

**ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Investigation into Complaint  
Regarding the Collection and Disclosure of Personal Information  
By a Public Body**

**July 5, 2000**

**Workers' Compensation Board**

**Investigation #1663**

**The Complaint**

On July 6, 1999, the Office of the Information and Privacy Commissioner received a privacy complaint concerning the Workers' Compensation Board (the "Public Body").

The Complainant had applied under the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act") to the Public Body for access to information. The Public Body disclosed records responsive to the Applicant's access application, including records from the Public Body's Special Investigations Unit (the "SIU").

The Complainant had concerns with the information on the SIU records, and questioned the Public Body's authority to collect and disclose this information. In response to the Complainant's concerns, the Commissioner authorized an investigation pursuant to section 51(2)(e) of 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 Information**

The Complainant is an injured worker who was granted a partial disability pension from the Public Body.

In 1997, an SIU investigator received and recorded information from an informant ("the Informant") alleging that the Complainant was involved with various physical activities that were inconsistent with the disability benefits awarded to the Complainant by the Public Body.

The SIU investigator contacted the Complainant's Case Manager regarding the Informant's allegations. The Case Manager advised the SIU investigator that the alleged activities had no impact on the pension awarded by the Public Body to the Complainant.

Subsequently, the SIU investigator contacted the Complainant's former employer concerning the information provided by the Informant. The Complainant's former employer expressed no interest in this matter.

The SIU investigator contacted the Informant to advise that the Public Body would not be investigating the matter and that the information had been passed to the Complainant's former employer. The SIU investigator then closed the matter and no further action was taken.

### **Information at Issue**

The information at issue is contained in three records from the Public Body's SIU files ("the records"):

- A one-page report outlining the chronology of events from receipt of the Informant's information to when the matter was closed;
- A one-page internal memo from the SIU investigator to the SIU Supervisor that summarizes the information received from the Informant and the subsequent actions taken by the SIU investigator; and
- A one-page tracking form used by the SIU to provide an audit trail of the matter.

### **Issues**

The Public Body had applied section 19(1)(d) of the FOIP Act [identity of a confidential source of law enforcement information] to sever the name of the Informant. The remaining portions of the records were disclosed to the Complainant, including the Informant's allegations.

The Complainant did not request a review under section 62(1) of the FOIP Act regarding the Public Body's application of section 19(1)(d) to sever information. Therefore, the Public Body's severing is not an issue for this investigation.

The Complainant's concerns were directed at the Public Body's authority to collect and disclose the information provided by the Informant about the Complainant. As a result, the issues of the investigation are:

1. Did the Public Body collect personal information in violation of Part 2 of the FOIP Act?
2. Did the Public Body disclose personal information in violation of Part 2 of the FOIP Act?

### **Issue #1: Did the Public Body Collect Personal Information in Violation of Part 2 of the FOIP Act?**

The Complainant identified two concerns on this issue. First, the Complainant questioned the Public Body's authority to collect the information contained in the records. Second, the Complainant disputed the accuracy of the information contained in the records.

#### ***Is the Information "Personal Information" as defined in the FOIP Act ?***

The records contained the following information: the Complainant's name, residential address, the Complainant's WCB claim number, activities attributed to the Complainant by the Informant, the name of the Informant, the name of the Complainant's former employer, the name of the SIU investigator, the benefits granted to the Complainant by the Public Body, and the actions taken by the SIU investigator in response to the Informant's complaint.

“Personal information” is defined in section 1(1)(n) of the FOIP Act as “*recorded information about an identifiable individual*”. Therefore, the information contained in the records is “personal information” in accordance with section 1(1)(n) of the FOIP Act.

***What are the collection provisions of the FOIP Act?***

Under the FOIP Act, a public body must:

1. have the authority to collect the personal information under section 32 of the FOIP Act; and
2. Collect the information directly from the individual the information is about unless the collection falls within one of the listed exceptions listed under section 33(1) of the FOIP Act.

***Did the Public Body have authority to collect the Complainant’s personal information under section 32 of the FOIP Act?***

Under section 32(a) of the FOIP Act, a public body may collect personal information if the collection of that information is expressly authorized by an enactment of Alberta or Canada.

The Public Body claimed its authority to collect the information is pursuant to section 13 of the *Workers’ Compensation Act* (the “WCB Act”), which states in part:

*13(2) The Board or a person authorized in writing by the Board for the purpose may on its or his own initiative or on complaint of a person interested, investigate any matter concerning the due administration of this Act [emphasis added].*

Periodically, the Public Body receives complaints from various sources concerning claimants. These sources allege that claimants may be engaged in activities that are inconsistent with the disability or injury claimed. The Public Body indicated it has a responsibility to ensure that claimants are receiving the benefits they are entitled to. Therefore, the Public Body is obligated to investigate each complaint to determine whether the allegations have merit and warrant further action.

