# ALBERTA INFORMATION AND PRIVACY COMMISSIONER

Report on the Investigation into Complaint Regarding the Disclosure of Personal Information by a Public Body

**December 21, 1998** 

**Workers' Compensation Board** 

**Investigation #1429** 

### **The Complaint**

On May 1, 1998, the Office of the Information and Privacy Commissioner received a written complaint concerning the disclosure of personal information by the Workers' Compensation Board (the "WCB").

The Complainant claimed that WCB breached the Complainant's privacy by disclosing information relating to the Complainant's WCB claim, including correspondence and medical information, to parties named as defendants by the Complainant in a civil law suit. The complaint is similar to Investigation #1403.

The Commissioner authorized an investigation pursuant to section 51(2)(e) of the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act") which states:

- 51(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that
- (e) personal information has been collected, used or disclosed by a public body in violation of Part 2.

## **Background**

The Complainant is one of a number of workers who submitted similar claims for compensation to the Claimant Services Department of WCB in 1995. All claimants were employed with the same Employer. The Claimant Services Department denied the Complainant's WCB claim.

Subsequently, the Complainant appealed to the Claims Services Review Committee of WCB (the "CSRC). The CSRC is the first level of appeal for injured workers who do not agree with decisions made on claims by the Claimant Services Department. The CSRC conducted an oral hearing in August 1997, and issued its decision denying the Complainant's appeal in December 1997.

In January 1998, the Complainant submitted an appeal to the Appeals Commission on the decision made by the CSRC. The Complainant also filed a lawsuit in April 1998 against the Employer and other parties alleging negligence and breach of contract.

#### **Issue**

This privacy complaint is similar to the complaint in Investigation #1403. The issue is:

Did WCB disclose personal information in violation of Part 2 of the Freedom of Information and Protection of Privacy Act?

#### **Investigation Findings**

On December 2, 1998, Investigation Report 98-IR-005 was publicly released. The report outlines the findings and recommendations on Investigation #1403. The following findings on Investigation #1403 can be applied to this complaint:

1. The CSRC disclosed personal information about the Complainant.

In Investigation #1403, the complainant had filed the lawsuit <u>prior</u> to the CSRC hearing. As a result, the CSRC granted "interested party" status to the defendants and allowed them to participate in the hearing. Copies of the CSRC hearing minutes and the CSRC decision, which contained personal information about the complainant, were disclosed to the defendants subsequent to the hearing.

With respect to this case, the Complainant's lawsuit was filed <u>after</u> the CSRC hearing. Therefore, the CSRC did not invite the defendants named in the lawsuit to the hearing as "interested parties". The Complainant, a family member of the Complainant, the Complainant's representative, and representatives of the Employer were the only parties in attendance at the August 1997 hearing.

However, on April 23, 1998, the CSRC received a written request from a defendant for copies of the CSRC hearing minutes and Memorandum of Decision. The CSRC provided the requested information on April 28, 1998.

During the investigation, the CSRC confirmed it provided the hearing minutes and the Memorandum of Decision only to the defendant who requested the information. However, if other defendants had requested this information, the CSRC would most likely have disclosed the information to them as well. The CSRC felt the defendants were "interested parties" as a result of the lawsuit filed by the Complainant.

2. The information disclosed by the CSRC to the defendant is "personal information" in accordance with section 1(1)(n) of the FOIP Act.

The hearing minutes and the Memorandum of Decision contained information about the Complainant.

3. WCB did not have authority to disclose the Complainant's personal information under its own legislation and it did not meet the requirements of section 38(1) of the FOIP Act.

Section 38(1)(e) of the FOIP Act allows a public body to disclose personal information if the disclosure is authorized by an enactment of Alberta. WCB claimed that section 9(4) of the *General Regulations* under the *Workers' Compensation Act* provided the Claims Services Review Committee with authority to disclose personal information to interested parties. However, the investigation found that a number of the defendants would not be "interested parties" under section 9(4) of the *General Regulations*. The investigation concluded that WCB did not have authority to disclose the Complainant's personal information under its own legislation and therefore it did not meet the requirements of section 38(1)(e) of the Act.

During the investigation, WCB acknowledged it erred in granting interested party status to defendants who were not employers under the *Workers' Compensation Act*. However, WCB argued that it was justified in disclosing the Complainant's personal information to these parties because the <u>Janke</u> v. <u>Wylie</u> decision applied and the defendants could obtain that information from the plaintiff through the discovery process.

The investigation found that the <u>Janke v. Wylie</u> decision did not apply to the Complainant's case. The investigation also noted that disclosure through the discovery process is separate from and does not take the place of WCB's duties relating to disclosure of personal information under section 38 of the FOIP Act.

## Conclusion

I find that WCB disclosed personal information in violation of Part 2 of the *Freedom of Information and Protection of Privacy Act*.

The recommendations noted in Investigation Report 98-IR-005 are applicable for this complaint. These recommendations have been accepted by the WCB.

Submitted by:

Marylin Mun Portfolio Officer