

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on an Investigation into the
Collection and Disclosure of Personal Information**

June 23, 2009

Sun Life Assurance Company of Canada
(Investigation P1180)

And

Southern Alberta Institute of Technology
(Investigation F4548)

Investigation Report P2009-IR-002 & F2009-IR-002

I. INTRODUCTION

[1] The Complainant filed two complaints with the Commissioner:

- That Sun Life Assurance Company of Canada (“Sun Life”) disclosed his personal information to the Southern Alberta Institute of Technology (“SAIT”) in contravention of the *Personal Information Protection Act* (“PIPA”); and
- That SAIT improperly collected information about him from Sun Life in contravention of the *Freedom of Information and Protection of Privacy Act* (“the FOIP Act”).

[2] The Commissioner authorized me to investigate this matter under PIPA and the FOIP Act. This report outlines my findings and recommendations in relation to both investigations.

II. JURISDICTION

[3] PIPA applies to provincially-regulated private sector organizations operating in Alberta. PIPA sets out the provisions under which organizations may collect, use or disclose personal information. Sun Life is an “organization” as defined in section 1(i) of PIPA, and is operating in Alberta.

[4] Section 36(2)(e) of PIPA authorizes the Commissioner to investigate complaints that personal information has been collected, used or disclosed by an organization in contravention of PIPA.

[5] SAIT is a “public body” under section 1(p)(vii) of the FOIP Act. Under section 65(3) of the FOIP Act, a person who believes that their own personal information has been collected, used or disclosed by a public body in contravention of Part 2 of the FOIP Act may ask the Commissioner to review the matter. Section 53(2)(e) of the FOIP Act allows the Commissioner to

investigate complaints that personal information has been collected, used or disclosed by public bodies in contravention of Part 2 of the FOIP Act.

III. ISSUES

[6] The issues are:

- a. Did Sun Life disclose the Complainant's personal information in contravention of PIPA?
- b. Did SAIT collect the Complainant's personal information in contravention of Part 2 of the FOIP Act?

IV. INVESTIGATION FINDINGS

1. Background

[7] SAIT is the "plan sponsor" of a group Long Term Disability Plan (the LTDP) for its employees. The Complainant is a former employee of SAIT and a "plan member" of the LTDP. Sun Life is the insurance "plan provider" for the LTDP.

[8] SAIT has outsourced its disability management services through a contract with a third party, Shepell-fgi. The disability management services are performed by a Disability Management Consultant ("the DMC") who is the contact and liaison between SAIT (the plan sponsor), Medical Practitioners, Sun Life (the plan provider) and plan members for any disability related issues. The DMC meets regularly with Sun Life employees for updates on Long Term Disability (LTD) claims under the plan sponsored by SAIT.

[9] The Complainant is a former SAIT employee receiving LTD payments from Sun Life under the plan sponsored by SAIT. The DMC has been communicating with Sun Life and receiving updates on the progress of the Complainant's LTD claim through regularly scheduled meetings and emails.

2. Did Sun Life disclose the Complainant's personal information in contravention of PIPA?

Information at Issue

[10] Sun Life says the following information was disclosed to the DMC:

- Whether the Complainant's medical condition was deteriorating (no details about nature or symptoms of the Complainant's medical conditions were disclosed).
- That the Complainant had an appointment with a specialist on a certain date (name or type of specialist not disclosed).
- Updates on whether Sun Life has asked the Complainant to apply for Canada Pension Plan-Disability.
- Whether the Complainant is capable of returning to work.

[11] The information disclosed by Sun Life to the DMC is the Complainant's personal information as defined in section 1(k) of PIPA and is subject to the provisions of PIPA.

Application of PIPA

[12] Section 7(1)(d) of PIPA states:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,

(d) disclose that information unless the individual consents to the disclosure of that information.

[13] Section 19 of PIPA establishes requirements regarding the disclosure of personal information by an organization. This section reads as follows:

19(1) An organization may disclose personal information only for purposes that are reasonable.

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

Analysis

[14] Sun Life said that no information was disclosed without the Complainant's consent. Therefore, it is necessary to address the following questions to determine whether the disclosure was in compliance with PIPA requirements:

- a. Did the Complainant consent to the disclosure?
- b. Was the purpose for the disclosure reasonable?
- c. Was the personal information disclosed only to the extent that is reasonable for the purpose?

