



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

INVESTIGATION REPORT

INVESTIGATION I93-034M

A CITY



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INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a City. The complainant, an employee of the City, made a claim to the Worker's Compensation Board (WCB) with respect to a back injury. His claim was denied, and later, when he made a request to WCB for access to his claim file, he found that the City had disclosed information about him to WCB. His view was that some of the information disclosed was not relevant to his claim, and that the disclosure of this information to WCB breached the Municipal 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) Did the records in question contain the complainant's "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Were the records in question disclosed in accordance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Did the records in question contain the complainant's "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act defines "personal information" 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,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- ...
- (g) the views or opinions of another individual about the individual, and

- (h) the individual's name if 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;

The records in question were the complainant's Short Term Disability (STD) Report, Sick Leave Record, Employee History Record, two letters written by employees of the City to WCB, and the WCB Investigator's report.

It is our view that the above records contained information about the complainant which met the requirements in paragraphs (a), (b), (c), (g), and (h) of the definition of personal information in section 2(1) of the Act.

Conclusion: The records in question contained information which was personal information, as defined in section 2(1) of the Act.

Issue B: Were the records in question disclosed in accordance with section 32 of the Act?

The City stated that the complainant had signed a consent (i.e. a Medical Records Waiver) in accordance with section 31(a) of the Act for the release of information in his medical records.

Section 31(a) of the Act states:

An institution shall not **use** [emphasis added] personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;

The issue in this case is the disclosure, rather than use of the complainant's personal information. Therefore, the relevant section of the Act is section 32. Section 32 of the Act prohibits the disclosure of personal information by an institution except in the circumstances listed in section 32(a) through (l). Section 32 states in part:

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

...

- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;

- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

...

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;

...

The Medical Records Waiver provided to the City by WCB stated:

This will be your authority to allow a representative of the Worker's Compensation Board of Ontario to have access to my **medical** [emphasis added] records and to receive copies thereof at [the City's] First Aid Dept.

In our view, the section of the Act pertaining to the above consent form is section 32(b). The form indicates that the complainant specifically identified his medical records and authorized them to be disclosed to WCB by the City. Since the above consent form clearly applies to the disclosure of medical records only, it is our view that the City could not rely on the above consent form to authorize the disclosure of non-medical information about the complainant. We examined the remaining disclosure provisions of section 32 and determined that section 32(c) and 32(e) applied in the circumstances of this case.

In our view, if the disclosures in question were made in accordance with sections 32(c) or (e) of the Act, it would not have been necessary for the City to obtain the complainant's consent for disclosure. Therefore, we considered sections 32(b),(c), and (e) in determining whether the Act had been breached by the City's disclosures to WCB.

Short Term Disability Report

The City stated that it was its view that the STD Report formed part of the complainant's medical record maintained by the City, and that the complainant had consented to the disclosure of this information, in accordance with section 31(a) [32(b)] of the Act when he signed the Medical Records Waiver.

We agree with the City's view that the complainant's STD report, which contained his name, employee number, dates and term of his STD claim, and the amount of STD benefits paid to him formed part of the complainant's medical record with the City. Therefore, it is our view that complainant's personal information in the STD report was disclosed in accordance with section 32(b) of the Act.

Conclusion: The complainant's personal information in the STD report was disclosed in accordance with section 32 of the Act.

Sick Leave Record

The City stated that:

.... the disclosure of a sick leave record to the WCB for the consideration when investigating a claim for disablement that developed over the course of employment and not as the result of a specific accident is in accordance with

subsection 32(c) as the use of the record is for a purpose consistent with the use for which the record was compiled.

It is our view that sections 32(b) and (c) applied to the disclosure of the complainant's personal information in the Sick Leave Record. The Sick Leave Record contained the complainant's name, employee number, and the number of hours he had taken for sick leave with/without pay, short term disability, surplus time in lieu of sick time, and compensation (WCB). It is our view that the above items formed part of the complainant's medical record with the City, and as such, were disclosed in accordance with section 32(b) of the Act. The remaining item at issue is the record of leaves of absence without pay.

The complainant's view was that the record of his leaves of absence was not relevant to his WCB claim. We asked the City why information about leaves of absence without pay would have been disclosed to WCB, since these leaves would not necessarily be taken for illnesses or injuries, or form part of an employee's medical records. The City stated that leaves of absence could be taken for a variety of reasons, including illness and injury and could be significant information when considering a claim for any disablement arising out of the nature of employment. However, the City gave no evidence to show that the leaves of absence in question had been used for illness or injuries.

