

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2005-027

February 26, 2007

WORKERS' COMPENSATION BOARD

Case File Number 3022

Office URL: <http://www.oipc.ab.ca>

Summary: The Complainant alleged that the Workers' Compensation Board disclosed her personal information in contravention of Part 2 of the *Freedom of Information and Protection of Privacy Act*. The Workers' Compensation Board disclosed personal information to both the Complainant's former employer and to the Appeals Commission.

The Adjudicator held that the Workers' Compensation Board had the authority under sections 40(1)(e) and (f) (legislative authority) of the *Freedom of Information and Protection of Privacy Act* to disclose the personal information to the Complainant's former employer and to the Appeals Commission. The Adjudicator held that the WCB had the authority under sections 44 and 147(3) of the *Workers' Compensation Act* to disclose the Complainant's personal information to the Complainant's former employer. The Adjudicator also found that the Workers' Compensation Board had the authority, pursuant to section 13.2 of the *Workers' Compensation Act*, to disclose the Complainant's personal information to the Appeals Commission.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1(n); 40(1)(b), 40(1)(c), 40(1)(e), 40(1)(f), 40(1)(l), 72; *Workers' Compensation Act*, R.S.A. 2000, c. W-15, ss. 13.2, 35, 44, 46, 147(3).

I. BACKGROUND

[para 1] In April, 2002, the Complainant made an application to the Workers' Compensation Board (the "WCB") for compensation for a work-related injury. The WCB denied the Complainant's claim. Throughout the claim process, the WCB sent the Complainant's former employer (the "Employer") copies of the correspondence which related to the Complainant's compensation claim.

[para 2] On June 17, 2004, the Complainant requested that this Office investigate whether the WCB had disclosed her personal information in contravention of Part 2 of the Freedom of Information and Protection of Privacy Act (the "FOIP Act"). The Commissioner authorized an investigation.

[para 3] On April 21, 2005, the Complainant requested that the matter proceed to inquiry. The matter was set down for a written inquiry. The WCB provided an initial and a rebuttal submission to this Office. The Complainant provided an initial submission to this Office but did not provide a rebuttal. The Employer did not make a submission.

II. RECORDS AT ISSUE

[para 4] The records at issue consist of letters authored by the WCB relating to the Complainant's compensation claim. For reference, I have numbered these records. The records at issue are as follows:

- Record 1: 2 page letter dated June 19, 2002 from a WCB Adjudicator to the Complainant
- Record 2: 1 page letter dated July 19, 2002 from a WCB Adjudicator to the Complainant
- Record 3: 1 page letter dated July 24, 2002 from the WCB Claims Services Review Committee to the Complainant
- Record 4: 2 page letter dated August 7, 2002 from a WCB Adjudicator to the Complainant
- Record 5: 1 page letter dated August 9, 2002 from the WCB Claims Services Review Committee to the Complainant

- Record 6: 1 page letter dated October 23, 2002 from the WCB Claims Services Review Committee to the Complainant
- Record 7: 1 page letter dated October 23, 2002 from the WCB Claims Services Review Committee to the Employer
- Record 8: 1 page letter dated October 23, 2002 from the WCB Claims Services Review Committee to the Complainant
- Record 9: 1 page cover letter dated December 11, 2002 from the Claims Services Review Committee to the Complainant and a 7 page Memorandum of Decision by the Claims Services Review Committee
- Record 10: 1 page cover letter dated September 24, 2003 from the Decision Review Body to the Complainant and a 2 page Reconsideration
- Record 11: 1 page memorandum dated November 24, 2003 from the Decision Review Body to the Office of the Appeals Advisor
- Record 12: 8 page letter dated May 19, 2004 from the WCB Case Manager to the Complainant
- Record 13: 1 page letter dated May 26, 2004 from the WCB Case Manager to the Complainant
- Record 14: 1 page cover letter dated June 30, 2004 from the Decision Review Body to the Complainant and a 5 page decision by the Decision Review Body
- Record 15: 2 page letter dated July 27, 2004 from the Decision Review Specialist to the Complainant

[para 5] In addition, as mentioned below, there is evidence that the WCB disclosed additional personal information found in the Complainant's claim file to the Appeals Commission. As such, these records are also at issue in this inquiry.

