



Information and Privacy
Commissioner/Ontario

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PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NO. PC-040048-1

Workplace Safety and Insurance Board



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INVESTIGATOR: **Suzanne Tardif**

INSTITUTION: **Workplace Safety and Insurance Board**

SUMMARY OF COMPLAINT:

The Office of the Information and Privacy Commissioner (the IPC) received a complaint on behalf of an injured worker (the complainant) who had applied for Workplace Safety and Insurance Board (WSIB) benefits. The complainant contends that WSIB disclosed her personal medical history contrary to the *Freedom of Information and Protection of Privacy Act* (the Act). Specifically, the complainant alleges that a breach of privacy occurred when WSIB disclosed in its decision letter relating to the complainant's claim the date of a particular medical exam and the physician's opinion of an injury. This decision letter was sent by WSIB to the complainant's employer and to Human Resources and Skills Development (HRSD) (formerly known as Human Resources Development Canada).

The complainant also contends that, before giving access to her personal medical information to her employer, WSIB should have notified her and given her the opportunity to object to the disclosure, as per sections 58 and 59 (1) of the *Workplace Safety and Insurance Act* (WSIA).

Background

WSIB operates under the authority of the *WSIA*. WSIB oversees Ontario's workplace safety education and training system and administers the province's no fault workplace insurance for employers and their workers. WSIB adjudicates claims for work-related injuries or diseases, administers benefits and assists the workers in returning to work.

HRSD administers the *Government Employees Compensation Act* (*GECA*) and is responsible for overseeing the provision of workers' compensation benefits in the federal public service. Instead of establishing its own system for compensation and treatment, the federal government uses the services already available through provincial worker's compensation boards.

The HRSD website contains the following information with respect to claims from federal employees:

[HRSD] receives and processes claims from employees of federal departments and agencies. Claims are forwarded to the appropriate provincial authority, and [HRSD] is concerned with the provision of workers' compensation benefits for each claim until a case has been settled. A file is maintained on each claim and other records are kept for accounting and statistical purposes. A general advisory service is provided to employees and their unions, as well as to employers, on the interpretation and application of the legislation.

The complainant, who is employed by a particular federal agency, claimed to have sustained an injury while entering her employer's premises to report to work. The complainant reported the accident to her employer, who subsequently submitted the claim to HRSD and WSIB.

WSIB investigated the claim and, as part of the adjudication process, rendered an adverse decision letter to the complainant. A copy of the decision letter was provided to the complainant's employer and to HRSD.

DISCUSSION:

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

Issue A: Is 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 other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

As indicated above, the information that is the subject of this complaint is contained in a decision letter written by a WSIB claims adjudicator which includes, among other things: the complainant's name; the date of a particular medical exam; the history of the complainant's injury and the physician's diagnosis relating to this injury.

In my view, the information in question clearly satisfies the requirements of the definition of "personal information" contained in the paragraphs (b) and (h) of section 2(1).

Conclusion: The information in question is "personal information" as defined in section 2(1) of the Act.

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

Introduction

Section 42 of the *Act* sets out the rules for the disclosure of personal information other than to the individual to whom the information relates. This section provides that an institution shall not disclose personal information in its custody or under its control, except in the circumstances listed in sections 42(a) through (n).

WSIB is relying on sections 42(c) and (e) in this case. In light of my findings relating to section 42(c) below, it is not necessary for me to consider section 42(e).

Section 42(c) reads as follows:

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

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

The term "consistent purpose" is defined in section 43 of the *Act* as follows:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

Where information has been collected directly from an individual, section 43 indicates that a purpose may be considered to be consistent "... only if the individual might reasonably have expected such a use or disclosure". Where personal information has not been collected directly from the individual, but from some other source, previous investigation reports have indicated that in order to qualify under "consistent purpose", the use or disclosure must be "reasonably compatible" with the purpose for which it was obtained or compiled (see Investigation Report #I95-008M).

Complainant's Submissions

As outlined above, the complainant's representative contends that WSIB breached the *Act* by disclosing certain medical information to the complainant's employer and to HRSD in its decision letter relating to her claim. He also contends that, under sections 58 and 59 of *WSIA*, the Board had an obligation to notify the complainant of its intent to disclose her personal medical information to her employer, in order to give her the opportunity to object to the disclosure.