Section 32(c) states that personal information may be disclosed for the purpose for which it was obtained or compiled or for a consistent purpose. In our view, the information in the Sick Leave Record would have been compiled by the City for the purpose of creating a record of absences to use in the administration of its human resources programs. The purpose for disclosing information about absences to WCB would have been to provide the Investigator with an overall picture of the complainant's absenteeism from work.

In our view, the complainant's personal information relating to his leaves of absence in the Sick Leave Record was not disclosed for the purpose for which it had been compiled by the City. Therefore, we considered whether the City's disclosure was for a consistent purpose. Section 33 of the Act states:

The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31(b) and 32(c) only if the individual might reasonably have expected such a use or disclosure.

Since the information in the Sick Leave Record was not collected directly from the complainant, the complainant's reasonable expectations could not be a factor in determining whether the disclosure had been made for a consistent purpose. In our view, whether the disclosure was made for a consistent purpose should be determined by considering whether the purpose for the disclosure was reasonably compatible with the purpose for which the information had been obtained or compiled by the City.

In our view, disclosing the complainant's absence information for the purpose of providing the WCB Investigator with an overall picture of the complainant's absenteeism with the City is reasonably compatible with the purpose for which the City compiled the information - to create a

record of the complainant's absenteeism for use in administering its human resources programs. Therefore, it is our view that in the circumstances of this case, the disclosure of the record of leaves of absence was made in accordance with section 32(c) of the Act, for a consistent purpose.

Conclusions: The complainant's personal information that formed part of his medical records in the Sick Leave Record was disclosed in accordance with section 32 of the Act.

The complainant's personal information in his leave of absence record was disclosed in accordance with section 32 of the Act.

Employee History Record

The City stated that the Employee History Record was disclosed in accordance with section 32(e) of the Act (i.e. in order to comply with an Act of the Legislature) upon request from the WCB Investigator. The City referred to section 133(1) of the Workers' Compensation Act (WCA), which states:

Every employer, within three days after learning of the happening of an accident to a worker in the employer's employment by which the worker is disabled shall notify the Board in writing of,

- (a) the happening of the accident and the nature of it;
- (b) the time of its occurrence;
- (c) the name and address of the worker
- (d) the place where the accident happened
- (e) the name and address of the physician or surgeon, if any, by whom the worker was or is attended for the injury,

and shall in any case furnish such further details and particulars respecting any accident or claim to compensation as the Board may require.

As we understand the situation, the complainant's WCB claim was not made as the result of a specific accident, but rather was for an injury which developed over the course of employment. In our view, WCB would have had to require details or particulars respecting the complainant's claim to compensation, in order for section 133 of the WCA to apply in the circumstances of this case.

In our view, some items of the complainant's personal information in the Employee History record were details or particulars respecting the complainant's claim (e.g. name, position, birthdate, seniority date, retirement date). Since WCB had required that the City furnish information respecting the claim, we conclude that the disclosure of this personal information was made in accordance with section 32(e) of the Act, for the purpose of complying with an Act of the Legislature.

However, in our view, some items of the complainant's personal information in his Employee History Record were not details or particulars respecting the claim (e.g. records of suspensions

from driving for speeding). Since the WCA states that the employer is to "furnish such further details and particulars respecting any ...claim to compensation", it is our view that section 133 of the WCA would not apply in the circumstances of the disclosure of details or particulars which, in our view, did not pertain to the complainant's claim . Therefore, we conclude that the disclosure of this personal information was not made in accordance with section 32(e) of the Act, for the purpose of complying with an Act of the Legislature. It is our view that no other sections of the Act applied to the disclosure of this information.

Conclusions: The items of the complainant's personal information in the Employee History Record that were details respecting the claim were disclosed in accordance with section 32 of the Act.

The items of complainant's personal information in the Employee History Record that were not details respecting the claim were not disclosed in accordance with section 32 of the Act.

Letter to WCB from General Superintendent of Operations

The City stated that the information contained in the letter was requested by WCB and was disclosed pursuant to section 32(e) of the Act.

The letter contained the complainant's name, employee number, date of employment with the City, amount of accumulated sick time by a certain date, and the rate at which sick time would have been earned. In our view, these were details respecting the claim. Since the above items of information were details or particulars respecting the claim, and WCB had required that the City furnish the information, we conclude that the disclosure was made in accordance with section 32(e) of the Act, for the purpose of complying with an Act of the Legislature.

Conclusion: The complainant's personal information in the letter to WCB from the General Superintendent of Operations was disclosed in accordance with section 32 of the Act.

Letter to WCB from Co-ordinator, Rehabilitation and Claims Administration

The letter to WCB from the Co-ordinator, Rehabilitation and Claims Administration, contained the complainant's name, social insurance number, details of his current and previous claims, details of his STD claim, his current position, the fact that he had been assigned to light duties, and his physical restrictions. This letter, which accompanied the WCB claim form, stated, "Obviously, this claim warrants your investigation".