The investigation finds that section 13(2) of the WCB Act provides the Public Body with legislative authority to receive complaints and to investigate any matter concerning the administration of the WCB Act. Therefore, the Public Body’s collection of the Complainant’s information is in accordance with section 32(a) of the FOIP Act.

***Did the Public Body collect the personal information in accordance with section 33(1) of the FOIP Act?***

The FOIP Act requires that a public body collect personal information directly from the individual the information is about unless the collection falls within one of the listed exceptions listed under section 33(1) of the FOIP Act. The relevant portions of section 33(1) of the FOIP Act states:

*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, ...*

*(g) the information is necessary*

*(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,...*

Under section 13(2) of the WCB Act, the Public Body may receive complaints from “a person interested”. There is no definition in the WCB Act for “a person interested”. In reviewing the investigatory powers granted to the Public Body by the WCB Act, the investigation concludes that “a person interested” would include individuals other than a WCB claimant. As section 13(2) of the WCB Act authorizes the Public Body to collect information from sources other than the individual the information is about, the manner of collection is in accordance with section 33(1)(a)(ii) of the FOIP Act.

The Public Body collected the information provided by the Informant for the purpose of verifying whether the Complainant is entitled to the benefits granted. Therefore, the investigation finds that the Public Body’s collection of the Complainant’s personal information from the Informant is also in accordance with section 33(1)(g)(ii) of the FOIP Act.

### ***Complainant Challenges Accuracy of Information***

The Complainant disputes the accuracy of the information provided by the Informant, and expressed concerns that others reading the information may have a misconception of what really happened. The Complainant requested that the Public Body destroy the information.

The Public Body advised that notes on complaints are retained even if SIU determines that the complaints are not substantiated. The retention of the notes is required for audit purposes and to establish an audit trail on actions taken. The Public Body advised that SIU records are destroyed after a seven-year retention period.

There are no provisions under the FOIP Act that authorizes a public body to destroy disputed information. Public bodies are required to comply with their records retention and disposition schedules. Therefore, the Public Body cannot comply with the Complainant’s request until the seven-year retention period has elapsed.

Under section 35(1) of the FOIP Act, an individual may request a correction of the individual’s personal information. However, in Order 97-020, the Commissioner ruled that a public body would be justified in not correcting personal information where a third party’s statement of fact is accurately recorded, even if that statement is in error. The Commissioner wrote:

*[111.] ...I believe that a public body has a choice or discretion to correct or not to correct personal information under section 35(1)....*

*[126.] Ontario Order M-440 and British Columbia Order 189-1997 held that a public body was not able to correct a third party’s statement of fact about an applicant’s personal information, if accurately recorded, even if that statement of fact was in error. In such a situation, a public body would be justified in not correcting that personal information.*

*[127] ...In those cases, it appears that even though an applicant was able to meet the burden of proving an error of fact, there was another reason for not correcting the applicant's personal information. That reason involves maintaining the integrity of the record in certain situations, such as investigations in which a third party's statements have been recorded. In investigations, there is a need to record statements accurately, in order later to make a decision relating to what was said, and to understand the basis on which a decision was made. Accordingly, a third party's statement of fact cannot be corrected, even if that statement of fact is in error. The statement does not appear for the truth of it; it appears for the fact that it is what was said, truthful or not [emphasis added].*

*[128] It seems to me that the only way an applicant can meet the burden of proof in these situations is to show that the third party's statement of fact was not accurately recorded.*

The Complainant has not requested a correction pursuant to section 35(1) of the FOIP Act. However, the Public Body advised it is willing to provide an annotation to the information pursuant to section 35(2) of the FOIP Act if the Complainant wishes.

The Public Body's proposal seems reasonable, and it is recommended that the Complainant discuss this matter with the Public Body.

**Issue #2: Did the Public Body disclose personal information in violation of Part 2 of the FOIP Act?**

The investigation found the Complainant's personal information was disclosed on two occasions:

1. When the SIU investigator passed the Informant's allegations to the Complainant's Case Manager; and
2. When the SIU investigator contacted the Complainant's former employer concerning the information provided by the Informant.

***Is the disclosure to the Case Manager in accordance with Section 38(1) of the FOIP Act?***

Under section 38(1)(b) of the FOIP Act, a public body may disclose personal information if the disclosure is for the purpose for which the information was collected.

Section 13(2) of the WCB Act authorizes the Public Body to investigate "any matter concerning the due administration" of the WCB Act.

The information was collected for the purpose of determining whether the alleged activities would impact on the benefits granted to the Complainant, and it was disclosed to the Case Manager for this purpose. Therefore, the investigation finds that the disclosure to the Case Manager is in accordance with section 38(1)(b) of the FOIP Act.