Sections 58 and 59 (1) of *WSIA* state:

Employer's access to records

58 (1) If there is an issue in dispute, the Board shall, upon request, give a worker's employer access to such documents in the Board's file about the claim as the Board considers to be relevant to the issue and shall give the employer a copy of those documents.

Same

(2) The Board shall give the same access and copies to a representative of the employer, if the representative has written authorization from the employer.

Notice to worker

(3) The Board shall notify the worker or his or her representative if the Board has given access and copies to the employer (or employer's representative) and shall give a copy of the same documents to the worker.

Employer's access to health records

59 (1) Despite section 58, before giving the employer access to a report or opinion of a health care practitioner about a worker, the Board shall notify the worker or other claimant that the Board proposes to do so and shall give to him or her an opportunity to object to the disclosure.

The complainant's representative submits as follows:

I am in possession of the entire WSIB file in regard of [the complainant's] claim. There is no indication that the employer and in particular, [a named individual], has sought access to or has submitted a request for anything from the WSIB file. On the face of it, it would appear that the complainant's personal medical information was provided arbitrarily to the employer without her knowledge, without her permission and with absolutely no benefit for objection.

Second to this, [WSIB claim adjudicator's] original letter of denial was information to all parties stating that the Board was denying initial entitlement. Therefore, given that this was merely a statement of fact, there was nothing in dispute which would trigger the employer's request for access. Ergo, the employer had no need to be in possession of information available only within [the complainant's] WSIB file. Injured workers do not abrogate their right to privacy simply by seeking initial entitlement and the only matter which they do agree to voluntarily disclose to the employer is the information on the Functional Abilities Form when attempting to return to work. In fact, the Board has denied initial entitlement. Therefore, there is even less reason for the employer to be in possession of [the complainant's] personal and privileged medical history.

At no time was [the complainant] informed that her personal medical information was going to be provided to the employer or any of the employer's delegates. There is a legislated obligation upon the Board to inform her of any and all material being provided to the employer and most importantly this is to transpire prior to that disclosure in order that she may choose to make fervent arguments to the contrary if she felt that disclosures would be contentious or harmful to her case.

Certainly the Board, following sections 58 and 59 of the [WSIA] has a statutory obligation to provide personal information to employers who seek it when the information requested is relevant to the issues objected to. However, there is no statutory latitude provided to an adjudicator to arbitrarily disclose personal medical information to the employer.

With respect to disclosure to HRSD, although the complainant's representative acknowledges HRSD's involvement in the claim administration process and the need for it to receive a copy of the WSIB decision, he contends that the disclosure of the personal information in question was contrary to the *Act*.

WSIB's submissions

As indicated above, WSIB maintains that the disclosure of the personal information in question, was authorized pursuant to sections 42(c) and (e) of the Act. With respect to section 42(c), WSIB states the following:

Section 42, clause (c) is another statutory exception to the rule against disclosure of personal information by an institution. It provides for disclosure of personal information collected indirectly "for the purpose for which the personal information was obtained or compiled or for a consistent purpose".

The overriding purpose for which information is collected by the WSIB, as communicated to injured workers on our Form 6 (attached), is for the administration of their claims for WSIB benefits and services. Within this

overriding purpose are other necessarily incidental purposes for which the WSIB collects personal information about injured workers.

Under section 1 of [WSIA], for example, we find four major purposes, the fulfillment of which would necessitate the collection of personal information:

- to promote health and safety in workplaces and to prevent and reduce the occurrence of workplace injuries and occupational diseases
- to facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease
- to facilitate the re-entry into the labour market of workers and spouses and same-sex partners of deceased workers
- to provide compensation and other benefits to workers and to the survivors of deceased workers.

These statutory purposes can be further distilled to identify yet more specific purposes for which the WSIB collects personal information. Such purposes include:

...

- supporting the legitimacy of the worker's claim.

