

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2014-06

September 10, 2014

CRAWFORD & COMPANY (CANADA) INC.

Case File Number P1895

Office URL: www.oipc.ab.ca

Summary: The Complainant was injured in an auto accident in August 2007. Crawford & Company (the Organization) was hired by the insurer of the other party involved in the accident, to investigate the accident and determine any damages payable to the Complainant for his injuries. A claims adjuster employed by the Organization met with the Complainant on October 15, 2007, and asked him to sign several authorization forms, allowing the Organization to collect and use medical information about the Complainant from various sources, in order to make a determination regarding his injuries.

The Complainant made a complaint to this office under the *Personal Information Protection Act* (PIPA), stating that he did not sign the forms as alleged by the Organization, and complained that the Organization therefore did not have his consent to collect and use this information. He also complained that the Organization collected more information than was reasonable to settle the claim.

The Adjudicator accepted the Organization's assertion that the Complainant had signed the consent forms. She therefore found that the Organization had consent to collect and use most of the Complainant's personal information. However, she found that some of the information collected by the Organization was not related to the claim and therefore the Organization collected more information than was reasonable for its purpose of settling the claim.

Statutes Cited: **AB:** *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1, 2, 7, 8, 10, 11, 14, 16, 17, 52.

Authorities Cited: AB: Orders P2005-001, P2006-008.

I. BACKGROUND

[para 1] The Complainant was injured in an auto accident in August 2007. Crawford & Company (the Organization) was hired by the insurer of the other party involved in the accident, to investigate the accident and determine any damages payable to the Complainant for his injuries. A claims adjuster employed by the Organization met with the Complainant on October 15, 2007, and asked him to sign several authorization forms, allowing the Organization to collect medical information about the Complainant from various sources, in order to make a determination regarding his injuries.

[para 2] The Complainant made a complaint to this office under the *Personal Information Protection Act* (PIPA), stating that he did not sign consent forms, and complained that the Organization did not have his consent to collect and use this information and that it collected more information than was reasonable to settle the claim.

[para 3] The Commissioner authorized an investigation of this complaint. This did not resolve the matter and it was set down for a written inquiry.

II. INFORMATION AT ISSUE

[para 4] The information at issue is the Complainant's medical information collected and used by the Organization for the purpose of settlement of the insurance claim.

III. ISSUES

[para 5] The Notice of Inquiry, dated January 22, 2014, states the issues for inquiry as the following:

Did the Organization collect and use the Complainant's personal information in contravention of PIPA, or in circumstances that were not in compliance with PIPA?

Answers to the following sub-issues, to the extent relevant, might assist in determining the main issue:

Did the Organization collect and use the Complainant's personal information contrary to, or in compliance with, section 7(1) of PIPA (no collection without either authority or consent)? In particular,

Did the Organization have the authority to collect and use the Complainant's personal information without his consent, as permitted by sections 14 and 17 of PIPA?

If the Organization did not have the authority to collect and use the Complainant's personal information without his consent, did the Organization obtain the Complainant's consent in accordance with section 8 of PIPA before collecting the information? In particular,

Did the Complainant consent in writing or orally? Or

Is the Complainant deemed to have consented by virtue of the conditions in sections 8(2)(a) and (b) having been met? Or

Were the conditions in sections 8(3)(a), (b) and (c) met?

If the Complainant consented to the collection and use of his personal information, was the consent negated by virtue of section 10 of PIPA (consent obtained by deception)?

Did the Organization collect and use the Complainant's personal information contrary to, or in accordance with, sections 11 and 16 of PIPA (collection and use for purposes that are reasonable and to the extent reasonable for meeting the purposes)?

[para 6] I will first discuss whether the Organization obtained consent from the Complainant to collect and use his personal information. I will then consider whether the Organization had authority to collect and use the Complainant's information without consent. The issues regarding whether the Complainant's consent was obtained by deception and whether the collection and use was in accordance with sections 11 and 16 will be discussed in the order set out above.

