

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2017-83

December 1, 2017

WORKERS' COMPENSATION BOARD

Case File Number F8375

Office URL: www.oipc.ab.ca

Summary: The Complainant made a complaint under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Commissioner regarding the Workers' Compensation Board (the Public Body). In the complaint, he requested that overpayment information be removed from the file on the basis that the Public Body had improperly collected and used this information.

At the inquiry, the Complainant did not provide submissions, but relied on his complaint and request for an inquiry.

The Adjudicator confirmed that the Public Body had met its duties to the Complainant.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 33, 34, 39, 41, 72; *Workers' Compensation Act*, R.S.A. 2000, c. W-15, s. 17.

Authority Cited: AB: F2008-029

I. BACKGROUND

[para 1] The Complainant made a complaint to the Commissioner on July 28, 2014. He stated:

I want the overpayment information from the employer, Vitalaire, removed from my file. The overpayment was an error on their part and had no fraudulent intent as I was unaware. The overpayment is strictly between myself and Vitalaire and has no bearing on my WCB claim. In fact, the employer's report note "I am not of salary and they are not paying me." This claim was accepted prior to the employer telling the WCB to collect the overpayment they are responsible for. The WCB is the first payer and any [overpayment] to [employee?] does not affect WCB.

[para 2] The Commissioner authorized mediation to resolve the dispute. This process was unsuccessful and the Complainant requested an inquiry. The Complainant's request for inquiry states:

Are you serious? I submitted a complaint, which is very real, yet you decide, in your [the mediator's] detailed review, that the WCB and the employer did not breach policy by releasing my private information. Yes they did as all they needed to request was deposits made by Vitalaire for the period in question, nothing more.

Also, I note that your biased and [prejudiced] review sided with these people. You so liberally quoted the April 1, 2014 note that I owed money to the WCB which I do not and have not, ever owed the WCB money. The employer paid me despite stating in their report that I was NOT getting paid, a statement I confirmed when I stated I was not on full salary. I was unaware of this payment and wanted to pay it back to the employer when I was made aware, and even went to the bank the same day, but the employer refused to acknowledge this request of giving the hours I worked and hours I did not work.

And, despite this crucial evidence, you failed to even acknowledge the April 16, 2014 letter from the WCB that this employer did not want the WCB involved in any recovery of this overpayment, which I might add I never denied.

[para 3] The Commissioner agreed to conduct an inquiry. The issues for inquiry were set in the notice of inquiry dated March 31, 2017 as the following:

1. Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 33 of the Act?
2. Did the Public Body collect the Complainant's personal information directly or indirectly? If indirectly, did it do so in compliance with or in contravention of section 34 of the Act?
3. Did the Public Body use the Complainant's personal information? If yes, did it do so in compliance with, or in contravention of, section 39 of the Act?

[para 4] The notice of inquiry also states:

In making a decision, the Commissioner will not, with limited exceptions, consider correspondence or documents that were submitted to the Commissioner's Office prior to this Notice of Inquiry. The exceptions are the request for review or complaint made to this office and the request for inquiry, and their attachments. If a party wants the Commissioner to consider any other correspondence / documentation that it submitted previously, the party must resubmit the correspondence / documentation, by the deadlines identified below.

[para 5] The Complainant elected not to provide submissions or evidence for the inquiry. The Public Body provided submissions for the inquiry, explaining its collection and use of information and its authority and processes.

III. ISSUES

Issue A: Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 33 of the Act?

Issue B: Did the Public Body collect the Complainant's personal information directly or indirectly? If indirectly, did it do so in compliance with or in contravention of section 34 of the Act?

Issue C: Did the Public Body use the Complainant's personal information? If yes, did it do so in compliance with, or in contravention of, section 39 of the Act?

IV. DISCUSSION OF ISSUES

Issue A: Did the Public Body collect the Complainant's personal information? If yes, did it do so in compliance with or in contravention of section 33 of the Act?

[para 6] Personal information is defined by section 1(n) of the FOIP Act. This provision states:

I In this Act,

- (n) *“personal information” means recorded information about an identifiable individual, including*
 - (i) *the individual's name, home or business address or home or business telephone number,*
 - (ii) *the individual's race, national or ethnic origin, colour or religious or political beliefs or associations,*
 - (iii) *the individual's age, sex, marital status or family status,*
 - (iv) *an identifying number, symbol or other particular assigned to the individual,*
 - (v) *the individual's fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
 - (vi) *information about the individual's health and health care history, including information about a physical or mental disability,*

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

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

(ix) *the individual's personal views or opinions, except if they are about someone else[...]*

[para 7] From the foregoing, I conclude that personal information under the FOIP Act is information about an identifiable individual.

[para 8] The Complainant's complaint seeks to have overpayment information removed from his file. From the Complainant's correspondence and the Public Body's submissions, I conclude that the Complainant is complaining that his employer sent the Public Body information that the employer had paid him during a period that he was receiving workers' compensation benefits. The Public Body then used this information to determine that the Complainant had been overpaid, pursuant to its overpayment policy.

[para 9] The Complainant also refers to the Public Body as collecting more personal information than was necessary; however, as he does not explain what that information was, I am unable to address this aspect of his complaint.

[para 10] Information about payments made to an employee by an employer is the personal information of an employee.

