



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

INVESTIGATION REPORT

INVESTIGATION PC-990041-1

Workplace Safety and Insurance Board

22 February 2001



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INTRODUCTION:

Background of the Complaint

This investigation was initiated as a result of a complaint under the *Freedom of Information and Protection and Privacy Act* (the *Act*) that the Workplace Safety and Insurance Board (WSIB) improperly disclosed medical information about the complainant to a non-medical staff member of a service provider retained by WSIB.

The complainant suffered a work-related injury and claimed benefits under the *Workplace Safety and Insurance Act*. A claims adjudicator was assigned to the complainant's file in order to monitor his recovery and assess his entitlement to on-going benefits. As part of the regular WSIB process, benefit recipients are referred to a Regional Evaluation Centre (REC) in order to assess whether they have a substantial inability to perform their essential employment tasks. This ensures that workers are eligible to receive on-going benefits and to provide direction for treatments resulting from work-related injuries.

A REC assessed and evaluated the complainant's injury, and recommended that he undergo a particular type of treatment, consisting of "work hardening" exercises (ie., physiotherapy, stretch, aerobic and strength exercises). A Work Hardening Facility (WHF) was retained by WSIB in order to provide the complainant with these treatments. The WHF is located in Hamilton, an approximately 30-minute commuting distance from the complainant's residence. The WSIB states that the complainant's eligibility for benefits was conditional on his participation in this treatment program.

WSIB sent the complainant's REC evaluation to the WHF in order to provide the WHF with knowledge of the specific recommendations and background information necessary to enable it to provide the required treatment. In so doing, the complainant believed that WSIB had inappropriately disclosed his personal information, and that this constituted a breach of the *Act*. WSIB points out that the REC evaluation was required by the WHF "to ensure the complainant's safety during the work hardening process".

Record at Issue

The record provided to the WHF consists of the complainant's four-page REC evaluation, which assessed his health condition, limitations and his ability to perform the essential tasks of his employment, together with a one-page Multi-Disciplinary Health Care Assessment Summary Report based on the REC evaluation.

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) Was the personal information disclosed by WSIB to the Work Hardening Facility in compliance 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* states, in part:

"personal information" means recorded information about an identifiable individual, including,

...

(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;

...

(h) the individual's name where it appears with the other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information contained in the records includes the complainant's name and parts of his medical and employment history. I find that this information clearly satisfies the requirements of the definition of "personal information" in section 2(1) of the *Act*. WSIB does not dispute this finding.

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

Issue B: Was the personal information disclosed by WSIB to the Work Hardening Facility in compliance with section 42 of the Act?

Section 42 of the *Act* prohibits the disclosure of personal information by an institution, except in certain circumstances. Section 42(c), in particular, states:

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

for the purpose for which it was obtained or compiled or for a consistent purpose;

WSIB's position is that in order to decide whether to accept or deny a claim for benefits, it must collect all relevant and necessary information concerning the workplace injury and the impact of this injury on the worker's ability to return to work. Because all claims are based on an individual's medical condition, decisions cannot be made in the absence of the required medical

information. In the context of a claims adjudication, the adjudicator requires accurate information about the nature of the injury or illness, the prognosis, the worker's medical history, and any other factors which may affect the worker's return to work, in order to determine the worker's ongoing eligibility for benefits. Information of this nature is obtained through reports provided by the worker, physicians and other appropriate specialists.

As far as the complainant's situation is concerned, the WSIB's Regional Evaluation Centre collected the personal information in question in order to administer his claim and provide the required medical and vocational rehabilitation services. Because WSIB was not providing direct rehabilitation and/or medical services to the complainant, his information was sent to the Work Hardening Facility to which the complainant was referred and for which the WSIB had a service arrangement for vocational rehabilitation.

WSIB submits that it has numerous medical reports involving the complainant in its custody and control, all of which relate to the original benefits claim and are contained in his claim file. However, at the time it decided to refer the complainant for this particular treatment, the WSIB reviewed the entire file and decided only to provide the WHF with the two records that are the subject of this complaint. In explaining why the WHF required the REC evaluation in addition to the Multi-Disciplinary Health Care Assessment Summary Report, the WSIB states:

The WHF requires more detail about the physical findings to better facilitate the work hardening. It is important for the facility to know the medical condition, psychological factors or medications that may effect the vocation rehabilitation program.

The WSIB also states that the more extensive medical information contained in the REC evaluation is required by the WHF in order to ensure the complainant's safety during the treatment process.

One purpose for which WSIB collected the complainant's personal information was to administer the claim by assessing the complainant's right to receive income replacement benefits under the *Workplace Safety and Insurance Act*.

Another purpose was to provide the complainant with the required vocational rehabilitation services resulting from his work-related injury. In order to provide these services, WSIB entered into an arrangement with a locally-based body with the required expertise, and provided this particular Work Hardening Facility with the necessary information to conduct this rehabilitative treatment. The amount of personal information disclosed to the WHF in this context was limited to the assessment conducted by the WSIB's Regional Evaluation Centre, and a summary document concerning this same assessment.

In my view, it is reasonable for injured workers to expect that relevant medical information directly relating to a claim for benefits under the *Workplace Safety and Insurance Act* would be provided to rehabilitative service providers who have the skills and expertise to treat the injury in question. It is also reasonable for injured workers to expect that the information disclosed for this purpose would be limited to that which is necessary in order to deal with the specific treatment program. In the circumstances of this complaint, WSIB disclosed a specific and

limited amount of the complainant's medical information to the WHF in order to put this organization in a position to fully understand and effectively provide the required treatment identified by the Regional Evaluation Centre, and to ensure the complainant's safety during the treatment process. The WSIB took care to restrict the amount of information disclosed in this context, releasing only the specific records dealing with the identified treatment.

Accordingly, I find that the disclosure of the complainant's personal information by WSIB to the Work Hardening Facility was for a purpose consistent with the purpose for which it was originally obtained from the appellant, and therefore in accordance with section 42(c) of the *Act*.

Conclusion: The disclosure of the personal information by WSIB to the Work Hardening Facility was in accordance with section 42 of the *Act*.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

February 22, 2001 _____