A. Did the Complainant consent to the disclosure?

[15] Sun Life provided our office with a copy of an authorization that was signed and dated by the Complainant. The relevant wording on the authorization reads as follows:

"I authorize Sun Life Assurance Company of Canada, my Plan Sponsor and their Occupational Health Nurses to exchange any information about me excluding details relating to diagnosis, treatment or medication, that is relevant to this claim for the purpose of planning and managing my rehabilitation and return to work and claim management.

I also authorize Sun Life Assurance Company of Canada and the Plan Sponsor's Occupational Health Nurses to exchange any information about me including details relating to diagnosis, treatment or medication, that is relevant to this claim for the purpose of planning and managing my rehabilitation and return to work and claim management."

[16] The Canadian Oxford Dictionary of Current English defines “exchange” as: “*an act of giving one thing, and receiving another in its place.*” Consequently, in my view, the meaning of “exchange” in the context of the authorization means: the collection and/or disclosure of the Complainant’s personal information between any of the named parties.

[17] PIPA does not use wordings such as “exchange of information”. While it is my opinion that “exchange of information” encompasses collection, use and disclosure of personal information (terms which are in PIPA), I recommend that Sun Life revise the wording in its authorization/consent form for the purpose of clarity.

[18] I find that the Complainant authorized Sun Life to disclose to SAIT (as the Plan Sponsor) “*any information...excluding details relating to diagnosis, treatment or medication....relevant to this claim for the purpose of planning and managing my rehabilitation and return to work and claim management*”.

[19] The Complainant had also provided Sun Life with authorization to disclose to SAIT’s Occupational Health Nurses “*any information...including details relating to diagnosis, treatment or medication, that is relevant to this claim for the purpose of planning and managing my rehabilitation and return to work and claim management*”.

[20] As noted earlier, Sun Life disclosed the following information to the DMC:

- Whether the Complainant’s medical conditions is deteriorating (but no specifics on the nature or symptoms of the medical conditions);
- That the Complainant had an appointment with a specialist (but not the name or type of specialist);
- Whether Sun Life has asked the Complainant to apply for Canada Pension Plan-Disability.
- Whether the Complainant is capable of returning to work

[21] In my view, the information disclosed by Sun Life falls under the authorization from the Complainant. Therefore, I find that the Complainant consented to the disclosure by Sun Life.

B. Was the purpose for the disclosure reasonable?

[22] Sun Life said:

“The plan sponsor needs to know this type of information (excluding details relating to diagnosis, treatment or medication) for the purposes of planning and managing rehabilitation, return to work and for claims management purposes. It is not relevant that [the Complainant] is no longer an employee because the status of [the Complainant’s] claim impacts SAIT’s experience under the plan. SAIT has an interest in whether a claimant remains on claim, whether it is likely that the claimant will return to work (even if it is not with their organization) whether the claimant has applied for CPP (because CPP awards are generally deducted from the monthly disability benefit), etc. Sun Life has an obligation to communicate with the plan sponsor on occasion regarding the status of [the Complainant’s] Disability Claim, as long as [the Complainant] continues to claim benefits under the plan sponsor’s group benefit plan.”

[23] I considered the following:

- The amount of disclosure was limited i.e. no specific details about the Complainant's medical conditions; specialist not identified.
- The disclosure was to the DMC, who is contracted by SAIT to be the contact and liaison for SAIT (the plan sponsor) to Medical Practitioners, Sun Life (the plan provider) and plan members on any disability related issues.
- The Complainant is receiving LTD on the plan sponsored by SAIT.
- As the plan sponsor, SAIT has a responsibility to ensure the LTD plan is managed efficiently and effectively.

[24] Consequently, it is my opinion that Sun Life's purpose for the disclosure of the Complainant's personal information to the DMC is reasonable.

C. Was the information disclosed only to the extent that is reasonable for the purpose?

[25] As stated earlier, the amount of information disclosed by Sun Life was limited. Therefore, I conclude that the disclosure was only to the extent that is reasonable.

Conclusion

[26] I find that Sun Life had the consent of the Complainant to disclose the information at issue in compliance with section 7(1) of PIPA. I also find that Sun Life's disclosure of the information at issue was in compliance with section 19 of PIPA. Consequently, I conclude that Sun Life did not disclose the Complainant's personal information in contravention of PIPA.

3. Did the Public Body collect the Complainant's personal information in contravention of Part 2 the FOIP Act?

Application of the FOIP Act:

[27] Sun Life disclosed information about the Complainant to the DMC who is an employee of Shepell-fgi.