The WSIB discloses a worker's diagnosis to an employer either verbally, in a status letter or in a decision letter when the purpose(s) for such disclosure are reasonably compatible with the purpose(s) for which the diagnosis was obtained.

...

WSIB's submission goes on to state the following:

More specifically in regards to decision letters, the WSIB obtains information as to the exact diagnosis of a worker's injury for the purpose of determining initial and ongoing entitlement to benefits. It is then consistent for the WSIB to disclose that information to an employer for the purpose of explaining the entitlement decision. This would allow an employer to meaningfully participate in the claim whether by way of objection or arranging return to work, for example. Disclosure in these circumstances for the purpose of advising an employer and explaining an entitlement decision is reasonably compatible with the purpose for which the information was collected namely, determining entitlement.

WISB further explains in its submission that, as part of the Adjudication process, decisions are communicated in writing to the relevant parties. In situations where the claim involves a federal government employee, a copy of the decision is sent to HRSD, in addition to the employer.

WSIB states the following with respect to sections 58 and 59 of *WSIA*:

... Sections 58 and 59 of *WSIA* deal with employer access to the individual's claim file only after there is an issue in dispute. If an employer objects to a claim's decision, a copy of the entire claim file including health information is sent to the worker in order to give him/her an opportunity to review the information and he/she can object to the release of healthcare information to the employer. This does not apply to this situation, as we are not dealing with the release of a claim file to the employer. This issue is limited to including relevant health information into a claim decision letter in order to properly explain the decision. ...

Findings

Form 6, as referred to in WSIB's submissions, is a WSIB form entitled "Workers' Report of Injury/Disease". This form must be filled out by the worker when claiming benefits under *WSIA* for a work-related injury or disease. *WSIA* requires the worker to give a copy of Form 6, to the employer.

The WSIB's notice provision on this form states the following:

...Personal information relating to you will be collected throughout your claim under the authority of the [*WSIA*], and will be used to administer your claim and programs of the Board. Medical and non-medical information is collected from health care providers, vocational agencies, labour market service providers, employers, witnesses and others as required. Information may be disclosed to the employers, external medical, vocational, safety agencies, external service and payment providers, researchers and others as authorized by the [*WSIA*] and the [*Act*]. ...

It is clear from the wording on Form 6, which was filled out and signed by the complainant, that the purpose of WSIB's collection of the complainant's personal information is to administer her WSIB claim.

In this case, the personal information at issue was collected from the complainant's physician, by way of Form 8. During my investigation, WSIB provided me with a copy of this form, entitled "Physician's First Report". It is clear that the information in question is related directly to the complainant's WSIB claim and was collected for the purpose of administering that claim, which includes making an appropriate decision regarding eligibility.

Pursuant to section 131(4) of the *WSIA*, WSIB's decisions must contain reasons. This section states as follows:

The Board or the Appeals Tribunal, as the case may be, shall promptly notify the parties of record of its decision in writing and the reasons for the decision. The Appeals Tribunal shall also notify the Board of the decision.

As stated in WSIB's submission, the personal information was disclosed to the complainant's employer and HRSD for the purpose of advising and explaining its decision regarding the complainant's entitlement to benefits.

Based on the information provided to me, I conclude that section 42(c) of the *Act* applies in the circumstances of this complaint. In my view, the disclosure of the personal information to the complainant's employer and HRSD was for the original purpose for which it was obtained or compiled, namely the administration of the complainant's claim.

I also agree with WSIB that sections 58 and 59(1) of the *WSIA* deal with employer's access to records within a claim file and not to the disclosure of information contained within a claim decision letter, as is the case here. Therefore, I accept WSIB's position that sections 58 and 59(1) of the *WSIA* do not apply in these circumstances.

Conclusion: The disclosure of personal information to the complainant's employer and to HRSD was in accordance with section 42(c) of the Act.

CONCLUSIONS:

I have reached the following conclusions based on the results of my investigation:

- (1) The information in question is "personal information" as defined in section 2(1) of the *Act*.
- (2) The disclosure of personal information to the complainant's employer and to HRSD was in accordance with section 42(c) of the *Act*.

Original signed by: _____
Suzanne Tardif
Investigator

June 16, 2005