

**ALBERTA
INFORMATION AND PRIVACY COMMISSIONER**

**Report on the Investigation into Complaint
Regarding the Disclosure of Personal Information
by a Public Body**

March 29, 1999

Workers' Compensation Board Appeals Commission

Investigation #1501

The Complaint

On October 29, 1998, the Office of the Information and Privacy Commissioner received a privacy complaint concerning the Workers' Compensation Board Appeals Commission (the "Appeals Commission").

In the letter to the Commissioner, the Complainant alleged that the Appeals Commission breached the Complainant's privacy by disclosing information about the Complainant to legal representatives of parties named as defendants by the Complainant in a civil law suit. The Complainant claimed that the defendants subsequently sent the information disclosed by the Appeals Commission to a doctor in the United States for a medical opinion.

The Commissioner assigned a Portfolio Officer to investigate the matter, as provided by section 51(2)(e) of the *Freedom of Information and Protection of Privacy Act* (the "FOIP Act"), which states:

51(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that

(e) personal information has been collected, used or disclosed by a public body in violation of Part 2.

On January 13, 1999, the Portfolio Officer issued a preliminary investigation report to the parties. The report concluded that the Appeals Commission did not disclose personal information in violation of Part 2 of the FOIP Act.

The Complainant was not satisfied with the conclusion reached by the report. In addition, the Complainant identified two further concerns:

1. The Appeals Commission collected personal information in violation of the FOIP Act when it allowed the defendants to make submissions at the Complainant's WCB appeal hearing.
2. The Appeals Commission breached the FOIP Act when it used the information provided by the defendants in rendering its decision on the Complainant's WCB appeal.

This report incorporates the Complainant's concerns that were identified subsequent to the issuance of the preliminary investigation report.

Background

The Complainant had submitted a claim for compensation to the Claimant Services Department of the Workers' Compensation Board in 1995. Claimant Services denied the claim.

Subsequently, the Complainant appealed the denial of the Complainant's WCB claim to the Claims Services Review Committee (the "CSRC"). The CSRC is a department of the WCB and is the first level of appeal for injured workers dissatisfied with decisions made by Claimant Services on their claims.

In addition, the Complainant and a number of co-workers, who submitted similar WCB claims, filed a lawsuit against the Employer and other parties alleging negligence and breach of contract. The civil proceedings were placed in abeyance until the Complainant's appeal had been completed.

The CSRC granted "interested party" status to all the defendants named in the Complainant's lawsuit. These parties were invited to attend the CSRC appeal hearing and were provided with personal information about the Complainant, including medical information. [*Note: this issue was addressed in Investigation Report 98-IR-005.*]

The CSRC issued its decision denying the Complainant's appeal in December 1997.

In January of 1998, the Complainant filed an appeal to the Appeals Commission. The Appeals Commission is an administrative tribunal independent of the Workers' Compensation Board. It is the final level of appeal for injured workers on the adjudication of their claims.

The Appeals Commission noted that the CSRC had granted "interested party" status to all defendants named in the Complainant's lawsuit. As a result, the Appeals Commission extended an invitation to all defendants to make submissions for "interested party" status.

Four defendants submitted a request to the Appeals Commission for "interested party" status. After reviewing the requests, the Appeals Commission decided on April 2, 1998 to not grant "interested party" status to the defendants. Instead, the Appeals Commission granted "intervenor" status to the four defendants. As intervenors, these defendants were granted the right to observe the hearing and make submissions.

During the Appeals Commission hearing in June 1998, the Complainant and the Complainant's co-workers expressed concerns to the Appeals Commission that they were uncomfortable with discussing their personal information in front of the intervenors. Based on these concerns, the Appeals Commission reconsidered its decision to permit intervenors the right to observe the hearing. The intervenors were only given the opportunity to appear at the end of the hearing to make a submission.

The Appeals Commission issued its decision on the Complainant's appeal in July 1998.

Issues

The issues of the investigation are:

1. *Did the Appeals Commission **disclose** personal information in violation of Part 2 of the Freedom of Information and Protection of Privacy Act?*
2. *Did the Appeals Commission **collect** personal information in violation of Part 2 of the Freedom of Information and Protection of Privacy Act?*

3. *Did the Appeals Commission use personal information in violation of Part 2 of the Freedom of Information and Protection of Privacy Act?*

Issue #1: Did the Appeals Commission disclose personal information in violation of Part 2 of the FOIP Act?

The investigation found the following:

1. The Appeals Commission did not disclose information from the Complainant's WCB claim file to the defendants.

It is standard practice for the Appeals Commission to develop a Case Description in preparation for a hearing. The Case Description is a package of information relevant to the appeal that is obtained from the injured worker's WCB claim file. The Appeals Commission sent copies of the Case Description to the Complainant and the Employer in March 1998. No copies were disclosed to the defendants.

In its May 1998 written decision, the Appeals Commission wrote:

*"...the commissioners decided not to grant status as an "interested party", and **therefore, will not be providing any material from the workers files to the parties in question**".*
[emphasis added]

2. The Appeals Commission did not disclose a copy of the Employer's submission to the defendants.

Generally, the Appeals Commission would receive advance submissions from the injured worker and the injured worker's employer before the hearing date.

The Appeals Commission advised that a copy of the Employer's written submission was provided only to the Complainant and not to the intervenors. The Employer's submission contained information about the Complainant.

In this case, the Complainant did not provide a submission before the hearing. However, the Appeals Commission claimed it would not have released a copy of the Complainant's submission to the intervenors.

3. The Appeals Commission did not allow the intervenors to observe the June 1998 hearing.

The Appeals Commission indicated that the granting of intervenor status to the defendants was unique. Hearings conducted by the Appeals Commission typically involve the injured worker and the injured worker's employer.

