

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2022-13

February 25, 2022

WORKERS' COMPENSATION BOARD

Case File Number 005414

Office URL: www.oipc.ab.ca

Summary: The Complainant complained to the Commissioner that the Workers' Compensation Board (the Public Body) had provided his personal information to a medical consultant without his consent. The Adjudicator found that the Public Body had complied with the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) when it provided the information to the medical consultant.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 39, 40, 41, 72

1. BACKGROUND

[para 1] The Complainant made a complaint to the Commissioner that the Workers' Compensation Board (the Public Body) had disclosed medical reporting about him to a consultant without his consent and had then denied payment of a 5% partial disability award as a result of the consultant's opinion.

[para 2] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. At the conclusion of this process, the Complainant requested an inquiry. The Commissioner agreed to conduct an inquiry and delegated her authority to conduct it to me.

II. ISSUE

ISSUE A: Did the Public Body use or disclose the Complainant's personal information in contravention of Part Two of the FOIP Act?

[para 3] Section 39 of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) limits the ability of a public body to use personal information. It states, in part:

39(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 4] Section 40 of the FOIP Act prohibits public bodies from disclosing personal information except in specified circumstances. It states, in part:

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

[...]

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

(d) if the individual the information is about has identified the information and consented, in the prescribed manner, to the disclosure,

(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,

[...]

(l) for the purpose of determining or verifying an individual's suitability or eligibility for a program or benefit [...]

[...]

[...]

(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

[para 5] Public bodies may use or disclose personal information with the consent of the individual who is the subject of the information, but they may do so without consent if the purpose for use or disclosure is consistent with the public body's purpose in collecting the information. For example, if a public body collects personal information for the purpose of adjudicating entitlement to benefits, it may use or disclose the same information if doing so serves this same purpose. A public body may disclose personal information for several purposes without consent, including complying with a statute or adjudicating entitlement to benefits. However, public bodies must not use or disclose any more personal information than is necessary for meeting its authorized purposes.

[para 6] Section 41 of the FOIP Act defines "consistent purposes" within the terms of sections 39(1)(a) and 40(1)(c) (*supra*). It 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 7] If using or disclosing personal information has a reasonable and direct connection to the public body's purpose in collecting the information, and is also necessary for the public body in performing its statutory duties, then the public body's purpose in using or disclosing information will be consistent with its purpose in collecting the information.

[para 8] In his request for review, the Complainant provided a copy of a medical consultant's report, on which a case manager had relied to determine that he was not entitled to a 5% permanent disability award. He complained that he did not consent to his medical reporting being provided to the consultant.

[para 9] In his request for inquiry, the Complainant took the position that the consultant was not an employee of the Public Body, but a third party.

[para 10] In his submissions for the inquiry, the Complainant stated:

Breach of Privacy

Phone Tapping Recording

Doctors Hire

No certificate or evaluation as

Contractor breach of privacy

Tax Evasion

Malpractice

Breach of Privacy

Hiring [judicial] workers without

Experience

Breach of Privacy

Missing Files Breach of Privacy

[para 11] The Complainant attached records from his workers' compensation claim file to his submissions as well as requests for access to records relating to a meeting of a medical review panel that he had submitted to the Public Body. None of these records shed light on the complaint for which the Commissioner agreed to conduct an inquiry.

[para 12] The Complainant's request for review indicates that he is complaining about the Public Body's provision of medical information from his claim file to a medical consultant without his consent. He also complains that the Public Body should not have denied a 5% permanent disability benefit based on the opinion of the consultant. The Complainant's submissions for inquiry indicate he continues to take issue with that decision.

[para 13] I lack jurisdiction to review the decision of the Public Body to deny a 5% permanent disability benefit, or any other decisions the Public Body has exclusive jurisdiction to make under the *Workers' Compensation Act*. I do have jurisdiction to review the complaint regarding the sharing of information from the Complainant's claim file with the medical consultant.

[para 14] From the evidence the Complainant submitted for the inquiry, I find that the Public Body provided the Complainant's personal information to the medical consultant in order to evaluate the Complainant's claim for benefits. The medical consultant provided his opinion in an internal memo, which lends support for finding that

the information was not disclosed outside the Public Body. As a result, the actions that are the subject of the complaint are likely a *use* of the Complainant's personal information.

Did the Public Body use the Complainant's personal information in compliance with section 39 of the FOIP Act?

[para 15] As noted above, a public body may use an individual's personal information without the individual's consent for a purpose that is consistent with the public body's purpose in collecting the information. I am able to determine from the documents submitted by the Complainant and by the scheme of the *Workers' Compensation Act* that the Public Body collected the Complainant's personal information in order to manage and adjudicate his claim for workers' compensation. I find that the medical consultant used the Complainant's personal information for a consistent purpose: to assess the information and provide a medical opinion to assist the Public Body to adjudicate the Complainant's entitlement to benefits. I also find that the Public Body did not use any more information than was necessary to meet its purpose.

If the Public Body disclosed the Complainant's personal information, did it do so in compliance with section 40 of the FOIP Act?

[para 16] I acknowledge that the Complainant considers providing information from his file to the medical consultant to be a disclosure of information, rather than a use. I will therefore answer the question posed for inquiry as if the activity on the part of the Public Body that is the subject of the complaint were a disclosure.

[para 17] Like section 39, section 40 of the FOIP Act permits a public body to disclose personal information if it does so for a purpose consistent with its initial purpose in collecting the information. As discussed in my analysis of use above, I find that the purpose in providing the Complainant's personal information to the medical consultant was to assist the Public Body to adjudicate the Complainant's claim for benefits. I find that this purpose is consistent with the Public Body's purpose in collecting the information. Moreover, sections 40(1)(d), (e), and (l) (reproduced above) of the FOIP Act may also serve as authority for providing the Complainant's personal information to the medical advisor, given that the Public Body was adjudicating the Complainant's claim for benefits in accordance with the *Workers' Compensation Act*. There is also nothing before me to suggest that the Public Body provided more information than was necessary for the purpose of adjudicating the Complainant's claim.

Conclusion

[para 18] I find that the Public Body provided the Complainant's personal information to the medical consultant in compliance with Part 2 of the FOIP Act. I have decided that I do not need to hear from the Public Body as the Complainant's evidence and submissions were sufficient to answer the questions set down for inquiry.

III. ORDER

[para 19] I make this Order under section 72 of the Act.

[para 20] I confirm that the Public Body complied with the FOIP Act when it obtained the medical consultant's opinion.

Teresa Cunningham
Adjudicator
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