III. PRELIMINARY ISSUES

[para 6] In her submission the Complainant raised a number of additional issues. The Complainant alleges that the WCB denied her access to information that was relevant to her claim. The Complainant also questioned whether her WCB claim file was accurate and alleged that the WCB refused to obtain relevant information regarding her claim. The Complainant also alleged that the WCB coerced her into providing information to the WCB.

[para 7] These issues were not outlined in the inquiry notice and, as such, I will not address them in this inquiry. In addition, I note that the Complainant has supplied me with a great deal of information regarding the merits of her compensation claim. I do not have the jurisdiction to decide whether the WCB was entitled to deny the Complainant's claim for compensation and will not address that issue in this Order.

[para 8] In the Complainant's submission, she also alleges that, in addition to records enumerated above, the WCB disclosed her entire claim file to the Employer. The Complainant states that this disclosure was also in breach of Part 2 of the FOIP Act.

[para 9] The WCB states that it did not disclose the Complainant's entire claim file to the Employer. The WCB surmises that the Appeals Commission may have disclosed, to the Employer, the claim file as part of the Appeal Documents Package.

[para 10] I accept the WCB's submission that it did not disclose the Complainant's entire claim file to the Employer. There is no evidence before me that the WCB disclosed these records to the Employer. The Complainant also did not provide evidence to substantiate this claim.

[para 11] In addition, I note that the Appeals Commission is a public body which is separate and distinct from the WCB and was not identified as a party in this inquiry. As such, I will not address, in this inquiry, whether the Appeals Commission disclosed those records to the Employer in contravention of Part 2 of the FOIP Act.

[para 12] However, there is evidence that the WCB disclosed the Complainant's personal information to the Appeals Commission. As such, I will address whether the WCB had the authority to disclose this information to the Appeals Commission under Part 2 of the FOIP Act.

IV. ISSUES

[para 13] The issue in this inquiry is: Did the WCB disclose the Complainant's personal information in contravention of Part 2 of the FOIP Act?

[para 14] For the purpose of this inquiry, I have divided this issue into two further sub-issues:

- A. Did the WCB disclose the Complainant's personal information to the Employer in contravention of Part 2 of the FOIP Act?
- B. Did the WCB disclose the Complainant's personal information to the Appeals Commission in contravention of Part 2 of the FOIP Act?

V. DISCUSSION OF ISSUES

A. Did the WCB disclose the Complainant's personal information to the Employer in contravention of Part 2 of the FOIP Act?

[para 15] The WCB states that it disclosed a number of records to the Employer that related to the Complainant's claim for compensation. The WCB states that it had the authority to disclose this information under sections 40(1)(b), (c), (e), (f) and (l) of the FOIP Act.

[para 16] The term "personal information" is defined in section 1(n) of the FOIP Act. Specifically, subsections 1(n)(vi) and 1(n)(viii) of the FOIP Act define "personal information" as:

I In this Act,

...

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

...

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

(viii) anyone else's opinions about the individual

[para 17] After a review of the records I find that a large portion of the information in the records at issue consist of the Complainant's personal information.

1. Sections 40(1)(e) and 40(1)(f) – legislative authority

[para 18] The WCB states that it had the authority to disclose this personal information under sections 40(1)(e) and 40(1)(f) of the FOIP Act.

[para 19] Sections 40(1)(e) and 40(1)(f) read:

40(1) A public body may disclose personal information only

...

(e) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,

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

[para 20] The WCB states that the records at issue were disclosed for the purpose of complying and in accordance with a number of sections within the *Workers' Compensation Act* (the "WCA") including sections 35, 44 and 147(3). I have addressed each of these sections below:

Section 35 - WCA

[para 21] Section 35 of the WCA reads:

35 On the written request of the employer of an injured worker, the Board shall provide the employer with a report of the progress being made by the worker.

