



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

INVESTIGATION REPORT

INVESTIGATION I93-106P

WORKERS' COMPENSATION BOARD



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Workers' Compensation Board (the Board).

The Workers' Compensation Act (the WCA) has established a two-track benefit system for workers who suffer permanent consequences because of their workplace injuries. It provides compensation for permanent impairment (the non-economic loss award for the loss of enjoyment of everyday life) and the future loss of earnings (the economic loss award for the employment impact) which result from the injury.

The complainant's spouse had filed a claim for non-economic loss with the Board. The Board subsequently disclosed the spouse's personal information to her employer. The spouse's information was contained in a psychiatrist's Non-economic Loss Assessment and cover letter (the NEL). The NEL included information concerning the spouse's sexual life with the complainant, and other personal information. It also contained information about the complainant, such as his age and his state of health.

The complainant's spouse filed a complaint with our office about the disclosure of her personal information in the NEL to her employer. This complaint was the subject of Investigation I93-048P.

The complainant's concerns were also about the NEL. It was his view that the Board had disclosed information concerning his personal and sexual life contained in the NEL to his spouse's employer, in contravention of the Freedom of Information and Protection of Privacy Act (the Act).

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information contained in the NEL "personal information" as defined in section 2(1) of the Act? If yes,
- (B) Was the personal information disclosed in accordance with section 42 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information contained in the NEL "personal information" as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information", in part, as:

recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, **age**, sex, sexual orientation or **marital or family status of the individual**, (emphasis added)
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

We reviewed a copy of the NEL. The NEL identified the complainant's spouse by her married surname. By indicating that the complainant was married to her, it also identified him by his surname. The NEL also disclosed his age, his place of work, his state of health, the length of his marriage, and his place of employment. It also contained comments about his sexual life with his spouse. We noted that the NEL also contained information about identifiable family members of the complainant, and his spouse, such as their ages and employment status.

It is our view that the information contained in the NEL met the requirements of paragraphs (a) and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information contained in the NEL was personal information as defined in section 2(1) of the Act.

Issue B: Was the personal information disclosed in accordance with section 42 of the Act?

The complaint concerns the Board's disclosure of the complainant's personal information to his spouse's employer. Under the Act, personal information in the custody or control of an institution cannot be disclosed except in the specific circumstances outlined in section 42.

Section 42(e) of the Act states:

An institution shall not disclose personal information in its custody or under its control except,

- (e) for the **purpose of complying with an Act of the Legislature** or an Act of Parliament or a treaty, agreement or arrangement thereunder; (emphasis added)

The Board stated that the issue in this investigation was identical to one of the issues in Investigation Number I93-048P. In that investigation, the Board cited section 42(12) of the WCA as its legislative authority for its disclosure, in accordance with section 42(e) of the Act.

Section 42(12) of the WCA requires the Board to send a copy of the non-economic loss assessment to the accident employer. It states:

(12) The Board shall send a copy of the medical assessment conducted under subsection (9) to the worker and to the employer who employed the worker on the date of the injury.

In this case, the complainant was not the claimant and, therefore, not the "worker". However, the Board advised that spousal and family information, both before and after the injury, is an important component used to assess a worker's claim for permanent impairment due to mental and behavioural disorders. Furthermore, since either the worker or the employer may object to the assessment by asking for a second assessment, both parties to the claim are provided with the same document.

It is our view that since the Board is required under section 42(12) of the WCA to send a copy of the NEL to both the worker and the worker's employer, the disclosure of the complainant's personal information contained in the NEL was in accordance with section 42(e) of the Act, for the purpose of complying with an Act of the Legislature.

Conclusion: The Board's disclosure of the complainant's personal information contained in the NEL to his spouse's employer was in accordance with section 42 of the Act.

SUMMARY OF CONCLUSIONS

- The information contained in the NEL was personal information as defined in section 2(1) of the Act.
- The Board's disclosure of the complainant's personal information contained in the NEL to his spouse's employer was in accordance with section 42 of the Act.

RECOMMENDATION

Although we found that the Board's disclosure of the complainant's personal information to his spouse's employer was in accordance with the Act, we were, nevertheless, concerned that the NEL contained such detailed information about the complainant and other family members. However, during the course of the investigation, the Board informed us that a policy is being prepared that would require doctors to rewrite medical assessments that contain too much or unnecessary information. We, therefore, recommend that the Board include in this policy, a reminder to the doctors of the requirements of the Act when writing medical assessments, in particular, with respect to personal information of individuals other than that of the worker.

Within six months of receiving this report, the Board should provide the Office of the Information and Privacy Commissioner with proof of compliance with the above recommendation.

Original signed by:
Susan Anthistle
Compliance Review Officer

March 30, 1994
Date