IV. DISCUSSION OF ISSUES

Issues not addressed in this inquiry

[para 7] In his Request for Inquiry form, the Complainant asked to see the original copy of the consent forms that the Organization states he signed. Although the Notice of Inquiry specified that this issue would not be addressed in this inquiry, and that the Complainant should make a formal access request directly to the Organization, the Complainant continues to request these documents in his submissions. The Complainant has not (to the best of my knowledge) made an access request to the Organization for this information (as is his right to do under the Act). The Commissioner's role in an inquiry under PIPA is to review actions or decisions of an organization; the Complainant must first request the information from the Organization before I can review any decision by the Organization as to whether or not to provide the information. For this reason, the Complainant's demand to see the original signed forms will not be addressed in this inquiry.

Did the Organization obtain the Complainant’s consent in accordance with section 8 of PIPA before collecting the information?

[para 8] The Complainant has the initial burden of proof, in that he has to have some knowledge, and adduce some evidence, regarding what personal information was disclosed; the Organization then has the burden to show that its disclosure of the Complainant’s personal information was in accordance with PIPA (Order P2005-001 at para. 8; Order P2006-008 at para. 11).

[para 9] The Act defines “personal information” as “information about an identifiable individual” (section 1(1)(j)). The personal information at issue is the Complainant’s medical file collected from his physician by the Organization. In this case, the Organization agrees that it collected the Complainant’s personal information.

[para 10] Section 8 of PIPA provides the methods of consent contemplated by the Act. The relevant portions are as follows:

8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.

(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if

- (a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and*
- (b) it is reasonable that a person would voluntarily provide that information.*

...

(3) Notwithstanding section 7(1), an organization may collect, use or disclose personal information about an individual for particular purposes if

(a) the organization

(i) provides the individual with a notice, in a form that the individual can reasonably be expected to understand, that the organization intends to collect, use or disclose personal information about the individual for those purposes, and

(ii) with respect to that notice, gives the individual a reasonable opportunity to decline or object to having his or her personal information collected, used or disclosed for those purposes,

(b) the individual does not, within a reasonable time, give to the organization a response to that notice declining or objecting to the proposed collection, use or disclosure, and

(c) having regard to the level of the sensitivity, if any, of the information in the circumstances, it is reasonable to collect, use or disclose the information as permitted under clauses (a) and (b).

Did the Complainant consent in writing or orally?

[para 11] The Organization provided in its initial submission an affidavit sworn by the Claim Adjuster who dealt with the Complainant's claim. The affiant states that she met with the Complainant on October 15, 2007, and asked the Complainant to sign the following consent forms to obtain information:

- Consent to Disclosure of Individually Identifying Health Information (specifically for disclosure by Alberta Health)
- Medical Authorization; and
- Privacy Consent Form.

[para 12] The affiant states that in each case, she provided "full disclosure" to the Complainant regarding the forms (presumably, she means that she informed the Complainant about the purpose of each form). The Organization states that the Complainant signed these forms. The Organization provided me with copies of the forms that appear to have been signed by the Complainant.

[para 13] The Consent to Disclosure form is an Alberta Health form for obtaining statements of benefits paid by Alberta Health to the Complainant.

[para 14] The Medical Authorization form allows:

any physician, surgeon, dentist, hospital or association to release any and all information requested with respect to any illness, injury or medical history and to review any and all hospital records and medical reports including details of treatments received to date and future treatments required by [the Complainant] arising out of an accident which occurred on or about the [date]. Such information may be released to any representative of CRAWFORD ADJUSTERS CANADA INC.

[para 15] The Privacy Consent form notified the Complainant that the Organization was collecting information on behalf of TD Meloche Monnex (the insurer) in order to:

- Investigate, evaluate, negotiate, and settle claims involving this incident
- Provide rehabilitation recommendations and services
- Compile statistics and conduct quality assurance
- Detect and prevent fraud.

[para 16] The affiant states that she wrote a letter to the Complainant dated September 3, 2008, in which she requested that the Complainant sign another form for disclosure of benefit information by Alberta Health. The letter, a copy of which the Organization provided to me, informs the Complainant that the reason for the new form was due to "a mark on the copy of the request that you had signed which [led] Alberta Health to believe that you were only allowing us to obtain information from July 1st, 2007 to present, rather than the July 1st, 2001 to present which you had actually authorized." The Organization sent another copy of the form along with the letter to the Complainant, which would authorize Alberta Health to disclose relevant information from July 1, 2002 to the (then) present date. The Organization states that the

Complainant refused to sign this new form, and therefore the Organization did not seek the benefit information from Alberta Health.