[para 22] In order for a disclosure to fall within this section, two criteria must be fulfilled:

- a) the employer must make a written request; and
- b) the WCB must provide a "report of the progress" of a worker to the employer.

[para 23] There is no evidence before me that the Employer made a written request to the WCB for a progress report. Furthermore, I find that most, if not all, of the records at issue could not be considered a "report of the progress" of the Complainant. I do not find that this section gave the WCB the authority to disclose the records at issue to the Employer.

Section 44 - WCA

[para 24] Section 44 of the WCA reads:

44 On the making of a determination as to the entitlement of a worker or the worker's dependant to compensation under this Act, the employer and the worker or, in the case of the worker's death, the worker's dependant, shall, as soon as practicable, be advised in writing of the particulars of the determination, and shall, on request, be provided with a summary of the reasons, including medical reasons, for the determination.

[para 25] In order for a disclosure to fall within this section, three criteria must be fulfilled:

- a) the WCB must make a determination as to the entitlement of a worker or the worker's dependant to compensation under the WCA;
- b) the WCB must provide the employer with written "particulars of the determination"; and

c) if requested by an employer, the WCB must provide the employer with a summary of the reasons. This summary includes the medical reasons for the determination.

[para 26] The records at issue contain the WCB's decisions about the Complainant's compensation claim. These records often contain the reasons for the decision. The issue before me therefore becomes whether the phrase "particulars of the determination" within section 44 gives the WCB the authority to disclose, not only its decision regarding the Complainant's entitlement to compensation, but also the reasons for the decision.

[para 27] The Canadian Oxford Dictionary defines the word "determination" as "2a. *the process of deciding, determining, or calculating.* b. *the result of such consideration*". The word "particular" is defined as "2. *points of information; a detailed account*". Given these definitions, I find the phrase "particulars of the determination" to mean, a detailed account of a decision and, therefore, must include the reasons for the decision.

[para 28] I do not see how "a detailed account of the decision" would not also include the reasons for the decision. Conversely, I find that the reference in section 44 to the "summary of the reasons" refers to a more specific enumeration of the reasons which a person might not ascertain from the particulars of the determination.

[para 29] Applying the above definition to the records, I find that the WCB had the authority under section 44 of the WCA to disclose, to the Employer, the personal information found in records 1, 2, 3, 4, 9, 10, 11, 12, 13 and 14.

Section 147(3) – WCA

[para 30] Section 147(3) of the WCA reads:

147(3) Notwithstanding subsections (1) and (2) and section 34(4), where a matter is being reviewed or appealed under section 46 or 120,

(a) the worker, or the worker's personal representative or dependant in the case of the death or incapacity of the worker, or the agent of any of them, and

(b) the employer or the employer's agent

are entitled to examine all information in the Board's files that is relevant to the issue under review or appeal, and those persons shall not use or release that information for any purpose except for the purpose of pursuing the review or appeal.

[para 31] In order for a disclosure to fall within this section, two criteria must be fulfilled:

a) a matter must be reviewed or appealed under section 46 or 120 of the WCA;

b) the information must be relevant to the issue under review or appeal.

[para 32] Section 46 of the WCA permits a person with a direct interest in a claim for compensation to request a review by a Decision Review Body (previously known as the Claims Services Review Committee). Section 46(1) of the WCA reads as follows:

46(1) Where a person has a direct interest in a claim for compensation in respect of which a claims adjudicator has made a decision, that person may, within one year from the day the decision was issued by the claims adjudicator, seek a review of the decision by the review body appointed under section 45.

[para 33] I find that the WCB had the authority to disclose, under section 147(3) of the WCA, the Complainant's personal information in records 5, 6, 7, 8 and 15. Those records were authored after the Complainant requested a review under section 46 with the Decision Review Body on July 9, 2002. I also find that those records were relevant to an issue under review or appeal.