Section 38(1)(j) of the FOIP Act allows a public body to disclose personal information if the disclosure is for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit. The investigation finds that the disclosure to the Case Manager is also in accordance with section 38(1)(j).

***Is the disclosure to the Complainant's former employer in accordance with section 38(1) of the FOIP Act?***

The Public Body claimed that the disclosure to the Complainant's former employer is authorized under section 141(2) of the WCB Act and is therefore in accordance with section 38(1)(e) of the FOIP Act, which states:

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

*(e) for any purpose in accordance with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada, ...*

In support of its position, the Public Body noted:

1. Section 141(2) of the WCB Act allows the Public Body to disclose "*information respecting a worker*" to "*persons directly concerned*". The Public Body stated it has been afforded curial deference by the court, and that the Commissioner's office ought to do so as well. In other words, the Public Body has jurisdiction to interpret the meaning of interested persons and its decision should only be interfered with if patently unreasonable. The Public Body stated the purpose of the disclosure to the Complainant's former employer was to "*alert a victim, an "interested party", of the possibility of an offence*".
2. As section 141(3) of the WCB Act deals with access to claim file information, the Public Body believes section 141(2) of the WCB Act must deal with a different class of information i.e. information not in a claim file.

Section 141(2) of the WCB Act 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.*

In order for section 141(2) of the WCB Act to apply, the disclosure must be "under the authority of the Board". The investigation considered the following:

1. Was the disclosure authorized by a Board policy or directive?
2. Was the disclosure authorized by an individual in a position to do so?
3. Was the disclosure authorized by the Board's mandate or jurisdiction?

*Was disclosure authorized by a Board policy or directive?*

The investigation finds that the Public Body's disclosure policy is limited to claim and employer account information. Section 1.0 of Policy 01-02 Part 1 (dated November 26, 1996) states:

*The WCB will release information **from a claim or employer account file** under the following circumstances:*

- *Requests under s. 141(3), when an adjudicative decision or decision affecting premiums is under review or appeal*

- *Information on an appeal issue to an interested party, under s. 9 of the General Regulations*
- *Requests under s. 141(2), for reasons other than a review or appeal of a decision* [emphasis added].

In accordance with the Public Body's disclosure policy, section 141(2) of the WCB Act is applied when disclosing claim or employer account information for reasons other than a review or appeal of a decision.

The information disclosed to the Complainant's former employer was not on a claim file. The Public Body advised that if the Informant's information had affected the administration and determination of the benefits granted to the Complainant, the information would have been placed on the Complainant's claim file.

However, the Public Body had decided that the Informant's information was not relevant to the Complainant's benefits. The Case Manager had informed the SIU investigator that the Complainant could "basically do most any kind of activity without any concern on the part of W.C.B.". As the Informant's information did not affect the Complainant's benefits, this information was kept on the SIU file and not placed on the Complainant's claim file.

As the Public Body's disclosure policy does not address disclosure of information outside a claim file, the investigation concludes that the disclosure could not be pursuant to the Public Body's disclosure policy. Therefore, the disclosure to the Complainant's former employer was not authorized by the Public Body's disclosure policy.

*Was the disclosure authorized by an individual in a position to do so?*

The investigation then considered whether the disclosure to the Complainant's former employer was authorized by an individual in a position to do so.

The Public Body's disclosure policy requires prior approval for any claim and employer account information disclosed pursuant to section 141(2) of the WCB Act. Section 3 - Part II of the Public Body's disclosure policy states:

*Disclosure requests for reasons other than review or appeal are made under Section 141(2) of the Act. **Requests for information under this section must be approved by the WCB before disclosure*** [emphasis added].

Given the above requirement, it would be reasonable to expect that prior approval would also be required for the disclosure of information outside a claim file under section 141(2) of the WCB Act.

Representatives of the Public Body advised this office that information in the SIU files would normally not be available to employers. In a letter to this office, the Public Body wrote:

*"...This attempted disclosure to the employer or employer representative does not appear to be a common occurrence..."*

This appears to support the contention that prior approval would have been required if the disclosure to the Complainant's former employer was pursuant to section 141(2) of the WCB Act.

The SIU investigator received the Informant's information during the morning. The information was disclosed to the Complainant's former employer later that same day. The chronological report details the SIU investigator's conversations with the Informant, the Case Manager, and the former employer. There is no indication that the SIU investigator sought approval for disclosure from the SIU Supervisor prior to contacting the former employer.

The internal memo from the SIU investigator to the SIU Supervisor (dated the same day as the receipt of the Informant's complaint) makes no reference of the disclosure to the Complainant's former employer.

