

ALBERTA INFORMATION AND PRIVACY COMMISSIONER

Report on Investigation into A Complaint Regarding the Disclosure of Personal Information

February 28, 2001

Workers' Compensation Board

Investigation #1922

I. THE COMPLAINT

[para 1.] On June 12, 2000, the Complainant authorized a representative to file a privacy complaint on behalf of the Complainant against the Workers' Compensation Board ("the WCB"). The Complainant and the representative will be collectively referred to in this Report as "the Complainant".

[para 2.] The Complainant alleged that a WCB Case Manager (the "Case Manager") disclosed information from the Complainant's WCB claim file to third parties. Specifically, the Complainant claimed that the Case Manager:

- Disclosed the Complainant's resume to three prospective employers, and further discussed the Complainant with one of the prospective employers. That prospective employer later contacted the Complainant's current employer.
- Disclosed information about the Complainant to the Complainant's current employer and advised the employer that the Complainant needed a higher paying job.

[para 3.] The Complainant stated the Case Manager's disclosures were made without the Complainant's authorization or consent, and that these actions jeopardized the Complainant's employment situation.

II. THE COMMISSIONER'S AUTHORITY TO INVESTIGATE

[para 4.] Section 51(2)(e) of the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act") authorizes the Commissioner to investigate complaints that personal information has been collected, used or disclosed by a public body in violation of Part 2 of the FOIP Act. Accordingly, the Commissioner authorized me to investigate this matter. This report outlines my findings and recommendations.

III. ISSUE

[para 5.] The issue of my investigation is:

Did WCB disclose personal information in violation of Part 2 of the FOIP Act?

IV. INVESTIGATION FINDINGS

1. Background Information

[para 6.] The Complainant is an injured worker with a WCB claim. In 1999, the Complainant was referred by the WCB to a job search program conducted by a private sector agency ("the Agency"). The Agency is one of a number of approved agencies contracted out by the WCB to provide various services to assist injured workers in their employment search. The Agency assisted the Complainant in preparing a resume. A copy of the resume was placed on the Complainant's WCB claim file.

[para 7.] The Complainant was unsuccessful in obtaining employment during the job search program. However, after the completion of the job search program, the Complainant applied and was accepted for a position at a lower rate of pay than the Complainant's pre-accident occupation.

2. Disclosures to Prospective Employer

[para 8.] The Case Manager advised that five private sector companies were contacted as part of the process for determining economic loss payment ("ELP") entitlements for the Complainant. (I will deal with the ELP entitlements later in this Report.) Two companies did not have any employment opportunities that would accommodate the Complainant's work restrictions. Of the remaining three companies, only one company had an opening. I will refer to this company as "the Prospective Employer" in this report.

[para 9.] The Case Manager stated the Complainant's identity was disclosed only to the Prospective Employer. In contacts with the other four companies, the Case Manager described the Complainant's work restrictions but did not reveal the Complainant's identity. The Complainant's resume was not sent to these four companies.

[para 10.] As the Prospective Employer had an applicable employment opening at a higher rate of pay than the Complainant's current job, the Case Manager disclosed the Complainant's name, home telephone number and work telephone number. The Case Manager also faxed a copy of the Complainant's resume to the Prospective Employer on April 14, 2000. The resume detailed the Complainant's home address, home telephone number, work related skills, interests, educational qualifications and work history.

[para 11.] On April 15, 2000, the Case Manager informed the Complainant that a copy of the Complainant's resume was sent to the Prospective Employer and that the Prospective Employer may contact the Complainant for an interview. The Complainant advised the Case Manager that the Complainant was not interested in another job.

[para 12.] On May 4, 2000, the Prospective Employer called the Complainant at work and invited the Complainant to an interview. The Complainant declined the invitation.

3. Disclosures to Current Employer

[para 13.] The Case Manager confirmed contact was made with the Complainant's current employer (the "Current Employer"). To the Case Manager's recollection, the only information disclosed to the Current Employer was the explanation that information concerning the Complainant's current pay rate and job duties was needed for the purposes of determining ELP entitlements for the Complainant.

V. ANALYSIS

1. Is the information disclosed "personal information"?

[para 14.] Section 1(1)(n) of the FOIP Act defines "personal information" as "recorded information about an identifiable individual".

[para 15.] Although the Case Manager did describe the Complainant's work restrictions to four private sector companies, the Case Manager did not link this information to the Complainant. In my view, these companies would not be able to identify the Complainant as the specific individual to whom the information is about. Therefore, I find that the information disclosed to these companies was not "personal information" as the information was not about "an identifiable individual". Therefore, no further action by this office is warranted on this matter.

[para 16.] However, I find that the information disclosed by the Case Manager to the Prospective Employer is "personal information" in accordance with section 1(1)(n) of the FOIP Act. As a result, I will review whether the disclosure to the Prospective Employer is in accordance with Part 2 of the FOIP Act.

[para 17.] I could not substantiate the Complainant's allegation that the Case Manager commented to the Current Employer that the Complainant needed a higher paying job. In my view, the Case Manager's contact with the Current Employer was for the purpose of collecting information about the Complainant, specifically the Complainant's current salary, potential salary increases and current job responsibilities. Collection is not an issue for my investigation. The only disclosure to the Current Employer I could confirm was the Case Manager's disclosure that the Complainant was a WCB claimant. As the information is linked to the Complainant, it is "personal information" and I will review the disclosure to ensure it is in accordance with Part 2 of the FOIP Act.