[para 11] The Public Body acknowledges that it collected the Complainant's personal information, but argues that it is authorized to collect personal information from individuals in order to adjudicate claims for compensation. It points to section 17(1) of the *Workers' Compensation Act* as its authority to collect the personal information the Complainant's employer provided.

[para 12] Section 33 of the FOIP Act establishes the circumstances in which a public body may collect personal information. It states:

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

(a) the collection of that information is expressly authorized by an enactment of Alberta or Canada,

(b) that information is collected for the purposes of law enforcement, or

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

[para 13] In my view, information about the amounts paid by an employer during the period of a workers' compensation claim is information that could potentially affect the amount of compensation payable to the employee by the Public Body.

[para 14] In Order F2008-029, the Director of Adjudication discussed the meaning of "necessary" in relation to a disclosure of information for the purposes of meeting the goals of a program of the Public Body. She said:

[...] I find that "necessary" does not mean "indispensable" - in other words it does not mean that the CPS could not possibly perform its duties without disclosing the information. Rather, it is sufficient to meet the test that the disclosure permits the CPS a means by which they may achieve their objectives of preserving the peace and enforcing the law that would be unavailable without it. [...]

[...] Again, I find that "necessary" in this context does not mean "indispensable", and is satisfied as long as the disclosure is a significant means by which to help achieve the goals of the program.

In my view, this analysis applies equally to collection and use of personal information.

[para 15] In this case, it was necessary for the Public Body to review the information the employer submitted in order to adjudicate the claim of compensation in a reasonable way. It would be unreasonable for the Public Body to make decisions without the benefit of information that an employee had been paid at the same time the employee received benefits once that information has come to its attention. As a result, I find that information relates directly to and is necessary for an operating program or activity of the public body.

[para 16] I find that the Public Body was authorized by section 33(c) of the FOIP Act to collect the personal information of the Complainant that his employer provided.

Issue B: Did the Public Body collect the Complainant's personal information directly or indirectly? If indirectly, did it do so in compliance with or in contravention of section 34 of the Act?

[para 17] Section 34 of the FOIP Act imposes a requirement on a public body to collect personal information directly from the individual who is the subject of the information unless an exception set out in section 34(1) applies. Section 34(1) states, in part:

34(1) A public body must collect personal information directly from the individual the information is about unless

[...]

(k) 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 [...]

[para 18] The Public Body argues that it collected the Complainant's personal information in order to verify the Complainant's eligibility for compensation benefits. The Complainant made no submissions on this point.

[para 19] As I have no reason not to accept the Public Body's explanation that it collected the Complainant's personal information to review his eligibility for compensation, and I accept that compensation is a benefit, I find that section 34(1)(k) authorizes the Public Body's indirect collection of the Complainant's personal information from his employer.

Issue C: Did the Public Body use the Complainant's personal information? If yes, did it do so in compliance with, or in contravention of, section 39 of the Act?

[para 20] Section 39 establishes the circumstances in which a public body may use personal information. It states:

34(1) A public body may use personal information only

(a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,

(b) if the individual the information is about has identified the information and consented, in the prescribed manner, to the use, or

(c) for a purpose for which that information may be disclosed to that public body under section 40, 42 or 43.

[...]

(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.

[para 21] The Public Body states:

As noted above, the WCB's use of the information in the April 1, 2014 letter was to determine if an overpayment should be created in relation to the benefits the complainant received, which is

the purpose for which the information was collected. In addition, the Case Manager only used the information to the extent necessary and in a reasonable manner in order to make the decision regarding wage loss benefits, as required under section 39(4). WCB submits that the use of the information provided by the employer was in compliance with s. 39(1)(a) and 39(4) of the FOIP Act.

[para 22] The Complainant did not make submissions.

[para 23] Section 41 of the FOIP Act states:

41 For the purposes of sections 39(1)(a) and 40(1)(c), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure

(a) has a reasonable and direct connection to that purpose, and

(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

[para 24] The Public Body's evidence established that it used the Complainant's personal information to calculate an overpayment pursuant to its policies created under the authority of its constating statute. Its purpose in collecting the information was to determine whether there had been an overpayment and to ensure that benefits had been properly calculated. Its use of the Complainant's personal information similarly furthered this same purpose. As a result, I find that section 39(1)(a) authorizes the Public Body's use of the Complainant's personal information.

[para 25] In the absence of evidence to the contrary, I find that the Public Body used only the personal information necessary for adjudicating the claim in a reasonable way, as required by section 39(4).

[para 26] For the reasons above, I am satisfied, on the evidence before me, that the Public Body's use of the Complainant's personal information complied with the terms of section 39 of the FOIP Act.

[para 27] I acknowledge that in his complaint and his request for inquiry the Complainant takes issue with the decisions the Public Body made under its policy and does not agree that it should have determined that the Complainant was overpaid. However, I have no jurisdiction to review adjudicative decisions made by public bodies under their home statutes. I can only review a public body's collection, use, or disclosure of personal information in order to determine whether it complies with the FOIP Act. On the evidence before me, I find that the Public Body met its duties to the Complainant under the FOIP Act.

V. ORDER

[para 28] I make this Order under section 72 of the Act.

[para 29] I confirm that the Public Body met its duties to the Complainant under the FOIP Act.

Teresa Cunningham
Adjudicator