[para 17] The Complainant states that he did not sign forms to authorize the Organization to collect his medical information and that “if I did give [the Organization] permission I would only give [it] rights for the day of the collision and forward and that was it.” He also states that he may have signed the consent form allowing the Organization to collect benefit information from Alberta Health from July 1, 2007 onward.

[para 18] The Complainant does not state outright that the Organization forged his signature on the consent forms. However, since he has been provided a copy of the Organization’s submissions, which include copies of the forms that appear to have been signed by him, this appears to be the only conclusion to draw from his statement that he did not sign the forms and from his demand to view the original versions of these forms.

[para 19] I have affidavit evidence from the Organization regarding the circumstances in which it states the Complainant signed the consent forms. I note that when the Complainant refused to sign the updated form for Alberta Health, the Organization did not seek the benefit information from Alberta Health. It seems reasonable to conclude that had the Complainant refused to sign the other consent forms, the Organization would have continued on without them (in other words, the Organization would have done whatever it normally does when a claimant refuses to provide consent).

[para 20] The Complainant has not provided me with any reason to suspect the Organization forged his signature on the consent forms, and I cannot imagine a motive for it to do so. I accept the Organization’s evidence that it obtained consent from the Complainant to collect medical information related to the accident. I do so because the Organization’s version of events is more complete, comprehensive, and reliable than the Complainant’s version (i.e. his assertions that he did not sign the consent forms).

[para 21] I find that the Organization obtained written consent from the Complainant to collect and use his personal information. However, for the reasons given in the discussion of section 11, below, I find that the Organization collected information that was not related to the Complainant’s injury claims. The Privacy Consent form signed by the Complainant states that the Complainant’s information would be collected for the purpose of the insurance claim; this form encompasses the medical information collected under the authority of the Consent to Disclosure of Individually Identifying Health Information form, and Medical Authorization form. Information that is not related to that claim is therefore not encompassed by the Complainant’s consent. I will therefore consider whether the Organization otherwise had authority to collect that information.

Is the Complainant deemed to have consented by virtue of the conditions in sections 8(2)(a) and (b) having been met?

[para 22] Section 8(2) provides that an individual is deemed to have consented to the collection of his or her personal information when that individual gives the information to an organization, and other conditions are met.

[para 23] The Organization argues that this section is not relevant to the current circumstances. As the Complainant did not provide the Organization with the information at issue (it was collected from his physician), I agree that section 8(2) is not relevant.

Were the conditions in sections 8(3)(a), (b) and (c) met?

[para 24] Section 8(3) provides that an organization may rely on “opt-out” consent, if it provides an individual with notice about the collection, use and/or disclosure of personal information; provides the individual with an opportunity to opt out of the collection, use and/or disclosure; and the individual does not opt out. This provision is subject to other conditions, such as the sensitivity of the personal information.

[para 25] The Organization argues that this section is not relevant to the current circumstances. As the Organization sought express consent from the Complainant, I agree that section 8(3) is not relevant.

Did the Organization have the authority to collect and use the Complainant’s personal information without his consent, as permitted by sections 14 and 17 of PIPA?

[para 26] I found that the Organization obtained consent from the Complainant to collect his personal information in order to settle the insurance claim, but (for the reasons discussed later in this Order) that the Organization collected more information than what was encompassed by the consent forms. I will therefore consider whether the Organization had authority to collect that information without the Complainant’s consent.

[para 27] Section 14 of PIPA lists circumstances in which an organization may collect personal information without the consent of the individual the information is about. The Organization states that the collection of the Complainant’s information “related to investigation and a legal proceeding relating to a remedy at law” (initial submission, paragraph 6). The Organization did not cite any other subsections of section 14 that would provide authority to collect without consent, and it does not appear that others apply. Therefore, the only potentially relevant subsection of section 14 is as follows:

14 An organization may collect personal information about an individual without the consent of that individual but only if one or more of the following are applicable:

(d) the collection of the information is reasonable for the purposes of an investigation or legal proceeding;

[para 28] As noted above (and discussed further, below), some of the information collected by the Organization does not appear to relate to the Complainant's injuries arising out of the car accident. As I have found that this information was not encompassed by the Complainant's consent, which permitted the collection of information related to his injuries for the purpose of setting the insurance claim, I cannot conclude that the collection of this information was reasonable for an investigation or legal proceeding arising out of the Complainant's claim. Therefore, I do not need to consider whether there was an investigation or legal proceeding for which the Organization collected the Complainant's information.