The claim form contained the question, "Do you have any reason to doubt the history of injury?", to which the City had answered "Yes". "See attached letter" was typed at the bottom of this section of the form.

It is our view that the City's purpose for compiling the complainant's personal information in the above letter was to provide WCB with further information concerning its reasons for doubting the history of the claim, and to request an investigation.

It is our view that the complainant's personal information in the letter was disclosed for the purpose for which it had been compiled by the City - to provide further information concerning its reasons for doubting the history of the claim, and to request an investigation. Therefore, it is our view that the complainant's personal information was disclosed in accordance with section 32(c) of the Act, for the purpose for which it was compiled.

Conclusion: The complainant's personal information in the letter to WCB from the Co-ordinator, Rehabilitation and Claims Administration was disclosed in accordance with section 32 of the Act.

WCB Investigator's Report

As previously stated, our view is that the WCB Investigator's report contained the complainant's personal information, including City employees' opinions regarding the complainant. This information was apparently recorded by the WCB Investigator as a result of her interview with City employees. The complainant believed that the comments made were prejudicial to his claim. The comments attributed to the City employees were as follows:

Comment #1:

[employee] advised me that [complainant] is a complainer and complains about everything.

Comment #2:

[employee] elaborated indicating that [complainant] was a bit of a hypochondriac. He always seemed to have something wrong with him..

Comment #3:

[employee] indicated that the injured worker was a good worker when he originally commenced working for [the City]...

The City stated that "the comments noted were verbal comments and opinions that did not form part of any record as defined in the act". We agree with the City that the comments made were verbal. It is our view that comments #1 and #2 did not contain information that would have been a matter of record with the City, and that the Act did not apply to these disclosures.

However, Comment #3 contained information about the complainant's job performance that had been recorded by the City on the Employee History Record approximately six months after he was hired (i.e."LAYOFF-EXCELLENT EMPLOYEE-WOULD REHIRE"). In her report, the WCB Investigator referred to the fact that the information had been recorded, stating:

[employee] indicated that the injured worker was a good worker when he originally commenced working for [the City] **as noted in the Employee History Record which was supplied to me by the employer.** [emphasis added]

Therefore, it is our view that the Act applied to this disclosure. The City stated that the comments made to the WCB Investigator were in response to questions asked by her during the interviews. Accordingly, it is our view that section 32(e) of the Act applied to the disclosure. It is our view that the complainant's personal information in Comment #3 was details or particulars respecting his claim. Since WCB had required that the City furnish the information, by asking questions during an interview, we conclude that the disclosure of this personal information was made in accordance with section 32(e) of the Act, for the purpose of complying with an Act of the Legislature.

Therefore, it is our view that the disclosure of the complainant's personal information in Comment #3 was made in accordance with section 32 of the Act.

Conclusions: The Act did not apply to Employee Comments #1 and #2 in the WCB Investigator's report.

The complainant's personal information in Employee Comment #3 in the WCB Investigator's report was disclosed in accordance with section 32 of the Act.

Other Matters

During the course of this investigation, the following matter was identified and brought to the City's attention:

The complainant's Employee History Record contained a reference to another employee. The City acknowledged that third party information that should have been severed was disclosed to WCB inadvertently.

SUMMARY OF CONCLUSIONS

- The records in question contained information which was personal information, as defined in section 2(1) of the Act.
- The complainant's personal information in the STD report was disclosed in accordance with section 32 of the Act.
- The complainant's personal information that formed part of his medical records in the Sick Leave Record was disclosed in accordance with section 32 of the Act.
- The complainant's personal information in his leave of absence record was disclosed in accordance with section 32 of the Act.

- The items of the complainant's personal information in the Employee History Record that were details respecting the claim were disclosed in accordance with section 32 of the Act.
- The items of the complainant's personal information in the Employee History Record that were not details respecting the claim were not disclosed in accordance with section 32 of the Act.
- The complainant's personal information in the letter to WCB from the General Superintendent of Operations was disclosed in accordance with section 32 of the Act.
- The complainant's personal information in the letter to WCB from the Co-ordinator, Rehabilitation and Claims Administration was disclosed in accordance with section 32 of the Act.
- The Act did not apply to Employee Comments #1 and #2 in the WCB Investigator's report.
- The complainant's personal information in Employee Comment #3 in the WCB Investigator's report was disclosed in accordance with section 32 of the Act.

RECOMMENDATIONS

We recommend that the City incorporate the following into its procedures:

that personal information not respecting an accident or claim be severed from records that are provided to WCB.

Within six months of receiving this report, the City 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

April 25, 1994
Date