The Public Body indicated that notes on complaints are required for audit purposes and to establish an audit trail on actions taken. Therefore, notes on all complaints are retained even if SIU determines that the complaints are not substantiated.

The SIU investigator's notes on the chronological events and the internal memo to the SIU Supervisor details the information provided by the Informant and the comments made by the Case Manager. However, there is no documentation that the SIU investigator obtained authority from the SIU Supervisor or any other appropriate employee prior to the disclosure to the Complainant's former employer.

In the absence of documentation, the investigation concludes that the disclosure to the Complainant's former employer was not authorized by the SIU Supervisor or any other individual of authority.

*Was the disclosure authorized by the Board's mandate or jurisdiction?*

The investigation reviewed whether the disclosure to the Complainant's former employer was authorized by the Board's mandate or jurisdiction.

The Public Body stated it has broad powers under the WCB Act. However, the Public Body's jurisdiction and powers are confined to matters under the WCB Act and its regulations.

Section 12(1) of the WCB Act states:

*12(1) Subject to section 7, the Board has **exclusive jurisdiction** to examine, inquire into, hear and determine **all matters and questions arising under this Act or the regulations** and the action or decision of the Board thereon is final and conclusive, and is not open to question or review in any court [emphasis added].*

Section 13(2) of the WCB Act authorizes the Public Body to investigate "*any matter concerning the due administration of this Act*".

The Case Manager had told the SIU investigator that the alleged activities did not affect the benefits awarded to the Complainant. In the internal memo to the SIU Supervisor, the SIU investigator wrote that the Complainant's activities "would have no consequence" to the Complainant's benefits and that his activity was of no particular interest to WCB".

The Public Body determined that the Informant's information is not relevant to the administration of the WCB Act or its regulations. As the matter is outside the Public Body's jurisdiction, the disclosure to the Complainant's former employer cannot be under the authority of the Board.

*Special Constable Status*

SIU investigators are appointed as “Special Constables” under section 42 of the *Police Act*. In a letter to this office, the Public Body wrote:

*“... The peace officer role as granted to the WCB special constables does not extend to allow them to investigate anything that a claimant or an employer might be doing if it did not affect the Workers’ Compensation Board and its responsibilities under the Workers’ Compensation Act except for the broad power afforded to the WCB in sections 12 and 141(2)...”* [emphasis added].

As the Public Body had already determined that the Informant’s information did not affect the Public Body and its responsibilities under the WCB Act, the SIU investigator would have no authority to proceed further on this matter. Therefore, the disclosure by the SIU investigator to the Complainant’s former employer could not be “under the authority of the Board”.

### *Conclusions on Disclosure*

The investigation finds that the disclosure to the Complainant’s former employer was not “under the authority of the Board” as set out in section 141(2) of the WCB Act. Therefore, the disclosure is not in accordance with section 38(1)(e) of the FOIP Act.

There may be circumstances where the Public Body may disclose personal information to an employer. However, given the circumstances for this particular case, the investigation finds that the disclosure is not in accordance with the provisions under section 38(1) of the FOIP Act. Therefore, the investigation concludes that the Public Body breached the Complainant’s privacy when it disclosed the Complainant’s personal information to the Complainant’s former employer.

### **Summary of Investigation Findings**

1. The Public Body is authorized to collect the Complainant’s personal information under section 13(2) of the WCB Act. Section 32(a) of the FOIP Act allows a public body to collect personal information if the collection of that information is expressly authorized by an enactment of Alberta or Canada.
2. The Public Body’s authority to collect the information from sources other than the individual the information is about is in accordance with section 33(1)(a)(ii) and section 33(1)(g)(ii) of the FOIP Act.
3. The Public Body cannot accommodate the Complainant’s request to destroy the information in dispute. The Public Body must comply with its records retention and disposition schedules.
4. The Public Body is willing to provide an annotation to the information pursuant to section 35(2) of the FOIP Act.

5. The disclosure of the Complainant's personal information to the Case Manager is in accordance with section 38(1)(b) and section 38(1)(j) of the FOIP Act.
6. The disclosure of the Complainant's personal information to the Complainant's former employer is not in accordance with the provisions under section 38(1) of the FOIP Act.

**Recommendations and Closing Comments**

Based on the findings of the investigation, it is recommended that:

1. The Public Body should review its disclosure policy to deal with information outside claim and employer account information. The policy should also specify how prior approval for disclosures pursuant to section 141(2) of the WCB Act is to be obtained and the persons with the authority to grant the approval.
2. Where a disclosure pursuant to section 141(2) of the WCB Act is approved, the Public Body should retain documentation on the appropriate files.
3. If the Complainant wishes the Public Body to annotate the records, the Complainant should submit a request for correction pursuant to section 35(1) of the FOIP Act.

Submitted by:

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