Exercise of Discretion

[para 34] Sections 40(1)(e) and (f) are discretionary ("may") provisions. In other words, even if the criteria of the section have been met, a public body may nevertheless decide not to disclose the personal information.

[para 35] A public body must exercise its discretion properly. As stated in prior orders, a public body exercises its discretion properly when it considers the objects and purposes of the Act and does not exercise its discretion for an improper or irrelevant purpose.

[para 36] I find that the WCB properly exercised its discretion in disclosing the Complainant's personal information to the Employer. In coming to this conclusion I took into account that the WCB did not arbitrarily disclose the Complainant's personal information. After a review of the records at issue, I am satisfied that the WCB only disclosed information that was relevant to the review and information rights of employers under the WCA.

2. Section 40(1) (b) – unreasonable invasion of personal privacy

[para 37] As I have found that the WCB had the authority under sections 40(1)(e) and (f) of the FOIP Act to disclose the Complainant's personal information to the Employer, I will not address whether the WCB also had the authority to disclose the personal information under section 40(1)(b).

3. Section 40(1)(c) – for the purpose for which the information was collected or compiled

[para 38] As I have found that the WCB had the authority under sections 40(1)(e) and (f) of the FOIP Act to disclose the Complainant’s personal information to the Employer, I will not address whether the WCB also had the authority to disclose the personal information under section 40(1)(c).

4. Section 40(1)(l) – for the purpose of determining or verifying an individual’s suitability or eligibility for a program

[para 39] As I have found that the WCB had the authority under sections 40(1)(e) and (f) to disclose the Complainant’s personal information to the Employer, I will not address whether the WCB also had the authority to disclose the personal information under section 40(1)(l).

B. Did the WCB disclose the Complainant’s personal information to the Appeals Commission in contravention of Part 2 of the FOIP Act?

[para 40] The WCB states that it had the authority to disclose the Complainant’s claim file to the Appeals Commission pursuant to its legislative authority. As such, sections 40(1)(e) and 40(1)(f) of the FOIP Act are relevant. These sections read as follows:

40(1) A public body may disclose personal information only

...

(e) for the purpose of complying with an enactment of Alberta or Canada or with a treaty, arrangement or agreement made under an enactment of Alberta or Canada,

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

[para 41] The WCB states that it had the authority under section 13.2 of the WCA to disclose the Complainant’s claim file to the Appeals Commission. The relevant portions of section 13.2 read as follows:

13.2(1) A person who has a direct interest in and is dissatisfied with

(a) a decision under section 46 made by a review body appointed under section 45

(b) a decision under section 120 made by a review body appointed under section 119, or

(c) a determination of the Board under section 21(3)

may, in accordance with this section, the regulations and the Appeals Commission rules, appeal the decision or determination to the Appeals Commission.

(2) In considering an appeal from a decision under section 46, the Appeals Commission shall consider the records of the claims adjudicator and the review body relating to the claim.

...

(5) Where a decision or determination is appealed, the Board shall, on request, forward to the Appeals Commission

(a) the records and information in its possession relating to the decision or determination, and

(b) the written reasons for the decision or determination.

[para 42] I find that the WCB had the authority under section 13.2 of the WCA to disclose the Complainant's personal information to the Appeals Commission. I find that the criteria for disclosure under section 13.2 of the WCA were fulfilled. I also find that the WCB properly exercised its discretion in that regard.

VI. ORDER

[para 43] I make the following Order under section 72 of the FOIP Act.

[para 44] I find that the WCB had the authority under sections 40(1)(e) and 40(1)(f) of the FOIP Act to disclose the Complainant's personal information in the records at issue to the Employer. I find that the WCB properly exercised its discretion in that regard.

[para 45] I find that the WCB had the authority under sections 40(1)(e) and 40(1)(f) of the FOIP Act to disclose the Complainant's personal information in the records at issue to the Appeals Commission. I find that the WCB properly exercised its discretion in that regard.

Dave Bell
Adjudicator