The Appeals Commission had initially granted the defendants the right to observe the hearing as intervenors. However, upon hearing the concerns expressed by the Complainant and other injured workers at the June 1998 hearing, the Appeals Commission decided to amend its decision to allow defendants the right to observe the hearing. As a result, the defendants were excluded from the room during the Complainant's hearing. At the conclusion of the hearing, the defendants were permitted into the room to make a written submission.

4. The Appeals Commission did not send a copy of its July 1998 decision on the Complainant's WCB appeal to the defendants.

The Appeals Commission's detailed decision, which includes information about the Complainant, was issued only to the Complainant and the Employer. Intervenors were notified separately by the Appeals Commission that a decision had been made. The Appeals Commission did not provide copies of its detailed decision to the intervenors.

The investigation concludes that the Appeals Commission did not disclose the Complainant's personal information to the defendants. Therefore, there was no breach of privacy by the Appeals Commission in this matter.

Issue #2: Did the Appeals Commission collect personal information in violation of Part 2 of the FOIP Act?

The Complainant objected to the Appeals Commission's decision to accept written submissions from the intervenors, which included a medical opinion provided by a physician retained by the intervenors.

The intervenors' submissions contain information about the Complainant. "Personal information" is defined in section 1(1)(n) of the FOIP Act. The relevant portions of section 1(1)(n) read:

1(1)(n) "personal information" means recorded information about an identifiable individual, including

(i) the individual's name, home or business address or home or business telephone number, ...

(iii) the individual's age, sex, marital status or family status, ...

(vi) information about the individual's health and health care history, including information about a physical or mental disability, ...

(viii) anyone else's opinions about the individual

The information in the intervenors' submissions is personal information in accordance with section 1(1)(n) of the FOIP Act.

Section 32 of the FOIP Act outlines the provisions regarding the collection of personal information by a public body. Section 32(c) of the FOIP Act states:

32 No personal information may be collected by a public body unless

(c) that information relates directly to and is necessary for an operating program or activity of the public body.

The Appeals Commission is a quasi-judicial body responsible for hearing appeals from decisions made by various departments or review bodies of the Workers' Compensation Board. It is established pursuant to section 5.1(1) of the *Workers' Compensation Act*.

The powers of the Appeals Commission are outlined in section 7 of the *Workers' Compensation Act*, which includes:

- The exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under the *Workers' Compensation Act* and regulations in respect of appeals from the CSRC (section 7(1)(a)).
- The authority to make rules governing the practice and procedure applicable to appeals before the Appeals Commission and generally with respect to its operations (section 7(4)).

Under section 7 of the *Workers' Compensation Act*, the Appeals Commission has the power to control the appeal process i.e. to develop and implement rules and procedures for the parties to the appeal. Section 7 of the *Workers' Compensation Act* also implies that the Appeals Commission has the authority or discretion to decide what information is necessary, relative to the appeal process.

In his order 98-002, the Information and Privacy Commissioner states:

[para 152] I must give the Public Body considerable latitude in deciding that the collection of personal information is necessary...Provided this determination is not patently unreasonable, it is not likely I would interfere...

The Complainant had filed an appeal regarding the denial of the Complainant's WCB claim. The Appeals Commission has the authority to examine and inquire into matters relating to the Complainant's WCB appeal. Therefore, the Appeals Commission had the authority to decide to accept the written submissions from the intervenors. The weight that the Appeals Commission did or did not place on the written submissions in its decision making process is an issue outside the jurisdiction of the FOIP Act.

The investigation concludes that the decision to accept submissions from the intervenors is within the jurisdiction of the Appeals Commission. The investigation also concludes that the Appeals Commission is authorized under section 32(c) of the FOIP Act to collect personal information that relates directly to and is necessary for the operating program or activity of the Appeals Commission, namely, to hear appeals concerning injured workers' compensation.

Issue #3: Did the Appeals Commission use personal information in violation of Part 2 of the FOIP Act?

Section 37 of the FOIP Act outlines the provisions regarding the use of personal information by a public body. Section 37(a) of the FOIP Act states:

37 A public body may use personal information only

(a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose.

Section 39 of the FOIP Act states:

39 For the purposes of sections 37(a) and 38(b), a use or disclosure of personal information is consistent with the purpose for which the information was collected or compiled if the use or disclosure

(a) has a reasonable and direct connection to that purpose, and

(b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information.

The written submissions were collected for the purposes of the appeal process and used for the appeal process. Therefore, the investigation finds that the Appeals Commission used the information for the purpose for which the information was collected. This is consistent with section 37(a) of the FOIP Act, and meets the requirements of section 39 of the FOIP Act.

Conclusion

The investigation concludes that the Appeals Commission did not disclose, collect and use personal information in violation of Part 2 of the FOIP Act:

1. As the Appeals Commission did not disclose information about the Complainant to the defendants, there was no breach of privacy on this matter.
2. The Appeals Commission's decision to accept submissions from the intervenors is authorized under section 32(c) of the FOIP Act.
3. The Appeals Commission's use of the information provided by the intervenors' submissions is consistent with section 37(a) and section 39 of the FOIP Act.

Recommendation

The Complainant has expressed concerns and disagreements with the Appeals Commission's decision-making process in the review of the Complainant's WCB appeal. However, it is not within the mandate of this office to review the fairness of the Appeals Commission's administrative and decision-making processes.

On the issues relevant to the FOIP Act, the investigation concludes that the Appeals Commission did not violate Part 2 of the FOIP Act in this case.

I do not believe that there would be any further gain or benefit for the Complainant in proceeding further on this matter. It is my recommendation that this file be closed with no further action.

Submitted by,

Marylin Mun
Portfolio Officer