2. Is the disclosure to the Prospective Employer in accordance with Part 2 of the FOIP Act?

[para 18.] Part 2 of the FOIP Act sets out the provisions under which a public body may collect, use or disclose personal information. Under section 38(1)(d) of the FOIP Act, a public body may disclose personal information for the purpose of complying with an enactment of Alberta.

[para 19.] Section 83(1) of the *Workers' Compensation Act* ("the WCB Act") authorizes the WCB to take "*whatever measures it considers necessary to assist a worker injured in an accident and entitled to compensation to return to work and to lessen or eliminate any handicap resulting from that injury...*". I find that section 83(1) of the WCB Act grants WCB considerable latitude. The words "*whatever measures it considers necessary*" implies that WCB has discretion to decide what actions are necessary to assist injured workers.

[para 20.] The Case Manager initially contacted the Prospective Employer as part of the process in determining ELP entitlements for the Complainant. ELP payments compensate injured workers who are unable to return to their pre-accident occupation or obtained employment that pays less than their pre-accident employment.

[para 21.] To calculate ELP entitlements, WCB must first determine the kind of work an injured worker is capable of performing given the worker's work restrictions and transferable skills. Then, a case manager or a Labour Market Coordinator surveys a number of employers to determine the potential salary associated with this type of work. The ELP entitlements are based on the difference between an injured worker's pre-accident earnings and the potential earnings given the worker's current work restrictions.

[para 22.] WCB does not disclose identities of injured workers during employer contacts for the purpose of determining ELP entitlements. Therefore, the Case Manager did not identify the Complainant to the Prospective Employer initially.

[para 23.] However, when the Case Manager was informed that the Prospective Employer had an opening that could accommodate the Complainant's work restrictions and offer a higher rate of pay than the Complainant's current job, the Case Manager's contact focus changed from determining ELP entitlements to pursuing an employment opportunity. The Case Manager then identified the Complainant and forwarded a copy of the Complainant's resume.

[para 24.] I find that the Case Manager's disclosure of the Complainant's personal information to the Prospective Employer is in accordance with section 83(1) of the WCB Act for the following reasons:

- The Case Manager did not consider the Complainant's current job as a job in keeping with the Complainant's skill levels. The Case Manager felt that the Complainant was currently under-employed.
- The Complainant's current rate of pay is lower than the potential earnings determined by the Case Manager. The Case Manager stated it was part of WCB's mandate to obtain the best pay possible for its claimants. WCB has a responsibility to try to minimize a claimant's earnings loss as a result of injury and, at the same time, to mitigate the costs associated with the claim.
- The disclosure is confined to information typically associated with applying for employment i.e. resume, name of job applicant, and telephone numbers for contact.
- On the fax cover sheet to the Prospective Employer, I noted that the Case Manager offered a Training on the Job Program to reimburse the Prospective Employer for wages while the Complainant was training. This would support the Case Manager's claim that the resume was disclosed to assist the Complainant to obtain a position that could accommodate the Complainant's work restrictions and offer a rate of pay higher than the Complainant's current job.

[para 25.] As the disclosure to the Prospective Employer was for the purpose of complying with section 83(1) of the WCB Act, the disclosure is in accordance with section 38(1)(d) of the FOIP Act.

3. Is the disclosure to the Current Employer in accordance with Part 2 of the FOIP Act

[para 26.] Section 38(1)(j) of the FOIP Act states:

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

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

[para 27.] The Case Manager contacted the Current Employer to obtain information regarding the Complainant's current salary, potential salary increases and current job duties. This information is required to assist in the determination of the ELP entitlements to be granted to the Complainant. To obtain this information, it is reasonable for the Case Manager to reveal to the Current Employer that the Complainant is a WCB claimant.

[para 28.] Therefore, I find the Case Manager's disclosure to the Current Employer is in accordance with section 38(1)(j) of the FOIP Act.

VI. CONCLUDING COMMENTS AND RECOMMENDATIONS

[para 29.] WCB did disclose personal information in both cases. However, the disclosures are in accordance with section 38(1)(d) of the FOIP Act [disclosure for the purpose of complying with an enactment of Alberta] and section 38(1)(j) of the FOIP Act [disclosure for the purpose of determining suitability or eligibility for a program or benefit].

[para 30.] I would like to make the following recommendation for the consideration of the head of the WCB:

That WCB clearly communicate in writing to injured workers when they are referred to job search assistance that their resumes would be placed on their WCB claim files, and that copies of the resumes may be forwarded to potential employers.

[para 31.] WCB requires resumes to ensure that an agency fulfills its contractual obligations regarding the services that were to be provided to an injured worker. In addition, WCB requires the resume to determine benefits such as ELP and to assist workers to achieve employability.

[para 32.] I found that there was no standard communication to workers on this matter. Dependent upon the case manager or agency employee, injured workers may or may not be told that their resumes would be placed on their WCB claim files and that copies may be sent to potential employers. I believe written communication would ensure that all injured workers are properly informed as to this matter and would minimize misunderstanding as to what was said or not said by a case manager.

Submitted by,

Marilyn Mun
Portfolio Officer