- *Date of Accident*
- *Date of fitness to return to work or actual return to work*
- *Type of disability*
- *Length of lay-off anticipated (benefit period)*
- *Medical status (totally disabled? under active treatment? etc.)*
- *Rate of compensation*
- *Type of benefits issued*
- *Date of last payment*
- *Claim status*
- *Type and amount of benefits pending*

The WCB Business Procedures Manual is authorized by the Board.

The information in the August 8, 1996, 1996 letter falls within Procedure 20.2, as follows:

- present address
- type of disability
- medical status
- claim status

This Procedure 20.2 provides Board authorization to staff of the WCB to disclose information to provincial and federal government agencies, as provided by section 142(2) of the *Workers' Compensation Act*.

Therefore, I find that the WCB is authorized to release the information to Social Services, pursuant to section 38(1)(e) of the FOIP Act.

Is the collection of personal information by Social Services from WCB authorized by the FOIP Act?

This issue was not specifically raised by the Complainant in his complainant to my Office. However, since the investigation was inconclusive as to whether the letter of August 8, 1996 was sent by WCB on their own initiative or whether it was requested by Social Services, I felt it was necessary to also address the collection issue. Collection of personal information is dealt with in sections 32 and 33 of the FOIP Act, which state, in part:

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

(c) that information relates directly to and is necessary for an operating program or activity of the public body.

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

(i) that individual,

(b) the information may be disclosed to the public body under Division 2 of this Part,

(g) the information is necessary

(i) to determine the eligibility of an individual to participate in a program of or receive a benefit, product or service from the Government of Alberta or a public body and is collected in the course of processing an application made by or on behalf of the individual the information is about, or

(ii) to verify the eligibility of an individual who is participating in a program of or receiving a benefit, product or service from the Government of Alberta or a public body and is collected for that purpose,

Supports for Independence (SFI) is a program of Social Services which allows them to offer financial assistance to people in need. It is a means-tested program, available only to those who do not have other sufficient means of support. In applying for SFI benefits, an individual must make full disclosure of their financial circumstances so that Social Services can determine eligibility. Part of the application process involves the signing of a declaration. Item 6 of the declaration states:

I give the Department permission to get information about my financial, work, medical or family situation in order to determine my eligibility for the SFI or the AISH program, or to conduct a criminal investigation relating to these program benefits. I ask any person, agency, institution or other source to give the requested information to the Department.

A declaration was signed by the Complainant on July 11, 1994. This declaration was still in force during 1996.

Section 32(c) of the FOIP Act requires that information be collected by a public body only if it is required for and is necessary for the operation of the program or activity of the public body. I find that the information contained in the August 8, 1996 letter meets this requirement.

Section 33 of the FOIP Act restricts the manner in which information is collected. The declaration by the Complainant authorized Social Services to collect a wide range of information from any source. This falls within section 33(1)(a)(i) of the FOIP Act.

Section 33(1)(b) allows for collection of personal information that may be disclosed under Part 2 of the Act. As discussed above, disclosure is allowed under section 38, which is in Part 2 of the FOIP Act.

In addition, section 33(1)(g) allows for collection of information required to determine initial or ongoing eligibility for a program or benefit. Therefore, I find that Social Services was authorized by the FOIP Act to collect the information contained in the August 8, 1996 letter and the WCB is allowed to disclose.

Concluding Comments

The sharing of an individual's personal information by one public body to another is, by its very nature, an invasion of the individual's privacy. However, there are circumstances when collection and disclosure of personal information is necessary to carry on the business of a public body and to determine an individual's eligibility for a program or programs needed by the individual. The FOIP Act places restrictions on the ability of public bodies to collect and disclose personal information. In this case, I find that the disclosure of personal information about the Complainant by the WCB was authorized by section 38(1)(e) of the FOIP Act. Similarly, I find that the collection of the personal information by Social Services was also authorized by section 32(c), 33(1)(a)(i), 33(1)(b), and 33(1)(g) of the FOIP Act.

This file is now closed.

Robert C. Clark
Commissioner

May 14, 1998