If the Complainant consented to the collection and use of his personal information, was the consent negated by virtue of section 10 of PIPA (consent obtained by deception)?

[para 29] Section 10 states the following:

10 If an organization obtains or attempts to obtain consent to the collection, use or disclosure of personal information by

(a) providing false or misleading information respecting the collection, use or disclosure of the information, or

(b) using deceptive or misleading practices,

any consent provided or obtained under those circumstances is negated.

[para 30] The Complainant states that the Organization tried to trick him into signing a new form authorizing disclosure of older information from Alberta Health. The Organization provided me with a copy of the letter it had sent to the Complainant along with the updated form (discussed earlier in this Order); that letter explained to the Complainant why the original form was inadequate and why the Organization was requesting the Complainant sign the new form. The letter also reminded the Complainant of the purpose of the consent form (to obtain his Statement of Benefits from Alberta Health).

[para 31] The Complainant does not indicate why he believes this letter was intended to trick him. There is no indication in the letter of any false, misleading, or deceptive information or practices by the Organization. Further, the Complainant refused to sign that particular consent form – in other words, the Organization did not obtain the Complainant's consent.

[para 32] The Complainant did not provide any indication that he believes the Organization obtained any other consent by deception (rather, the Complainant argues that he did not provide any other consent). I find that the Organization did not obtain consent from the Complainant through misleading or deceptive means, within the terms of section 10.

Did the Organization collect and use the Complainant's personal information contrary to, or in accordance with, sections 11 and 16 of PIPA (collection and use for purposes that are reasonable and to the extent reasonable for meeting the purposes)?

[para 33] Sections 11(1) and 16(1) require an organization to respectively, collect and use personal information only for purposes that are reasonable. Sections 11(2) and 16(2) limit an

organization's collection and use, respectively, to what is reasonable for meeting the purposes of the collection and use.

11(1) An organization may collect personal information only for purposes that are reasonable.

11(2) Where an organization collects personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is collected.

16(1) An organization may use personal information only for purposes that are reasonable.

16(2) Where an organization uses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.

[para 34] Section 2 defines reasonable as follows:

2 Where in this Act anything or any matter

(a) is described, characterized or referred to as reasonable or unreasonable, or

(b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,

the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances.

[para 35] The Organization states that it collected and used the Complainant's personal information for the purpose of settling the Complainant's claim regarding injuries sustained in a car accident. This is a reasonable purpose for the collection and use of the Complainant's personal information under sections 11(1) and 16(1). The Complainant's objections primarily relate to the amount of personal information collected for this purpose.

[para 36] By letter dated January 9, 2008, the Organization requested information from the Complainant's physician, specifically

1. The condition of his health, if known, prior to the accident.
2. [The physician's] diagnosis of the injuries suffered by the patient in the accident.
3. Objective symptoms observed by [the physician].
4. Subjective symptoms described by the patient.
5. Dates of treatment and treatment administered at these visits.
6. The current status/condition of [the physician's] patient.
7. Whether further treatment is recommended and, if so, what these recommendations are.
8. What is [the physician's] prognosis for [the] patient?

[para 37] The Organization also requested a "complete copy of [the Complainant's] chart at [the physician's] clinic."

[para 38] The Complainant's physician answered the Organization's questions by letter dated February 12, 2008. The Organization wrote another letter, dated April 7, 2008, addressed to the clinic at which the Complainant's physician practiced, requesting "a complete copy of [the Complainant's] chart in your clinic", which was provided by the physician.

[para 39] The Complainant states that most of the medical records collected by the Organization did not relate to the car accident, including information about an eye injury that occurred approximately 70 years before the accident.

[para 40] The Organization concedes that the collection of the complete medical chart "had the potential to collect information that went beyond the scope of the Consent granted, as [it] could have included medical records not reasonably connected to the April 28, 2007 incident" (at para. 39).