[28] Shepell-fgi is not a "public body" under the FOIP Act; however, it is contracted by SAIT to provide disability management services. Section 1(e) of the FOIP Act states:

1 In this Act,

(e) "employee", in relation to a public body, includes a person who performs a service for the public body as an appointee, volunteer or student or under a contract or agency relationship with a public body.

[29] The definition of "employee" includes "a person", which can be an individual or a corporation (Order 96-019 [68] and Order 97-003 [17]). Therefore, Shepell-fgi is an "employee" of SAIT under the FOIP Act for the services it is contracted to perform for SAIT.

[30] Public bodies are held accountable under the FOIP Act for the actions of their employees (Order 99-032 paragraph 51 and Investigation Report F2007-IR-005 paragraphs 8-9).

Did SAIT collect the Complainant's personal information?

[31] Earlier in this report, I said the information disclosed by Sun Life to the DMC was "personal information" as defined in section 1(k) of PIPA. That information is also "personal information" as defined by section 1(n) of the FOIP Act.

[32] SAIT does not dispute that it collected the information at issue through the DMC. Based on the contractual relationship between SAIT and Shepell-fgi and the definition of an "employee" for the purpose of the FOIP Act, I confirm that SAIT collected the Complainant's personal information.

Did SAIT have authority to collect the Complainant's personal information under section 33 of the FOIP Act?

[33] A public body may only collect personal information if it is authorized under section 33 of the FOIP Act. SAIT said it relies on section 33(c) as its authority to collect the information, which reads as follows:

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

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

[34] The Disability Management Services is an operating program or activity of SAIT. I find that the information collected was limited and relevant to the management of the Complainant's claim. Consequently, I conclude that SAIT did have authority to collect the information at issue under section 33(c) of the FOIP Act.

Did SAIT have authority to collect the information at issue indirectly?

[35] SAIT said it relied on section 34(1)(k)(ii) of the FOIP Act and the Shepell-fgi consent form as the authority to collect the Complainant's personal information indirectly.

[36] Section 34 of the FOIP Act restricts the manner in which personal information is collected by a public body. A public body must collect personal information directly from the individual the information is about. However, section 34 also allows a public body to collect personal information about an individual from other sources in particular circumstances which are listed in section 34(1) (Order 98-002 [147]).

Application of section 34(1)(k)(ii)

[37] Section 34(1)(k)(ii) states:

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

(k) 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,

[38] In my opinion, SAIT cannot rely on section 34(1)(k)(ii) as its authority to collect the Complainant's personal information from Sun Life.

[39] The LTD benefit is provided to the Complainant from Sun Life (the "plan provider"). The LTD benefit is not provided to the Complainant from SAIT (the plan sponsor). SAIT did not explain why it would require the information at issue for the purpose of verifying the eligibility of the Complainant to participate in or receive the LTD benefit.

[40] Consequently, I conclude that SAIT would not have authority to collect the information indirectly under section 34(1)(k)(ii) of the FOIP Act.

Application of section 34(1)(a)(i)

[41] SAIT also relied on the consent form from Shepell-fgi as its authority to collect information about the Complainant from Sun Life.

[42] Section 34(1)(a)(i) of the FOIP Act states:

34(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

(i) that individual,

Does the Shepell-fgi consent form provide SAIT with authority to indirectly collect personal information under section 34(1)(a)(i) of the FOIP Act?

[43] SAIT provided our office with a copy of the Shepell-fgi's consent form which was signed by the Complainant. SAIT said, "This form allows information to be shared between Medical Practitioners, SunLife and their DMC in order to facilitate the process in the best interest of the employee."

[44] The form is a Shepell-fgi form entitled "Request and Consent for Release of Medical Information". The relevant wording concerning the collection or disclosure of personal information reads as follows (underlined for emphasis):

"I AUTHORIZE AND DIRECT any physician, health practitioner, clinic or hospital, that I have attended in connection with my disabling physical and/or mental condition to provide any medical information available, including any and all test results (laboratory tests, radiological images, etc.) regarding my diagnosis, treatment and prognosis with respect to my disabling physical an/or mental condition (the "Medical Information") to Shepell-fgi, and I hereby further authorize Shepell-fgi to forward the Medical Information and/or a summary thereof to my employer's long term disability insurance carrier for the purpose of evaluating any claim I may make for Long Term Disability benefits. I hereby also permit and authorize my employer to receive a summary of my claim status including a functional case summary such as restrictions, limitations and modifications necessary for return to work. I further agree that Shepell-fgi may disclose this information to Southern Alberta Institute of Technology (SAIT) for the purposes of my return to work. My confidential medical information will not be shared with my employer.

