



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

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# INVESTIGATION REPORT

INVESTIGATION I93-095P

WORKERS' COMPENSATION BOARD

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**June 23, 1994**



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## INTRODUCTION

### Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Workers' Compensation Board (the Board). Specifically, the complainant was concerned that the Board had disclosed her entire claims file including her medical information, to her employer contrary to the provisions of the Freedom of Information and Protection of Privacy Act (the Act). The complainant stated that some of the medical information that had been disclosed was wrongly filed in her correspondence file. As a result of this information being misfiled, the complainant was not given the prior opportunity to object to its disclosure as permitted by the Workers' Compensation Act.

The complainant also stated that her telephone number was disclosed contrary to explicit instructions to keep it confidential.

### Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did the Board disclose the complainant's personal information to her employer in accordance with section 42 of the Act?

## RESULTS OF THE INVESTIGATION

**Issue A: Was the information in question "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,

- (d) the address, telephone number, fingerprints or blood type of the individual;
- (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;

The documents in question included three memos, numbers 3, 6, and 12 which were written by a Board claims adjudicator; a copy of the claims adjudicator's "Summary of Prior or Subsequent

Claim", and a report from a walk-in clinic. These documents contained the complainant's name, claim number and background on the type of injury suffered.

In addition, a document entitled "Form 6 - Worker's Report of Injury or Disease" contained the complainant's name, address, telephone number, employment and injury information.

In our view the information contained in the documents met the requirements of paragraphs (d) and (h) of the definition of "personal information" in section 2(1) of the Act.

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

**Issue B: Did the Board disclose the complainant's personal information to her employer in accordance with the Act?**

### **Disclosure of the memos and the "Summary of Prior or Subsequent Claim"**

It was the complainant's view that the memos and summary contained her medical information and should have been filed in her medical file and not released with other non-medical records to the employer.

Under section 71(3) of the Workers' Compensation Act (the WCA), where there is an issue in dispute, the "Board shall grant the employer access to copies of only those records of the Board that the Board considers to be relevant to the issue or issues in dispute...".

However, section 71(5) of the WCA provides that before granting access to the employer to medical reports and opinions under subsection (3), the Board "shall notify the worker or claimant for compensation of the medical reports or opinions it considers relevant and permit written objections to be made within such time as may be specified in the notice before granting access to the employer...".

The Board stated that the issue of disclosure of medical information in medical records has been considered by the Workers' Compensation Appeals Tribunal (WCAT), which has the jurisdiction to hear appeals of the Board's decisions. The Board referred us to WCAT decision 697/90, which stated in part, "[t]he Panel does not agree that memos by claims adjudicators can be considered medical reports or opinions. Although these memos refer to the incident in question, we cannot conclude that a reference to a medical incident is the same as medical reports or opinions." In the same decision, the WCAT panel reviewed a social work report and found that "[w]e cannot conclude that this report constitutes a medical report. It is not authored by a medical practitioner and does not address medical issues."

It was the Board's view that the memos and summary disclosed to the complainant's employer could not be considered medical reports or opinions. We have carefully examined the documents. They are written by a claims adjudicator and not a medical practitioner. The memos were about the complainant's request for a change of doctors and the summary gave the background and status of her workers' compensation claim. We are, thus, in agreement with the Board's view.

Under the Act, an institution cannot disclose personal information except in the circumstances outlined in section 42.

Section 42(e) of the Act states that:

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;

In this case, the memos and summary were disclosed in compliance with section 71(3) of the WCA. It is, therefore, our view that the Board disclosed the memos and summary to the complainant's employer in accordance with section 42(e) of the Act.

#### **Disclosure of the walk-in clinic report**

The complainant contended that the walk-in clinic report should have been filed in her medical file so that she would have been given the opportunity to object to its disclosure as permitted by section 71(5) of the WCA.

According to the Board, this document was not filed in the medical section because it had been provided by the complainant in a package of correspondence and it did not address specific medical issues. The Board further indicated that the document provided diagnosis, return to work and claim status information. The Board stated that such information may be provided to the accident employer at any time and where there is an issue in dispute, such information may be provided to the employer in accordance with section 71(3) of the WCA. Therefore, it was the Board's view that the disclosure of this document was in accordance with section 42(e) of the Act.

The walk-in clinic report contained specific details about the complainant's injury to her left shoulder and was prepared and signed by a medical practitioner. Having carefully examined the WCAT decision 697/90 as previously noted, it is our view that the walk-in clinic report could be considered to be a medical report or opinion. It is our view that section 71(5) of the WCA would have been applicable, in which case the complainant would have been permitted to object to its disclosure to her employer.

This view would appear to be supported by the decision of the WCAT on March 16, 1994, decision 168/94, with respect to the complainant's objections to the Board's release of certain documents to her employer. The WCAT's decision specifically addressed the walk-in clinic report and stated, in part, that "[i]t was also clarified that the Board **inadvertently** sent the employer a **medical report from a medical walk-in clinic**" (emphasis added).

We have examined section 42(e) of the Act which permits disclosure of personal information for the purpose of complying with an act of the legislature. However, we are of the view that the disclosure of the walk-in clinic report was not in compliance with the provisions of the WCA and therefore, not in accordance with section 42(e) of the Act. We have examined the other provisions of section 42 and found that none applied with respect to this disclosure.

### **Disclosure of the complainant's telephone number**

The complainant stated that on her completed Form 6 "Worker's Report of Injury or Disease", she had advised that her telephone number was unlisted, unpublished and was "not for distribution". The complainant also stated that every time she spoke to the adjudicator assigned to her case she had made it clear that her telephone number should not be released to her employer.

The Board stated that on July 19, 1992, the complainant had telephoned in her claim for compensation and provided her telephone number but did not mention that it should not be disclosed to her employer. The Board indicated that the completed Form 6 was received a day later with the notation that the number was not for distribution.

The Board stated that it had relied on section 71(3) of the WCA for the disclosure of the complainant's telephone number. As previously noted, under section 71(3) the Board is required to provide copies of those documents which the Board considers to be relevant to the issue(s) in dispute to the employer. In this case, the documents included the complainant's completed Form 6. The Board submitted that relevant documents are disclosed in their entirety to the employer so that proper representations can be made with respect to the issue(s) in dispute.

We have carefully considered the Board's representations. It is our view that the Board disclosed the complainant's completed Form 6 which included her telephone number to her employer in accordance with section 71(3) of the WCA. The disclosure was, thus, in accordance with section 42(e) of the Act.

**Conclusions:** The disclosure of the memos and summary to the complainant's employer was in accordance with section 42 of the Act.

The disclosure of the walk-in clinic report to the complainant's employer was not in accordance with section 42 of the Act.

The disclosure of the complainant's telephone number included in her completed Form 6 to her employer was in accordance with the Act.

### **SUMMARY OF CONCLUSIONS**

- The information was personal information as defined in section 2(1) of the Act.

- The disclosure of the memos and summary to the complainant's employer was in accordance with section 42 of the Act.
- The disclosure of the walk-in clinic report to the complainant's employer was not in accordance with section 42 of the Act.
- The disclosure of the complainant's telephone number included in her completed Form 6 to her employer was in accordance with the Act.

## **RECOMMENDATION**

We recommend that in order to prevent any inadvertent disclosures of medical reports or opinions to employers, the Board should remind appropriate staff to ensure that incoming documents are carefully reviewed so that they are correctly filed.

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

June 23, 1994  
\_\_\_\_\_  
Date