[para 41] However, the Organization emphasized in its initial submission that it did not actually *use* information about the Complainant that was not relevant to settling the claim (at para. 24); it further stated in its response to my questions (dated August 15, 2014) that it did not *collect* any information that was not relevant to settling the Complainant's claim (at para. 2). Presumably, the Organization is suggesting that all of the information in the Complainant's chart was relevant to his claim.

[para 42] As the Organization had not stated specifically what information it collected about the Complainant (e.g. what information was contained in the Complainant's complete medical chart), by letter dated August 5, 2014, I requested a copy of the information about the Complainant that the Organization collected. I also requested that the Organization provide an explanation as to what it used for the purpose of settling the claim and why the Organization considered that information to be relevant to the claim.

[para 43] The Organization provided me with the medical information collected from the Complainant's physician. It also provided me with a copy of the statement made by the Complainant to the Organization regarding the accident and his resulting injuries. The Complainant's statement and his physician's diagnoses refer to back, neck and stomach injuries, as well as dizziness, blurry vision, and tinnitus. In my view, it is reasonable to collect medical information related to these injuries, including pre-existing related injuries or conditions.

[para 44] The Complainant objects to the collection of information about an eye injury he sustained approximately 70 years ago. However, his statement and his physician's diagnoses indicate that he complained of blurry vision after the accident. It seems reasonable for the Organization to inquire as to whether that could be attributed to a pre-existing condition.

[para 45] That said, some of the information in the records provided to the Organization by the physician do not appear to relate to injuries claimed by the Complainant as resulting from the accident (for example, some records from years prior to the accident relate to pain in his foot and/or ankle). As the Organization has not told me how this information relates to settling the Complainant's claim, I cannot conclude that it is related such that it was reasonable for the Organization to collect that information.

[para 46] In conclusion, I agree with the Organization's assessment and concession that it ought not to have requested the Complainant's entire medical file from his physician, but rather that it ought to have requested only that information that could relate to the Complainant's injuries resulting from the accident (including pre-existing but related injuries or conditions). I therefore find that the Organization collected more information than was reasonable, in contravention of section 11(2).

[para 47] The Organization has claimed that it did not use unrelated information that may have been collected. I have no reason to expect that the Organization did use unrelated information and therefore I have no reason to conclude that the Organization contravened section 16(2).

[para 48] The Organization stated that prior to the collection of the Complainant's personal information it had updated its forms (including requests to physicians) to clarify that it only seeks information related to an individual's claim. It states that in the Complainant's case, the Claim Adjuster erroneously used the old, outdated forms, and that the Adjuster has been reminded to use only the updated forms.

[para 49] The Organization also provided me with a copy of the new consent forms. I agree that these forms properly limit the collection of information to that which is relevant to an individual's claim. I note however, that the Authorization for the Disclosure of Alberta Medical Records form, and the Authorization for the Disclosure of Alberta Hospital Records form, both erroneously refer to the *Personal Information Protection and Electronic Documents Act* (PIPEDA), rather than PIPA. It might be the case that the Organization operates in other provinces of Canada, in which they would be subject to PIPEDA; however, insofar as these forms are used in Alberta, they should refer the reader to PIPA. (Other provinces, such as British Columbia and Quebec, also have provincial private-sector privacy legislation that supplants PIPEDA).

V. ORDER

[para 50] I make this Order under section 52 of the Act.

[para 51] I find that the Organization obtained consent to use the Complainant's personal information. I also find that the Organization obtained consent to collect the Complainant's personal information, with respect to much of the information collected, but that some of the personal information collected by the Organization went beyond the consent provided by the Complainant.

[para 52] I find that, with respect to the information not encompassed by the Complainant's consent, the Organization was not authorized to collect that information without consent.

[para 53] I find that the Organization's purpose for collecting and using the Complainant's personal information that it was authorized to collect was reasonable.

[para 54] I find that the Organization collected more information than was reasonable for its purposes, in contravention of section 11(2), but that it did not use more information than was reasonable under section 16(2).

[para 55] I order the Organization to securely dispose of the Complainant's personal information that is not relevant to his claim. As the Complainant's claim later became the subject of a legal proceeding, this order is subject to any legal requirement to retain information related to that proceeding.

[para 56] I further order the Organization to notify me and the Complainant, in writing, within 50 days of receiving a copy of this Order that it has complied with the Order.

Amanda Swanek
Adjudicator