[45] My comments on the Shepell-fgi consent form are as follows:

- I said earlier that Shepell-fgi is considered an "employee" of SAIT under the FOIP Act. Consequently, a collection of personal information by Shepell-fgi in relation to services it is contracted to perform for SAIT is a collection of personal information by SAIT and SAIT would be held accountable under the FOIP Act for that collection.

However, the form does not indicate that Shepell-fgi is collecting and/ or disclosing personal information on behalf of SAIT. On the contrary, the form gives the impression that Shepell-fgi is delivering the service independent of SAIT.

- The form authorizes Shepell-fgi to collect "medical information". As Shepell-fgi is an "employee" of SAIT under the FOIP Act, an argument can be made that the form authorizes SAIT to collect medical information. However, there is no evidence that medical information was collected by SAIT. Further, the statement "My confidential medical information will not be shared with my employer" indicates that SAIT would not collect "medical information", even if SAIT was presently the employer.
- The form also authorizes Shepell-fgi to "forward" or disclose medical information to "my employer's long term disability insurance carrier", in this case, Sun Life. However, there is no wording on form that would allow for a collection of the Complainant's information from Sun Life. In other words, Shepell-fgi can "disclose" to Sun Life but can it "collect" from Sun Life?
- The form authorizes the claimant's employer to receive claim information. However, the term "employer" is open to interpretation if the claimant is no longer an employee of SAIT. Also, the wording is vague because it does not say from whom SAIT is authorized to receive (i.e., collect) the information.

[46] Given these comments, I do not believe the Shepell-fgi consent form provides SAIT with the authorization to collect indirectly that is required under section 34(1)(a)(i) of the FOIP Act. If SAIT intends to rely on the Shepell-fgi consent form as its authority to collect information about claimants from Sun Life, I recommend that SAIT not use a “general” form from Shepell-fgi but should develop a consent form that is specific to its Disability Management Services.

Would the Sun Life authorization form authorize SAIT to collect the information at issue from Sun Life?

[47] As noted earlier, the Complainant signed Sun Life’s authorization form on August 23, 2007. This authorization allows Sun Life and the Complainant’s “Plan Sponsor” (which is SAIT) to “exchange” any information that is relevant to the claim for the purpose of planning and managing his rehabilitation and return to work and for claim management.

[48] In my opinion, the Sun Life authorization form signed by the Complainant provides SAIT with authority to collect the information indirectly from Sun Life under section 34(1)(a)(i) of the FOIP Act.

[49] The Complainant said that since he was no longer an employee of SAIT, it should not be entitled to receive his personal information from his LTD provider, Sun Life. However, I found that SAIT, as the LTD plan sponsor was authorized to collect a limited amount of personal information for the purpose of its Disability Management Services.

Conclusion

[50] I conclude that SAIT had authority to collect the Complainant’s personal information under section 33(c) of the FOIP Act and that the collection from Sun Life was allowed under section 34(1)(a)(i) of the FOIP Act.

[51] However, I recommend that SAIT ensure that the forms it relies on for its Disability Management Services clearly indicate that the service is being performed for/or on behalf of SAIT, particularly where the service is performed under a contract with an agent or contractor.

V. CLOSING COMMENTS:

[52] In summary, my findings on the issues under investigation are as follows:

Issue #1 - Did Sun Life disclose the Complainant’s personal information in contravention of PIPA?

- I find that Sun Life did disclose the Complainant’s personal information. However, the disclosure was not in contravention of PIPA.
- I recommend that Sun Life update its authorization/consent form for wording consistent with PIPA, specifically replacing “exchange of information” to collection and/or disclosure of personal information.

Issue #2 - Did SAIT collect the Complainant's personal information in contravention of Part 2 of the FOIP Act?

- I find that SAIT did collect the Complainant's personal information and that the collection was in compliance with Part 2 of the FOIP Act.
- I recommend that SAIT ensure that the forms it relies on for its Disability Management Services clearly show the following:
 - Indicate that the service is being performed for/or on behalf of SAIT, particularly where the service is being performed by an agent or contractor.
 - Where the term "my employer" is used, clearly explain whether this term includes both a present and former employer.
 - Identify from whom SAIT may collect personal information through the agent or contractor.

[53] I believe that this investigation has addressed the issues related to the Complainant's complaints against Sun Life and SAIT. This investigation is concluded.

Veronica Chodak
Portfolio Officer